

**Hydro One Networks Inc.**

**Application for Joint Use Rates and  
Connection Impact Assessments Fees**

**EB-2010-0228**

**FINAL SUBMISSION**

**Association of Power Producers of Ontario**

**November 1, 2010**

**Overview**

In preparing its submission and throughout this proceeding, the Association of Power Producers of Ontario (“APPrO”) has conferred with the Ontario Waterpower Association (“OWA”), the Canadian Wind Energy Association (“CanWEA”) and other industry representatives to ensure that generator interests were properly and efficiently addressed. As noted below, there were a number of areas where the fee proposals from Hydro One Networks Inc. (“Hydro One”) required further explanation in the technical conference to clarify the implications of the proposed fees and confirm the associated costs.

This is the first time that the joint-use fee for electricity circuit attachments has been reviewed in detail by other parties with submissions presented to the Ontario Energy Board (“Board”). The due diligence benefits provided by this proceeding highlight the importance of regulatory oversight when assessing the costs that a regulated monopoly incurs to provide services to the public and the energy industry.

APPrO agrees with the principles and summary positions highlighted by Board staff on page two of their submissions to the Board with three minor exceptions related to the pole space factor, the annual indexing of joint use fees and the transitional Connection Impact Assessment (“CIA”) fees. The reasons for the exceptions are provide below.

On the most of the critical points and principles related to the proposed rates, however, APPrO is aligned with the positions taken by Board staff as they are consistent with the approach to regulated services and costs previously advocated by APPrO and its members. These include the promotion of: cost based charges that are applied fairly to all generators and other system users; regulatory certainty, efficiency and transparency with regard to the timing and cost of system connections; and, open non-discriminatory access to monopoly services.

APPrO wishes to express appreciation to the Board for initiating this review and providing an opportunity for generators and their respective associations to evaluate the appropriateness of Hydro One's proposed rates and provide the following consensus submissions to the Board. APPrO also wishes to thank Board staff for their support and assistance in completing the record in this proceeding through the technical conference, which APPrO believes will be helpful to the Board in its deliberations.

## **Cost Based Rates**

APPrO supports the concept of cost-based rates and recognizes the benefits of shared services and standard fees. Its main objectives in this proceeding have been to confirm the fee calculations, verify the overall costs, and clarify how the fees will be applied.

When assessing these aspects of the proposed joint-use fees, APPrO was guided by the principles identified in the Board's RP-2003-0249 Decision<sup>1</sup> that "a single province-wide rate has advantages and is in the public interest", that the rate "should to a maximum extent possible be based upon representative cost" and that "the common costs should be shared equally among all attachers".

On this basis, APPrO submits that a joint-use rate of \$28.40 should apply to all electrical circuit attachments by generators requiring 10 feet of pole space, that the sliding scale rates can be approved in conjunction with the capital contribution clarifications and that the CIA rates should be approved as proposed subject to the transitional rates being reinstated as discussed below.

## **Joint-Use Fees**

In its pre-filed evidence, Hydro One states that "[t]he methodology used to establish the LDC Joint Use rate was based on the methodology established by the Board in its March 7, 2005, order for Telecommunications pole rental calculations (RP-2003-0249)".<sup>2</sup> However, as Hydro One confirmed at the technical conference, when the current costs are entered into the RP-2003-0249 methodology, the resulting cost-based fee for 2010 is \$28.40.<sup>3</sup> This is \$0.21 lower than the \$28.61 rate negotiated with the Electricity Distributors Association (the "EDA") in 2005.

As noted in its pre-filed evidence, Hydro One used the Local Distribution Company ("LDC") Joint-Use rate approved by the Board in RP-2005-0020/EB-2005-0378 to establish the proposed generator rate for 50-foot poles. That rate was based on a total

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<sup>1</sup> DECISION AND ORDER, RP-2003-0249, Pages 9-10

<sup>2</sup> Exhibit B, Tab 1, Schedule 1, Page 3

<sup>3</sup> Transcript Page 14, Line 1 to Page 15 Line 10; Exhibit KT2

power space of 20 feet shared equally between Hydro One and the LDC. Using the LDC rate as a base and assuming two non-electrical attachers on a 50 ft pole, Hydro One calculated the proportion of power space that would be used by Hydro One and a generator and the associated attachment fees for varying pole heights.<sup>4</sup>

#### Appropriate Base Rate

In its pre-filed evidence,<sup>5</sup> Hydro One confirmed that there is no approved charge for joint-use by generators, that currently generators are being charged \$28.61 and that Hydro One has entered into 20 year contracts with generators based on a sliding scale of fees related to pole height starting with the Electricity Distributors Association (“EDA”) negotiated rate of \$28.61 for 10 feet of space on a 50 foot pole.

