IN THE MATTER OF the *Ontario Energy Board Act, 1998*;

AND IN THE MATTER OF an application under section 74 of the *Ontario Energy Board Act, 1998* to amend Hydro One Networks Inc.'s electricity distribution licence.

FINAL ARGUMENT
Association of Power Producers of Ontario (APPrO)

APPRO'S OBJECTIVES.

1. APPrO's positions on this Application are informed by 3 objectives:

   (a) Fair and commercially reasonable treatment of the generators affected.

   (b) Maintenance of appropriate timing discipline within the generator connection process, in the interests of both the directly affected generators interested in finalizing connection and project arrangements and of other generators interested in timely release of allocated connection capacity where appropriate.

   (c) An appropriate balancing of;

      (i) the economic interests of generators in developing green energy generation projects, and of the public interest in such development as reflected the Ontario government's green energy policy, on the one hand; and

      (ii) the interests of provincial electricity ratepayers in reasonable electricity costs and appropriate cost oversight and discipline, in a manner consistent with the government's energy policy, on the other hand.

2. In participating in this proceeding and defining these objectives, APPrO has consulted with, and been informed by, the Canadian Wind Energy Association (CANWEA) and the Ontario Waterpower Association (OWA).

POSITION SUMMARY

3. Hydro One has brought forward two issues in respect of which relief is sought in this Application; i) cost recovery for new connection expenses for a particular group of renewable energy generators; and ii) premature expiration of connection capacity allocations for another particular group of renewable energy generators.

4. APPrO would first like to acknowledge the proactive approach and the spirit of fairness with which Hydro One has brought forward this Application.

Renewable Energy Connection Cost Recovery

5. The first issue which Hydro One has brought forward concerns expenditures recently identified as required to connect, or properly maintain the connection of, 41 renewable generation projects. The record indicates that these expenditures are: i) significant; ii) required in order to facilitate or maintain connection of the subject renewable generation projects while at the same time protecting other distribution system customers; and iii) were not, and could not have been, contemplated until some time after construction was begun, and in several instances until the generation facilities had been placed into service. In all events, planning for each project was completed and connection cost recovery agreements (CCRAs) were entered into long before the need for these expenditures was even identified.

6. The record reveals that these costs are for renewable generation connection related work that is in the nature of "expansion" and/or "renewable enabling improvement", as defined in the Board's *Distribution System Code* (*DSC*). As such, but for the accident of timing, these costs would be the responsibility of the distributor and ultimately recoverable from ratepayers across the province. Hydro One seeks to have the current cost responsibility provisions of the *DSC* applied to the subject costs.

7. It is APPrO's position that the costs in issue are prospective in every sense, and thus the *DSC* cost responsibility provisions already apply to them. APPrO submits that a logical, purposeful and technically appropriate interpretation of the relevant *DSC* provisions leads to this result without the need for exemption.

8. APPrO further submits that the Board should, in this proceeding, approve distributor responsibility for the subject costs, subject to more precise quantification of, and an appropriate future prudence review of, the costs as incurred. Such an approach would protect ratepayers while at the same time giving both Hydro One and the affected

generators cost certainty, thus facilitating completion of connection of, and continued operation of, the subject renewable energy generation projects.

Capacity Allocation Withdrawal

9. The second issue brought forward by Hydro One in this Application concerns the *DSC* prescribed timing for withdrawal of connection capacity allocations. The record indicates that capacity allocations properly assigned to 12 particular large renewable energy generators will expire pursuant to the relevant *DSC* requirements prior to the provision to the subject generators of connection cost estimates and offers to connect. The result would be loss by these generators of their capacity allocations before the connection evaluation, costing and connection cost agreement (CCA)[1] process has run its course.

10. Hydro One has requested exemption from a number of provisions of the *DSC* in its attempt to address this issue. Hydro One's objective is to allow the subject generators to preserve their capacity allocations until detailed connection cost estimates and the resulting offers to connect have been provided.[2]

11. It is APPrO's position that there is only one exemption required to effect this result. APPrO submits that Hydro One should be exempted from section 6.2.4.1 e. of the *DSC* in respect of the 12 generation projects identified in Exhibit J1.1.

12. APPrO further submits that in order to retain transparency of, and discipline on, the connection evaluation, costing and agreement process, such exemption should be conditioned as follows:

   (a) The exemption should expire in respect of each of the subject generators on a date that is the earlier of;

      (i) 45 days after the detailed connection cost estimate (including distribution costs to connect and, where applicable, transmission costs to connect) and offer to connect is delivered to the generator; and

[1] The term "connection cost agreement" is used in the current version of the *DSC* in place of the previous term for these agreements; "connection cost recovery agreements". In this argument, the previous term - "CCRA" - will be used for the connection agreements already executed by the generators involved in the connection costs topic, and the current term - "CCA" - will be used in reference to the connection agreements yet to be executed by the 12 generators implicated in the capacity allocation withdrawal topic.
[2] Ex. C/T1/S1, p. 1 line 26 through p. 2 line 8; Tr. 41, lines 11 through 19.

(ii) 16 months after the date on which Hydro One delivered the connection impact assessment (CIA) to the generator.

(b) During the term of this exemption, Hydro One should publicly file with the Board Secretary monthly reports indicating, for each of the 12 projects;

(i) the current status of, and expected delivery date for, the IESO System Impact Assessment (SIA) and the transmission Customer Impact Assessment (Transmission CIA) for the project, and the basis for any change to the current expected delivery date relative to the last reported expected delivery date, all informed by inquiries of each of the IESO and Hydro One Transmission;

(ii) the current status of, and expected delivery date for, the detailed cost estimate required to be performed by Hydro One Distribution and, if applicable, Hydro One Transmission, and the basis for any change to the current expected delivery date relative to the last reported expected delivery date, all informed, as applicable, by inquiries of Hydro One Transmission;

(iii) the current expected delivery date for the offer to connect, and the basis for any change to the current expected delivery date relative to the last reported expected delivery date; and

(iv) any other comments, either project specific or generic, that will inform the Board of the progress of the 12 projects or of any issues arising during the connection process for these projects, which comments the Board might wish to consider to facilitate timely connection of the subject projects and future projects.