In its submission, Board staff makes reference to the distribution joint-use fee as being based on 10 feet of power space allowance on a 40 foot pole.<sup>6</sup> This seems contrary to Hydro One’s evidence that an LDC requires the same 10 feet of power space allowance as Hydro One on a 50-foot pole.<sup>7</sup> Despite this difference, Board staff correctly concludes that the LDC fee does not cover demands from some generators for power space exceeding 10 feet which may necessitate taller poles.

At the technical conference, Hydro One provided a table to explain how its current costs were input into the RP-2003-0249 formula to calculate the 2010 joint use fee of \$28.40.<sup>8</sup> Hydro One subsequently confirmed that the proposed \$28.61 charge was not cost based; that the \$28.61 was the base rate negotiated with the EDA, and that the actual cost for Hydro One to provide this service in 2010 is \$28.40.<sup>9</sup>

The 28.1% allocation factor used to calculate the amount of indirect pole costs in the joint-use fee was determined by applying the 21.9% allocation approved by the Board in RP-2003-0249 to a communications attachment and to a streetlight attachment on a 50 foot pole. The remaining attachment space (58.1%) was allocated equally to Hydro One and the LDC.<sup>10</sup> This is discussed further in the next section.

Hydro One also confirmed that the rates charged to the LDCs are increased annually through an escalation clause negotiated with distributors in their joint-use agreement, that approval was sought only for the initial charge of \$28.61 and that the Board

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<sup>4</sup> Exhibit B, Tab 1, Schedule 1, Pages 5-6

<sup>5</sup> Exhibit B, Tab 1, Schedule 1, Page 1, Lines 11-19

<sup>6</sup> Board Staff Submission, Page 1

<sup>7</sup> Exhibit B, Tab 1, Schedule 1, Page 6

<sup>8</sup> Transcript Page 13, Line 17 to Page 15, Line 16

<sup>9</sup> Transcript Page 25, Line 12 to Page 26, Line 2

<sup>10</sup> Exhibit B, Tab 1, Schedule 1, Page 5, Line 24 to Page 6, Line 3

approved the initial charge as a miscellaneous rate.<sup>11</sup> Based on the 3% annual inflation rate used by Hydro One to estimate the 2010 direct costs,<sup>12</sup> APPrO submits that the attachment charge for LDCs in 2010 would be \$33.17, which is \$4.77 above the actual cost to provide this service.

When explaining why it used the \$28.61 LDC rate as the base rate for generators rather than using the \$28.40 rate based on its actual costs, Hydro One said it wanted to treat everyone fairly by charging the same fee for the same service.<sup>13</sup> APPrO supports the principle of charging a standard fee for the same service but only when the standard fee reflects to the extent possible the cost of providing the service as reflected in the Board's decision in RPO-2003-0249.

On this basis, APPrO contends that if Hydro One wants to apply a standard rate for joint-use of 50-foot poles in 2010, it should lower the rates that it is currently charging LDCs to \$28.40 to match its current costs. APPrO submits that based on the evidence presented by Hydro One on actual costs, the Board should approve a base rate of \$28.40 for generators requiring 10 feet of pole space on a 50 foot pole.

APPrO notes that when the current cost of an uninstalled 50-foot pole (\$617) is input into the RP-2003-0249 formula the resulting attachment fee would be \$26.97, but as Hydro One explained at the technical conference this would not include the preparation and installation costs<sup>14</sup> and in APPrO's view such an approach would not replicate the methodology used in RP-2003-0249.

In the introduction to its Argument-in-Chief, Hydro One states that the intent of the current application is to recover the costs associated with two services provided to generators seeking to connect to Hydro One's distribution system or a transmission system. With respect to the base rate for attachment on a 50-foot pole, APPrO submits that this can be accomplished by the Board approving \$28.40 as the base rate.