Potential Code Amendments

13. APPrO respectfully submits that the fact of this Application, and the record herein, underscores a disjunct between the capacity allocation preservation period prescribed by section 6.2.4.1. e. of the *DSC* and the timing for completion of the connection evaluation, estimation and contracting process for larger distribution connected generators.

14. The record herein also reveals that while a number of the steps in the connection process are subject to prescribed time lines, the Transmission CIA and transmission detailed cost estimate steps are <u>not</u> subject to any timing requirements. This creates undesirable uncertainty and results in a lack of transmitter accountability.

15. APPrO submits that it would be within the purview of, and appropriate for, this Hearing Panel to recommend that the Board consider the advisability of amendments to each of the *DSC* and the *Transmission System Code* to;

(a) better align and integrate the capacity allocation process and the connection assessment, costing and contracting process for large generators; and

(b) provide for some certainty and accountability in respect of the connection process steps required of the transmitter.

Such amendments would provide clarity and certainty to the generator and regulated utility communities, facilitating investment in, and timely, least cost development and connection of, new generation.

RENEWABLE ENERGY CONNECTION COST RECOVERY

16. Effective October 21, 2009, the Ontario Energy Board (OEB or Board) promulgated *DSC* amendments to effect new cost responsibility rules for distribution system connection of renewable energy generation projects.[3] These new connection cost responsibility rules respond to the Board's recently refreshed "green energy mandate". Under this mandate the Board's legislative objectives include promotion of *"the use and generation of electricity from renewable energy sources,... including the timely expansion or reinforcement of ...distribution systems to accommodate the connection of renewable energy generation facilities"*.[4]

17. Together with Section 79.1 of the *Ontario Energy Board Act, 1998* (*OEB Act*) and Ontario Regulation 330/09, the new *DSC* cost responsibility rules provide a regulatory framework under which costs determined by the Board to be the responsibility of the distributor (rather than the connecting generator), and which are incurred to accommodate the connection of renewable energy generators, are "socialized".

18. In particular, an investment by an electricity distributor:

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[3] EB-2009-0077, *Notice of Amendment to a Code - Amendments to the Distribution System Code*, October 21, 2009.

[4] *Ontario Energy Board Act, 1998*, s. 1. (1) 5.

(a) in the construction, expansion or reinforcement of a distribution line, transformer, plant or equipment used to distribute electricity [*OEB Act* s.79.1(5)];

(b) which is made for the purpose of connecting or enabling the connection of a renewable generation facility [*OEB Act* s.79.1(1) and O.Reg.330/09, s.1(3)]; and

(c) which is determined to be the responsibility of the distributor under the *DSC* [O.Reg.330/09, s.1(2)];

is an investment for which the Board shall provide rate protection for customers of the distributor making the investment [O.Reg.330/09, s.2].

19. Pursuant to such rate protection, the costs for making such investment, net of any distinctly local benefits resulting from that investment, are recoverable from provincial electricity consumers at large [O.Reg.330/09, ss. 3 *et seq.*].

20. The new "cost responsibility rules" under the *DSC* prescribe the investments which qualify for such socialization. These are:

(a) The costs of a distribution system "expansion" as defined in the *DSC* [s. 3.2.30] to connect a renewable energy generation facility are subject to socialization;

(i) up to the "expansion cost cap" as defined in the *DSC* [s. 3.2.5A (b)]; or

(ii) up to 100%, if the expansion is approved or mandated by the Board (through approval of a distributor "green energy plan" or otherwise) [*DSC* s.3.2.5A (a)].

(b) The costs of a "renewable enabling improvement" as defined in the *DSC* [s. 3.3.2] (though not until the distributor's rates are set based on a cost of service application for the first time following the 2010 rate year [*DSC* s.3.3.4]).

21. In this application, Hydro One has identified 3 types of costs to be incurred in order to accommodate the connection of 41 renewable generation projects constructed, or in the process of being constructed.[5] All of these projects are contracted under the Ontario Power Authority's Renewable Energy Standard Offer Program (RESOP) and/or Feed-in-Tariff Program (FIT).[6]

[5] Ex. B1/T1/S1, p.1, line 23 through 28; Hydro One Argument in Chief, Schedule B.
[6] Tr. 81, lines 12 through 17.

22. The 3 types of costs that Hydro One has identified are related to 3 recently understood issues associated with renewable generator distribution connections. These 3 issues are:

(a) ***"Distance limitations".*** For generators to be connected at a distance from the relevant transmission transformer station, Hydro One has a concern that a combination of the length of relevant distribution feeder, the point at which the generator connects to the system, the intermittent nature of the generation, and the nature of other load served by the feeder, can combine to create excessive voltage fluctuations. These voltage fluctuations could damage the equipment of the connecting generators or the equipment of other loads in the area.[7] This concern involves 22 generators[8].

(b) ***"Delta Y Transformers"***. Hydro One has also identified a voltage regulation issue presented by a certain transformer configuration.[9] These voltage problems, too, could damage the equipment of the connecting generator or other customers on the system.[10] This concern involves 9 generators.[11]

(c) ***"Dual Secondary Winding Transformers".*** Hydro One has identified a concern regarding the lack of ability of previously specified transformers to sustain reverse flow back to the generator.[12] This transformer limitation could damage Hydro One's equipment, and in an extreme case could cause outages impacting Hydro One's other customers.[13] This concern involves 25 generators.[14]

23. There is substantial evidence on the nature of the remediation that Hydro One proposes in order to address each of these three issues. In each case, the costs of the proposed remediation would, subject to approval by the Board, qualify under the current *DSC* cost responsibility rules as being the responsibility of the distributor, and subject to recovery from all electricity ratepayers.