Hydro One also states that the current rate does not adequately capture the costs associated with generator equipment attachments to its distribution poles. While this appears to be the case for the proposed sliding scale rates given the current pole costs provided by Hydro One at the technical conference<sup>15</sup>, it does not apply to the base rate since the currently approved LDC rate would more than recover the costs associated with a 50-foot pole attachment.

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<sup>11</sup> Transcript Page 15, Line 17 to Page 16, Line 16

<sup>12</sup> Transcript Page 15, Line 2

<sup>13</sup> Transcript Page 15, Lines 6-16

<sup>14</sup> Transcript Page 36, Lines 14-18

<sup>15</sup> Transcript Page 36, Lines 13-24

In its submission, Board staff supports the principle of cost based rates and the \$28.40 rate calculated by Hydro One, but questions significant reduction in the depreciation expensed and requests that Hydro One explain the reason for this decline in its reply argument.<sup>16</sup> APPrO notes a similar large increase in the pole maintenance cost and recommends that Hydro One review this as well as explaining why an allocation factor of 20.0% was not used for a 50 foot pole as suggested in the next section by APPrO.

#### Pole Space Allocation Factor

In its final submissions, Board staff suggests an alternate space allocation factor of 29.4% based on a 34 foot pole length representing the above ground portion of a 40 foot pole. APPrO submits that there is no foundation or precedent for this factor, particularly when Board staff admits that it was not able to duplicate the 21.9% factor used by the Board in RP-2003-0249. Based on the pole spacing provided by Hydro One<sup>17</sup> and the space allocation factor and attachment assumptions accepted by the Board in RP-2003-0249, APPrO submits that 40 feet is the more appropriate pole length to use when determining the telecommunication space allocation factor.

Assuming a minimum electrical clearance of 3.3 feet, 2.0 feet for each communications attacher and 2.5 attachers as determined by the Board, the total amount of pole space required for communication use would be 8.3 feet, which is 20.8% of a 40 foot pole versus 24.4% of a 34 foot pole. If the required space for 2.5 communication attachers included an additional 0.46 feet of separation clearance between the lines, the required communication space would be 8.76 feet representing 21.9% of a 40 foot pole.

APPrO notes that applying Board staff's approach to a 50-foot pole would result in an allocation factor of 23.3%, i.e. 10 feet divided by 43 feet (50-7), which would lower the generator attachment fee by \$4.48 rather than increasing it by \$1.20 as proposed by Board Staff based on the current costs provide by Hydro One. APPrO also notes that the RP-2003-0249 decision refers to a power space of 11.5 feet and that when this is divided by 40 feet the resulting allocation factor is 28.8%. The 28.1% factor that Hydro One has proposed in the current proceeding represents 11.24 feet of a 40-foot pole.

If the Board decides to consider changes to the allocation factor, APPrO recommends that the Board approve a factor of 20.0% which is based on the power space allocation proposed by Hydro One to attach an LDC or generator on a 50-foot pole (i.e. 10 divided by 50). Since the RP-2003-0249 methodology relies on pooled embedded costs rather than individual pole height costs, the differentiating input is the space allocation factor. APPrO contends that the allocation factor must be reset appropriately for each pole height to ensure that the common costs are allocated fairly.

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<sup>16</sup> Board Staff Submission, Page 5

<sup>17</sup> Exhibit KT 3

On that basis, APPrO submits that attachers requiring 10 feet of power space on a 50-foot pole should have an attachment fee based on 20.0% (i.e. 10 divided by 50) of the indirect costs. If the Board decides to adopt the approach suggested by Board staff, APPrO submits that the appropriate allocation factor for a generator or an LDC on a 50-foot pole would be 23.3% (i.e. 10 divided by 43).

#### Application of Proposed Fees

In responses to questions at the technical conference on how the joint-use fees would be applied, Hydro One confirmed that the fees would be based on the required pole space, not pole height. Hydro One explained that while space requirements for multiple attachments might require higher pole attachment points, it intended to charge the same fee for the same amount of pole space, regardless of the height of the pole.<sup>18</sup>

Under this approach, if two generators required 10 feet of space they would both pay \$28.61 regardless of where or when they attached to the pole, rather than one paying the 50-foot rate (\$28.61) and one paying the 60-foot rate (\$38.16). The 60-foot rate would be applied to a generator requiring a single attachment with 20 feet of required space separation from Hydro One's distribution line.