24. In particular:

(a) ***"Distance limitations".*** To address the "distance limitations" issue, Hydro One is considering options for rewiring a portion of the distribution system in the area of the generator connections.[15] The description of the options under consideration

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[7] Tr. 71, line 16 *et seq.*; Ex. B/T1/S2, p.2, lines 20 *et seq.*; Tr. 73, lines 11 to 12.
[8] Hydro One Argument in Chief, Schedule B.
[9] Tr. 72, line 16 *et seq.*]Tr. 72, lines 16 through 22.
[10] Ex. B/T1/S3, p.3; Tr. 94, lines 24 *et seq.*
[11] Hydro One Argument in Chief, Schedule B.
[12] Tr. 72, lines 23 *et .seq.*
[13] Tr. 72, lines 23 *et .seq.*; Ext. B/T1/S4, p.4, lines 1 through 9.
[14] Hydro One Argument in Chief, Schedule B.
[15] Ex. B/T1/S2, p.4.

mirrors the examples of "expansions" provided in the *DSC*.[16] In each case, the remediation proposed is required to ready the distribution system to receive or maintain the renewable energy generator connection.[17] Hydro One is projecting costs for this remediation of between $2 million and $42 million.[18]

(b) ***"Delta-Y transformers".*** To address the "Delta-Y transformers" issue, Hydro One is proposing to install ground transformers where the generators have already procured previously specified Delta-Y transformers.[19] Hydro One has characterized this action as an "expansion", though concedes that as a measure to regulate voltage it could also be characterized as a "renewable enabling improvement" under the *DSC*.[20] Hydro One is projecting costs for this remediation in the range of $4.5 million.[21]

(c) ***"Dual secondary winding transformers".*** To address the "dual secondary winding transformers" issue, Hydro One continues to investigate a number of remedial modifications or additions to allow for reverse flows.[22] Hydro One has characterized options to allow for reverse flow as "expansions", though concedes that as a modification or addition to accommodate reverse flows this remedial measure could also be characterized as a "renewable enabling improvement" under the *DSC*.[23] Currently anticipated monitoring of the affected generation connections is projected to cost $1.5 million. Hydro One is currently considering replacing up to 9 transformers, for a total cost of an additional $31 million.[24]

25. Hydro One has brought this application seeking *DSC* exemption based on the concern that a passage found in the Board's October 21 *Notice of Amendment* in EB-2009-0077 precludes application of the new cost responsibility rules to costs incurred to connect renewable generation projects for which an application to connect was made prior to the effective date of the amendments.

26. APPrO submits that as a statement in a Board notice, the statement of concern provides guidance on interpretation and application of the *DSC*, but as it does not form part of the code itself (and thus is not made as a binding rule under a grant of statutory authority) it

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[16] *DSC* s. 3.2.30.
[17] Tr. 82, lines 22 through Tr. 84, line 3.
[18] Ex. B/T1/S2, p.6 and Tr. 90 line 4 through Tr. 91, line 3.
[19] Ex. B1/T1/S3, p.3.
[20] *DSC* s. 3.3.2; Tr. 97, lines 2 through 13.
[21] Ex. B/T1/S3, p.3; Tr. 91 through 93 line 10.
[22] Ex. B/T1/S4, p. 4 *et seq.*
[23] *DSC* s. 3.3.2; Tr. 97, line 14 through Tr. 98, line 1.
[24] Ex. B/T1/S4, p.4; Tr. 12 *et seq.*

is not ultimately binding on this Hearing Panel.[25] Rather the statement in the notice is provided for the purpose of shedding light on the thinking of the Board in promulgating the new cost responsibility provisions of the *DSC*.

27. Further, APPrO respectfully submits that this Hearing Panel should be guided by the entirety of the Board's stated intent regarding application of the new cost responsibility rules, and not simply by a portion of the statement of that intent.

28. The statement in issue is found in both the EB-2009-0077 October 21, 2009 *Notice of Amendment*[26], and the Board's September 11, 2009 *Notice of Revised Proposal to Amend a Code* from the same proceeding.[27] The statement in issue does clearly state that the generation facilities that are intended to be covered by the *DSC* amendments are those associated with renewable generation projects for which an application to connect was made on, or after, the date on which the amendments come into force.

29. However, the rationale for this interpretive direction is provided most clearly in the September 11th notice, in the following terms[28]:

> *"Further, some stakeholders recommended that certain generation projects in the process of connecting to the distribution system prior to the coming into force of the proposed amendments should benefit from the proposed amendments. For example, one stakeholder recommended that the June Proposed Amendments should apply to all generation projects other than those that have been connected to the distribution system and reached commercial operations by the date of coming into force of the June Proposed Amendments.*
>
> *The Board does not believe that generation projects that commenced the connection process prior to the date of coming into force of the proposed new connection cost responsibility rules should be subject to those rules. Such projects were developed and proceeded with the connection process on the basis of the current cost responsibility rules and those rules and the resultant costs would have been factored in to the project economics*. [Emphasis added.]

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[25] *Canada (Commissioner of Competition) v. Superior Propane Inc.*, [2001] 3 F.C. 185, paras. 143 and 146.

[26] Page 10, last paragraph.

[27] Page 13, last paragraph.

[28] September 11, 2009 Notice, starting in the 4th paragraph.

30. The briefer statement of the interpretive guidance (absent the rationale) in the October 29, 2009 notice refers back to the discussion of the issue excerpted above from the September, 2009 notice.

31. In considering Hydro One's Application, and application of the *DSC*'s new cost responsibility rules to the 41 generators in issue in this Application, APPrO respectfully submits that:

(a) The Hearing Panel should be guided by the express intent of the Board regarding which <u>costs</u> would fall within the new regulatory framework for cost responsibility.

(b) That intent would preclude application of the new framework to connection costs which would have already been factored in to the project's economics and thus the generator's decision to proceed with the investment. In those cases, it can be assumed that anticipated connection costs are already covered by the OPA contract awarded to the generator.