APPrO supports Hydro One's application method as stated above as a reasonable means of applying the proposed fees fairly to all attachers regardless of whether one attaches below or above the other. If the rates were determined by pole height, the second (higher) attacher would pay a higher rate than the first (lower) attacher for the same amount of pole space. This application method presumes that there is sufficient pole space to accommodate both attachments, either on an existing pole where there is no incremental cost to accommodate both attachers, or on a new pole which has been built to accommodate additional attachments.

Where there is insufficient pole space on an existing pole, Hydro One has indicated that the attachers requesting coincident pole reconfiguration or replacement would be responsible for paying their share of the incremental costs through a capital contribution which would be allocated based on their individual pole space requirements.<sup>19</sup> When one generator is already attached to an existing pole and that pole needs to be reconfigured or replaced to accommodate a subsequent attachment from a second generator, APPrO assumes that any required contribution would be paid only by the second generator. The cost recovery implications of the capital contributions are discussed below.

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<sup>18</sup> Transcript Page 63 Line 23 to Page 64 Line 11

<sup>19</sup> Transcript Page 63, Lines 18-22

Where a different line configuration can be used to accommodate multiple electrical circuits within the same pole space, APPrO submits that the attachment fees should be shared by the generator(s) using that space the same way telecommunication attachers are allowed to attach multiple lines and only pay one fee.<sup>20</sup> Exhibit KT 4 provides an example of where this treatment would apply to three circuits attached within 20 feet rather than 30 feet of pole space. In this instance, APPrO submits that the combined attachment fee should be \$56.80, i.e. \$28.40 times two, not \$28.40 times three.

#### Justification for Sliding Scale Fees

At the technical conference, Hydro One confirmed that the sliding scale rates were not based on actual costs and that they were extrapolated from the negotiated LDC rate to reflect the generator attachment requirements above 10 feet on a 50-foot pole. Hydro One pointed out that there were operating efficiencies that would lower the maintenance costs on higher poles which is why the fees were not increased on a linear basis.<sup>21</sup>

Hydro One stated that it was not possible to use the RP-2003-0249 methodology to determine cost-based rates for poles above 50 feet in height as its pole costs were pooled. It also confirmed that any short-fall due to higher pole costs not being reflected in the fee calculation would be picked up in the capital contribution calculation which would be paid by the generator(s) requiring the increased pole space.<sup>22</sup>

APPrO believes there will be limited need for sliding scale fees for poles above 80 feet since, as Hydro One confirmed, attachments to poles exceeding 80 feet are very rare<sup>23</sup> and must be assessed on a case by case basis. However, APPrO believes that the fees for attachments above 50-feet can be approved as proposed by Hydro One since they cover the operating costs and the average capital costs, with any incremental capital costs being recovered in the capital contributions.<sup>24</sup> Based on the pole costs provided by Hydro One at the technical conference<sup>25</sup>, most of the capital costs associated with higher poles will be recovered through the capital contribution while the operational efficiencies will be reflected in the proposed sliding scale rates.<sup>26</sup>

Since all of the incremental costs of accommodating the joint use with generators will be recovered through the capital contribution or the joint use fees,<sup>27</sup> APPrO sees no

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<sup>20</sup> Transcript Page 31, Lines 11-25

<sup>21</sup> Transcript Page 26 Line 17 to Page 27 Line 16; Page 33, Lines 5-11

<sup>22</sup> Transcript Page 27, Lines 11-16; Page 46, Line 16 to Page 47, Line 2

<sup>23</sup> Transcript Page 64, Line 27 to Page 65, Line 3

<sup>24</sup> Transcript Page 50, Lines 16-19

<sup>25</sup> Transcript Page 65, Line 11 to Page 66, Line 3

<sup>26</sup> Transcript Page 59, Lines 20-24; Page 36, lines 17-24

<sup>27</sup> Transcript Page 46, Line 16 to Page 47, Line 2

reason for the Board not to approve the proposed sliding scale fees as proposed by Hydro One.