(c) In the case of the 41 generators in issue in this Application, the evidence is clear that the costs in issue *"arose as a result of the <u>unique circumstances</u> with the implementation of the renewable generation connections program"*, and *"Hydro One has not experienced these types of problems previously and they <u>could not have been reasonably foreseen</u>"*.[29] Hydro One has indicated that these costs were not, and could not have been, contemplated until some time after construction was begun, and in several instances until the generation facilities had been placed into service.[30] In these particular cases, therefore, it can only be assumed that the material costs related to these recently discovered issues would <u>not</u> be covered by the OPA contract awarded to the generators.

(d) In the result, these unforeseen costs could compromise the viability of these particular renewable energy generation projects.[31] This result would be contrary to the Board's statutory objective, and the supporting legislative and regulatory framework, to promote the connection of renewable generation in a timely manner, and to promote the timely expansion of distribution systems to accommodate such connection.

(e) This result would also be contrary to the principles of fairness embedded in the Board's connection process rules to the effect that prior to committing to paying

[29] Ex. B/T1/S1, p. 1 line 30 through p. 2, line 3. See also Tr. p.101, lines 3 through 16; Tr. p.104, lines 11 through 17; Tr. 105, lines 16 through 20.
[30] Hydro One Argument in Chief, page 4, paragraph 2; Tr. p.163, lines 8 through 21.
[31] Tr. 104, lines 11 through 17, where the evidence indicates little opportunity for the generation projects in issue to adjust in the face of these unforeseen costs.

connection costs, generators should be provided with the magnitude of those costs.[32]

(f) The costs associated with the remedial measures to accommodate connection of the 41 generation projects in issue have yet to be incurred (with the exception of approximately $5 million of costs recently incurred by Hydro One in order to protect existing distribution customers and avoid harming the generator by delaying their in service date).[33]

32. In consideration of the foregoing, APPrO submits that the Hearing Panel should determine that these prospective connection related costs which are to be incurred in order to accommodate the 41 specific renewable generation projects identified in the Application qualify under the *DSC*'s new cost responsibility rules for payment by the distributor and recovery from Ontario ratepayers at large.

33. To the extent that the Hearing Panel determines that the costs in issue relate to "expansions", as advocated by Hydro One, APPrO submits that the Hearing Panel has full authority to approve the costs as the responsibility of the distributor.[34] In this instance, in order to protect provincial electricity ratepayers, APPrO anticipates that the Board would "mandate" the remedial measures proposed by Hydro One, pursuant to section 3.2.5A (a) of the *DSC*, subject to Hydro One providing, in a future application, evidence of the prudence of the costs as incurred.

34. To the extent that the Hearing Panel concludes that some portion of the costs in issue relate to "renewable enabling improvements" as exhaustively enumerated in section 3.3.2 of the *DSC*, then APPrO submits that the Board could, in respect of the projects in issue, exempt Hydro One from the condition for recovery of such costs found in section 3.3.4 of the *DSC*. That condition requires a distributor to have rates set based on a cost of service application following 2010 in order for renewable enabling improvement costs to be recoverable from ratepayers. APPrO submits that the intent of this condition is to ensure that such costs are subject to a prudence review prior to being passed through to ratepayers. APPrO further submits that this Hearing Panel could exempt Hydro One from

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[32] Tr. p.11, line 16 through p. 12, line 13; Tr. p. 39, lines 7 through 14.
[33] Tr. 102, line 27, through Tr. 103, line 27.
[34] EB-2009-0096, *Decision with Reasons*, April 9, 2010, page 39, bottom: *"The DSC does contemplate approval of expansion and [Renewable Energy Improvement] work outside the context of a five year Green Energy Plan."*

such condition in this instance, and condition such exemption on a deferral of costs incurred for full consideration by the Board prior to disposition.

35. Hydro One has proposed:

(a) That its Green Energy Plan (GEP) as "provisionally approved" by the Board in EB-2009-0096 be ammended by inclusion of the connection related costs that are the subject of this Application.

(b) To record the expenditures contemplated in this Application to the GEP variance account previously approved by the Board.

(c) That, in the result, the costs incurred to address the connection remediation issues brought forward in this Application would be allocated between Hydro One distribution ratepayers and provincial electricity consumers utilizing the 18:82 ratio previously approved by the Board for allocation of Hydro One's GEP costs.

36. In its EB-2009-0096 *Decision with Reasons*[35] the Board:

(a) Approved for recovery capital expenditures related to 6 "express feeder" projects, subject to the filing by Hydro One of more detailed information regarding the express feeder projects and further direction from the Board prior to construction. The Board directed recovery of the costs associated with these express feeders by way of a rate rider, allocated between Hydro One distribution ratepayers and provincial electricity consumers in accord with Hydro One's proposal in that proceeding, subject to future recalculation upon finalization of the Board's allocation policy.

(b) Expressly declined to approve the remaining GEP generation related expenditures proposed by Hydro One, pending availability of additional information regarding those expenditures.[36] The Board did, however, allow commencement of recovery of funding for a portion of the anticipated expenditures through a "funding adder", the proceeds of which were to be recorded in a deferral account. The permitted "funding adder" was to be allocated between Hydro One distribution ratepayers and provincial electricity consumers in accord with Hydro One's proposal in that proceeding, subject to future recalculation upon finalization of the Board's allocation policy.

37. The Board in EB-2009-0096 declined to approve Hydro One's proposed *GEP* expenditures, save for those associated with the 6 "express feeders", on the basis of a conclusion that *"it is necessary to have greater detail and specificity regarding the*

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[35] See in particular page 44 of the Decision.
[36] EB-2009-0096 April 9 2010 *Decision with Reasons*, page 36, bottom.

projects to be undertaken before a finding of prudence and approval of the remaining expenditures can be made".[37]

38. APPrO submits that the evidence in this Application, including the broad range of forecast potential connection related costs, indicates a similar lack of certainty regarding expenditures that will ultimately be required to remediate the 41 green generator connections in issue in this Application.

39. APPrO has submitted that this Hearing Panel should approve as a distributor responsibility the types of costs identified in this Application in respect of the 41 generators identified by Hydro One. Such a finding would be consistent with the application by the Board of *Ontario Energy Board Act, 1998* section 79.1 in the EB-2009-0096 proceeding, where the Board found that *"costs can be specifically approved for collection under section 79.1 even if not yet approved as prudent"*.[38] While in that case the Board went on to provide recovery by Hydro One "on account" of such expenditures, APPrO submits that the same "approval in principle" approach applied by the Board in that earlier case can be, and should be, applied in this Application even if recovery is not currently effected.

40. APPrO respectfully suggests, however, that having determined such "approval in principle", the Board may wish to defer findings of prudence and local/provincial ratepayer allocation in respect of these costs, pending more complete information on Hydro One's final remediation plans and the associated costs to be incurred.

41. Under the foregoing approach, GEP amendment would not be required as the "approval in principle" is permitted pursuant to *DSC* section 3.2.5A (a). Rather, the costs as incurred would be added to the capital costs (1531) or OM&A costs (1532) deferral accounts created by the Board's *Guidelines: Deemed Condition of Licence: Distribution System Planning - G-2009-0087* (June 16, 2009) for recording of renewable connection expenditures, for detailed review and disposition in a future proceeding (along with the balance of Hydro One's as yet unapproved *GEP* costs).

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[37] EB-2009-0096 April 9 2010 *Decision with Reasons*, page 37, 3rd full paragraph.
[38] EB-2009-0096 April 9 2010 *Decision with Reasons*, page 33 bottom to 34 top, and page 39, 1st full paragraph.

42. APPrO submits that a finding of prudence based on more complete information would be advisable in order to protect ratepayers. Further, future generators who will be called upon to fund similar connection measures have an interest in a full review of the prudence of such measures, and associated costs, by the Board, once Hydro One's proposals in this respect are finalized. In taking this position, APPrO notes that the remedial measures proposed by Hydro One to address the concerns that are the subject of this Application are not yet fully endorsed by the generator community.[39]

43. **In any event, APPrO submits that the Hearing Panel, properly applying the Board's new generation connection cost responsibility rules, should interpret and apply those rules as intended by the Board, and find that the costs related to the 41 connections in issue in this Application properly qualify under those rules as being the responsibility of the distributor.**

44. Finally in respect of this aspect of Hydro One's Application, APPrO wishes to note its position in respect of the potential for recovery of these generation connection costs from generators, absent relief provided by the Board on this Application.

45. In light of some discussion during oral examination, and in response to some questions from the Hearing Panel[40], Hydro One has filed as Schedule A to its Argument in Chief *"a sampling"* of contractual clauses *"from various contracts between Hydro One and the Generators"*.

46. APPrO notes, and appreciates, Hydro One's acknowledgement that *"there are also contractual clauses and common law on which Generators will rely in the future to state that the costs of additional work cannot be visited on the Generators"*.[41] Hydro One has submitted that this Application is not the appropriate forum in which the merits of each party's contractual and common law rights, obligations and remedies should be determined.

[39] Tr. 101, line 24 through p. 102.
[40] Tr. 107, line 10 through p. 112, line 21.
[41] Hydro One Argument in Chief, Schedule A, paragraph 2.

47. APPrO does not accept that Hydro One has the authority to charge additional material connection costs through to generators which have signed CCAs, and in many instances which are in service. Such a conclusion would beg question regarding the point of an executed CCA.

48. In any event, review of the entire CCA actually executed by each such generator, in the legal context of the particular development and contracting process between that particular generator and Hydro One, would be required to determine this issue.

49. APPrO agrees that this Application is not the appropriate forum for such an inquiry, nor, it is respectfully submitted, is such inquiry required to draw the conclusions urged by APPrO, and Hydro One, regarding the appropriate cost responsibility for the remedial renewable generation connection measures in issue herein.

50. Should, however, the Board determine that these contractual recovery issues are germane to its deliberations, APPrO respectfully submits that a full process of discovery and argument on these issues would be required. Such process would require disclosure of each of the relevant CCAs, in full, and additional discovery thereon and regarding the transactions related thereto. Without such a process, mere assertion of general legal contractual principles would be of little assistance.

CAPACITY ALLOCATION WITHDRAWALS

51. In this Application Hydro One has identified 12 renewable energy generation projects that will not have connection cost estimates and associated offers to connect prior to expiry of their connection capacity allocations.[42] Hydro One has requested exemption from a number of provisions of the *DSC* in its attempt to address this issue. Hydro One's objective is to allow the subject generators to preserve their capacity allocations until detailed connection cost estimates and the resulting connection offers have been provided.[43]

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[42] Ex. J1.1.
[43] Ex.C/T1/S1, p. 1, line 26 through p. 2, line 8; Tr. 41, lines 11 through 19.

52. To understand Hydro One's exemption requests in relation to the capacity allocation withdrawal issue, it is important to review the connection process.

53. The main steps and associated timelines for large (greater than 10 MW) generator connection assessment, planning and contracting are reflected in Hydro One's evidence at Ex. C/T1/S1, p. 7, Diagram 3. These steps and time lines can be summarized as follows:

(a) A generator applies to the distributor for a Connection Impact Assessment (CIA). The CIA is provided to the generator within 90 days of application [*DSC* s.6.2.13 b.].

(b) Connection capacity is allocated to the generator at the time that the CIA is delivered [*DSC* s.6.2.4.1 a.]. The capacity allocation expires after 6 months, if a Connection Cost Agreement (CCA) has not been entered into between the distributor and the generator [*DSC* s.6.2.4.1 e.].

(c) Once the CIA is completed and delivered, an IESO System Impact Assessment (SIA) and a Transmission Customer Impact Assessment (Transmission CIA) are commenced. This work can <u>only</u> be commenced <u>following</u> completion of the distribution CIA.[44]

(d) Where the generator is a renewable energy generation facility with a capacity of 10 MW or greater, the IESO is required to deliver the completed SIA to the distributor within 150 days [Ontario Regulation 326/09, s. 2.].

(e) The Transmission CIA work is coordinated with the SIA work.[45] While this need for coordination may effectively place time parameters on the transmitter's impact assessment work, in order to allow the IESO to meet the prescribed time requirement for the SIA, there is <u>no</u> prescribed timing for delivery of the Transmission CIA.[46]

(f) Once the transmission level impact assessments (the SIA and the Transmission CIA) are completed, and the scope of required connection work thus fully defined[47], the generator enters into an agreement with the distributor to produce, and pays for the production of, a detailed cost estimate [*DSC* s.6.2.16].

(g) The detailed cost estimate, comprised of both distribution level and, as applicable, transmission level costs[48], is required to be delivered to the generator, along with a CCA which incorporates the costs provided in the detailed estimate, *"by the <u>later</u> of 90 days after the receipt of payment [for the estimation work] from the*

[44] Tr. p. 13, lines 4 and 5; Tr. p. 20, lines 2 through 11.
[45] Tr. 48, lines 21 through 24.
[46] Tr. p. 23, lines 17 through 20; Tr. p. 53.
[47] Tr. p. 34, line 23 to p. 35, line 2.
[48] Tr. pp. 30, 35 and 36.

applicant and 30 days after the receipt of comments from a transmitter ... that has been advised under section 6.2.17 [that the distributor is completing a detailed cost estimate]" [*DSC* s.6.2.16, emphasis added].

54. The problem identified by Hydro One with this process is that:

(a) The capacity allocation provided to the generator at the time of delivery of the CIA lasts for only 6 months.

(b) The SIA and Transmission CIA can start only after the CIA is delivered and can take up to 5 months (as prescribed by regulation) to complete.

(c) The distribution and transmission cost estimates can be undertaken only once the CIA, SIA and Transmission CIA have been completed (i.e. up to 5 months after the capacity allocation), and can take up to 9 months to complete, and perhaps longer[49]. As noted above, there is no prescribed time frame for provision by the transmitter of the detailed connection cost estimate.

(d) The offer to connect can only be provided once the detailed cost estimate is done, which pursuant to the timelines outlined above could be as long as 14 months following allocation of the capacity (5 months for the SIA and 9 months or more for the detailed transmission cost estimate).

(e) The capacity allocation can only stand for 6 months.

55. Absent intervention by the Board, the capacity allocation would thus expire before the generator knows the costs it will face to connect and has an opportunity to enter into a CCA to pay those costs and proceed with the connection.

56. With the intent of ensuring that the capacity allocations for the 12 large renewable generators[50] currently in the process outlined above remain in place until detailed cost estimates supporting a CCA are provided[51], Hydro One has requested a number of *DSC* exemptions.

57. APPrO's positions on two of the requested exemptions are supported by an understanding that *DSC* section 6.2.16 requires that the detailed connection cost estimate which the distributor is to provide to the generator in support of an offer to connect;

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[49] Tr. 43, lines 7 through 10.
[50] Tr. 47, lines 15 through 23; Ex. I/T1/S10.
[51] Tr. 41, lines 11 - 15; Tr. 43, lines 3 *et seq.*

(i) is to include <u>both</u> distribution connection costs and, where applicable, transmission connection costs[52]; and

(ii) is to be provided 30 days following receipt by the distributor of the transmission connection cost estimate, if such date is later than 90 days following commissioning of the cost estimate by the generator[53].

58. This interpretation is consistent with both a commercially practical reading of *DSC* section 6.2.16, and with "fairness".

59. Hydro One reads the phrase *"comments from a transmitter"* as used in *DSC* section 6.2.16 to refer to transmission level cost estimates. There are no other types of "comments" that would be received from the transmitter at this cost estimate stage.[54]

60. Reading the time limit for providing the generator with a detailed cost estimate and associated offer to connect to extend to 30 days following receipt by the distributor of the transmission level cost estimate also accords with fairness. It would be <u>un</u>fair to require a generator to execute a CCA, and thereby commit to paying connection costs, without knowing what those connection costs (both those at the distribution level and, as applicable, those at the transmission level) will be.[55]

61. In light of the foregoing interpretation of *DSC* section 6.2.16, the following two exemptions requested by Hydro One are <u>not</u> necessary to effect its intention of preserving the capacity allocations for the12 large renewable generators pending receipt by those generators of complete and detailed connection cost estimates:

(a) ***Exemption from section 6.2.16 which requires that a detailed connection cost estimate and an offer to connect be delivered to the generator by <u>the later of</u> 90 days after receipt of payment by the applicant generator <u>and 30 days after the receipt of comments from the transmitter</u>.*** Where *"comments"* (i.e. a detailed cost estimate) are required from the transmitter, as in the case of the 12 generation projects in issue, the distributor's obligation for delivery of the detailed cost estimate and the associated offer to connect extends to 30 days <u>following</u> receipt of those comments.[56] This time limit for delivering to the generator a detailed

[52] Tr. 65, line 26 through Tr. 66, line 2.
[53] Tr. 68, lines 11 through 20.
[54] Tr. p. 29, line 23 through p. 30, line 28; Tr. 35, lines 6 through 19; Tr. 36 lines 4 through 8.
[55] Tr. 39, lines 11 through 18; Tr. 66, lines 3 through 7.
[56] Tr. 68, lines 9 through 20.

connection cost estimate and associated offer to connect cannot expire prior to receipt by the distributor of the transmitters' detailed cost estimate. In such cases, the only timing obligation which this provision puts on the distributor is to have its own cost estimate ready by the later of the two time frames set out in the provision. The evidence is that this timeframe is not a problem for Hydro One Distribution.[57]

(b) ***Exemption from section 6.2.18, which requires a generator to provide a cost deposit equal to 100% of the total estimated connection costs at the time of executing the CCA.*** APPrO understands that Hydro One had requested exemption from this *DSC* provision on the basis that should exemption from the requirement to withdraw the generator's capacity allocation not be granted, the generator would proceed to execute a CCA, though it would be inequitable, and likely practically impossible, to get a connection cost deposit to cover connection costs that would be undetermined at the time that a generator executed the CCA.[58] Implicit in this proposition is that a generator would be called upon, and would be able to, execute a CCA prior to receipt of detailed cost estimates, in order to preserve its capacity allocation. APPrO submits that without specification of the connection costs, there would be nothing for the generator to agree too in a connection cost agreement. In any event, as outlined above, it is APPrO's understanding that DSC section 6.2.16 prescribes that the CCA be provided to the generator within 30 days following receipt by the distributor of the transmission connection cost estimate, if such date is later than 90 days following commissioning of the cost estimate by the generator. APPrO submits that this is the commercially sensible and fair approach to application of the DSC, as the CCA would then be executed upon provision of full connection cost information. A generator could not, and should not be called upon to, execute a CCA prior to provision to the generator of the detailed connection cost estimate.

62. It is also unnecessary to provide Hydro One exemption from ***Section 6.2.4.1 c. of the DSC, which directs that a CIA will not be completed unless the applicant generator has a proposed in-service date which is no later than 3 years (for non-water power projects) form the initial application for connection, or is in accordance with the timelines in an executed OPA contract***. APPrO submits that this DSC provision deals with preconditions at the time that a CIA is requested, satisfaction of which are required prior to the distributor undertaking and completing the CIA. Each of the 12 generation projects in issue in this Application already have their CIAs.[59] There is thus no need for the requested exemption.[60]

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[57] Tr. 43 line 26 to Tr. 44 line 6.
[58] Tr. 54.
[59] Ex. J1.1.
[60] Tr. 55 through Tr. 57, line 3.

63. Accordingly, the only exemption required to keep the capacity allocations to each of the 12 generators open until cost estimates are received is exemption from DSC section 6.2.4.1 e. ***Section 6.2.4.1 e. requires withdrawal of the generator's capacity allocation if a CCA is not executed within 6 months.***

64. **APPrO submits that exemption from *DSC* section 6.2.4.1 e. should be granted in respect of the 12 generation projects identified at Ex. J1.1, subject to conditions.**

65. APPrO proposes two conditions for the requested section 6.2.4.1 e. exemption. APPrO's intention in proposing these conditions is to achieve the objective driving this application - to maintain the capacity allocations until the transmission cost estimates supporting the offers to connect are completed - while maintaining some discipline and accountability in respect of the connection process. The 12 generators affected have an interest in ensuring that the required connection work is completed in as timely a fashion as practical. Other generators have an interest in ensuring timely release of connection capacity where appropriate for use by other queued generators.

66. **The exemption should expire in respect of each of the subject generators on a date that is the earlier of;**

(i) **45 days after the detailed connection cost estimate (including distribution costs to connect and, where applicable, transmission costs to connect) and offer to connect is delivered to the generator; and**

(ii) **16 months after the date on which Hydro One delivered the connection impact assessment (CIA) to the generator.**

67. This condition would provide some discipline on the subject generators to proceed promptly with their agreements for the preparation of detailed cost estimates and then with execution of their CCAs, in deference to the interests of other generators which might be waiting for capacity. The 45 day period in the first subparagraph of the proposed condition is intended to allow a reasonable time for the generator to consider and clarify as required the cost estimates and the consequent offer to connect[61], and to arrange financing to support the security deposit required upon execution of the CCA.[62]

[61] Tr. 169, lines 5 through 13.
[62] *DSC* s. 6.2.18.

The 15 month period in the second subparagraph of the proposed condition is the sum of; i) 150 days for the SIA; ii) up to 9 months for the transmission cost estimate; and iii) 2 months for the combination of the time (15 days) following receipt of the SIA/Transmission CIA to agree to the detailed costs estimates and the time (45 days) following receipt of the detailed cost estimates and the offer to connect for the generator to consider and clarify as required the cost estimates and offer to connect, and to arrange financing to support the security deposit required upon execution of the CCA[63].

68. This condition would also maintain some timing discipline with respect to the Transmission CIA and cost estimate work. Though there is not much evidence on this record regarding the transmission work involved in the process, what evidence there is indicates that 9 months is sufficient time for the transmitter to complete its detailed cost estimate.[64] It can be assumed that should it appear that more than 9 months will be required for the transmission cost estimate in any particular case, Hydro One would come back to the Board to seek amendment of this condition. The Board would thus be able to maintain some oversight of the connection process timelines.

69. **During the term of this exemption, Hydro One should publicly file with the Board Secretary monthly reports indicating, for each of the 12 projects;**

 (i) **the current status of, and expected delivery date for, the IESO System Impact Assessment (SIA) and the transmission Customer Impact Assessment (Transmission CIA) for the project, and the basis for any change to the current expected delivery date relative to the last reported expected delivery date, all informed by inquiries of each of the IESO and Hydro One Transmission;**

 (ii) **the current status of, and expected delivery date for, the detailed cost estimate required to be performed by Hydro One Distribution and, if applicable, Hydro One Transmission, and the basis for any change to the current expected delivery date relative to the last reported expected delivery date, all informed as applicable by inquiries of Hydro One Transmission;**

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[63] Tr. 169, lines 5 through 13.
[64] Ex. K1.3, last page; Tr. 156, line 8 through p. 157, line 22.

(iii) **the current expected delivery date for the offer to connect, and the basis for any change to the current expected delivery date relative to the last reported expected delivery date; and**

(iv) **any other comments, either project specific or generic, that will inform the Board of the progress of the 12 projects or of any issues arising during the connection process for these projects, which comments the Board might wish to consider to facilitate timely connection of the subject projects and future projects.**

70. This condition would provide visibility for the Board and interested parties into the progress of the connection process which has given rise to this exemption Application. Such visibility would provide:

(a) Early warning should further delays become apparent.

(b) Information on whether Hydro One Transmission is able to effectively carry out its connection work in a timely fashion, and if not what might be done to address undue delays.

71. Hydro One indicated in examination that it did not have concerns, in principle, with the content proposed for such reports.[65] While quarterly reporting was suggested during examination on behalf of APPrO of Hydro One's witnesses, monthly reporting would provide more timely indication of any emerging issues. Monthly reporting would also be consistent with the reporting required of, and provided by, Hydro One as a condition of an interim *DSC* exemption granted to Hydro One in 2008 to address CIA backlog issues.[66]

72. Review of Hydro One's Argument in Chief on this topic suggests that the exemption requested may be broader than in respect of the 12 projects listed in Ex. J1.1. If so, this request would be contrary to the statements of Hydro One's witnesses provided during examination.[67] APPrO submits that this Hearing Panel should address the situation of the 12 projects currently in issue only. APPrO's proposed relief has been crafted on this basis.

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[65] Tr. 19 through 88.
[66] EB-2007-0930, Decision, June 27 2008 Tr., page 42, line 27 through page 43, line 4.
[67] Tr. p. 47, lines 15 through 23.

73. APPrO has considered the two relief scenarios proposed in Hydro One's Argument in Chief, one in respect of projects that do not require significant transmission level intervention, and a second one in respect of projects that do.[68] APPrO is of the view that the relief proposal that it has outlined above will achieve Hydro One's objectives in a less complex manner, in respect of the 12 large renewable generation projects currently in the connection impact assessment, costing and contracting process. APPrO invites Hydro One to indicate in its reply argument if, and if so how, APPrO's relief proposal falls short of the relief required in respect of the 12 projects.

74. Finally on this topic, APPrO notes the discussion in Hydro One's Argument in Chief in support of the need for a two stage (provisional and final) capacity allocation model.[69] It is still not clear to APPrO what issue Hydro One is concerned about here. The references to the need to ensure that capacity is available *"at all levels of the system"* could be read to suggest that the capacity initially allocated (upon delivery of the CIA) might not be sufficient to connect the generator, and might have to be later supplemented. If this is the situation, it is submitted that this is an entirely different issue from those regarding timing that have been the subject of this Application throughout. APPrO urges Hydro One to clarify these statements in its reply argument.

75. Absent more information, APPrO still does not understand the need for a two stage capacity allocation model, and submits that its simpler exemption proposal as outlined above would be sufficient to address the circumstances of the 12 generators listed at Exhibit J1.1.

POTENTIAL CLARIFYING CODE AMENDMENTS

76. APPrO respectfully submits that the fact of this Application, and the record herein, underscores a disjunct between the capacity allocation preservation period prescribed by section 6.2.4.1. e. of the *DSC* and the timing for completion of the connection evaluation, estimation and contracting process for larger distribution connected generators.

[68] Hydro One Argument in Chief, p. 9 bottom *et seq.*
[69] Hydro One Argument in Chief, p. 12 bottom *et seq.*

77. The record herein also reveals that while a number of the steps in the connection process are subject to prescribed time lines, the Transmission CIA and transmission detailed cost estimate steps are not subject to any timing requirements. This creates undesirable uncertainty and a lack of transmitter accountability.

78. APPrO has proposed conditions to exemption of Hydro One from *DSC* section 6.2.4.1 e. that would ensure some discipline to the transmission cost assessment process for the 12 generators that are the particular subject of this Application. APPrO submits that the Board should have the same concern for new large distribution connected generation projects.

79. APPrO has also provided its interpretation of *DSC* section 6.2.16 (with which interpretation Hydro One agrees[70]), which APPrO submits is consistent with commercial reality and fairness to distributors, transmitters and generators. That interpretation focuses on the meaning, in a practical operational context, of the phrase *"comments from a transmitter"* as used in *DSC* section 6.2.16. APPrO has submitted that such phrase is properly interpreted to mean estimates of transmission level connection costs, where applicable.

80. APPrO submits that it would be within the purview of, and appropriate for, this Hearing Panel to recommend that the Board consider the advisability of amendments to each of the *DSC* and the *Transmission System Code* to;

(a) better align and integrate the capacity allocation process and the connection assessment, costing and contracting process for large generators; and

(b) provide for some certainty and accountability in respect of the connection process steps required of the transmitter.

81. APPrO respectfully submits that the Board should consider:

[70] Tr. p. 35, line 6 through p. 36, line 20.

(a) clarifying the phrase "comments from a transmitter" as used in *DSC* section 6.2.16;

(b) adding provisions to both the *DSC* and the *Transmission System Code* that would prescribe the time within which Transmission CIAs and transmission cost estimates are to be provided; and

(c) expressly aligning the time for expiration of connection capacity allocation with the time in *DSC* section 6.2.16 for provision by the distributor of a detailed cost estimate and an offer to connect, in particular in respect of large distribution connected generators.

82. Such amendments would provide clarity and certainty to the generator and regulated utility communities, facilitating investment in, and timely, least cost development and connection of, new generation.

COSTS

83. In Procedural Order No. 1 herein APPrO was found to be eligible to apply for an award of its reasonably incurred costs, as representing parties who, in the context of this Application, are customers of Hydro One who may be affected by the Board's decision herein.

84. APPrO respectfully submits that it has participated effectively in this proceeding, in order to ensure that the Board has the benefit of the generator perspective on the matters in issue.

85. APPrO hopes that its careful review, during examination and in this final argument, of the somewhat complex provisions of the *DSC* which govern the cost responsibility and connection procedure matters in issue in this Application has been of assistance to the Board.

86. As indicated at the commencement of the oral hearing, and again at the outset of this argument, in carrying out its intervention APPrO took the initiative to consult with, and inform its intervention by the perspectives of, both the Canadian Wind Energy Association (CANWEA) and the Ontario Water Power Association (OWA). APPrO has thus facilitated a broad and balanced representation of generator perspectives on the

matters in issue, and has also facilitated engagement in these matters by these two organizations on behalf of the particular types of generators which they represent.

87. APPrO hereby requests that it be awarded 100% of its costs reasonably incurred in its intervention herein.

ALL OF WHICH IS RESPECTFULLY SUBMITTED by:
MACLEOD DIXON, LLP

per: Ian A. Mondrow
Counsel to APPrO

October 29th, 2010