### Capital Contributions

As clarified by Hydro One at the technical conference, where there is insufficient pole space to accommodate generator attachments, the generator(s) seeking joint use would be required to pay the incremental cost of replacing or reconfiguring the existing pole.<sup>28</sup> Hydro One confirmed that the same approach to incremental costs would be applied to system expansions built to serve load customers.<sup>29</sup> Hydro One expects that when more than one generator requests attachment at the same time, both would be asked to pay their fair share of the capital contribution based on their individual space requirements.<sup>30</sup>

Hydro One also confirmed that the capital contribution calculation would be determined using the Board approved methodology with the incremental costs of the new pole requirements being offset by the proposed joint-use fees, the expected revenues from distribution load customers and the remaining useful life value of the existing pole using a 50-year net present value discounted cash flow.<sup>31</sup>

APPrO agrees with this approach (with one revision described below) as the generator is paying the incremental costs to accommodate its attachment while providing a ratepayer benefit by replacing the existing pole which effectively extends its useful life. Since ratepayers would normally pay to replace the existing pole when it reached the end of its useful life, generators should not be required to pay the replacement cost that the ratepayers would have paid in any case.

If the existing pole was brand new, the replacement with a higher pole would provide very little cost-deferral benefit to the ratepayer although there might be some value if the existing pole can be reused in another location. However, if the existing pole is ready for replacement, the full value of the new pole replacement should be recognized since the ratepayers would have paid the cost of a standard pole replacement in any case. This is similar to the cost sharing approach Hydro One proposes for an expansion project where ratepayers would pay the cost of the standard pole line and generators would pay the incremental cost to extend the pole heights.

In order to properly reflect the value of this deferral benefit, APPrO submits that the appropriate offset in the capital contribution calculation would be the cost of a new standard pole less the remaining value in the existing pole, rather than the remaining

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<sup>28</sup> Transcript Page 46, Lines 10-23

<sup>29</sup> Transcript Page 67, Line 19 to Page 68, Line 28

<sup>30</sup> Transcript Page 62, Line 22 to Page 63, Line 22

<sup>31</sup> Transcript Page 45, Line 11 to Page 46, Line 9; Page 67, Line 16-18



value of the pole as indicated by Hydro One. The remaining value in the existing pole should be used to estimate the salvage value when the existing pole can be reused.

### The Need for Inflation and Cost Adjustments

Hydro One has asked the Board to approve annual CPI increases and periodic base rate adjustments every five years to reflect actual costs on the basis that the joint-use agreements with generators will be in effect for twenty years and the CPI adjustments may not be sufficient to cover changes to Hydro One's costs. As described below, this is not the case and, in fact, the CPI adjustments in the LDC contracts were not required at all as they resulted in an over-recovery of Hydro One's actual costs.

Hydro One proposes to apply the periodic rate base adjustment to align the fee with the actual cost of service when the per pole cost of joint use service exceeds the charge per pole in effect.<sup>32</sup> APPrO contends that the periodic adjustment should also be applied by Hydro One when the cost of the joint-use service is lower than the current charge.

On the same page of its pre-filed evidence, Hydro One states that "[t]he current Joint Use charge for LDCs does not include provisions for year-over-year consumer price index ("CPI") adjustments". At the technical conference, Hydro One explained that annual inflation adjustments were applied to LDC attachments as part of the attachment agreements negotiated with the LDCs and that the only rate that the Board had approved for LDC attachment was the \$28.61 flat rate,<sup>33</sup> i.e. not the inflated rate that is currently being charged. Hydro One also confirmed that the attachment rates for telecommunications, cable and streetlights are not adjusted for inflation and that it tracks its embedded costs and inputs them into the formula annually.<sup>34</sup>

APPrO notes that if a 3.0% inflation rate was applied to the base LDC rate over a five year period, which is the same approach that Hydro One used to adjust the admin fees in Exhibit KT 2,<sup>35</sup> the LDC rate would be \$33.17 which is \$4.77 (17%) over the actual cost to provide this service in 2010. The LDC attachment agreements were not filed in this proceeding, so it is not possible to determine exactly what the LDCs are currently paying, but it would be safe to assume that 2010 rate is higher than the actual costs.

During the technical conference Hydro One confirmed that it intends to renegotiate the LDC attachment rate for 2011 using the same costs and same methodology it has proposed in this proceeding,<sup>36</sup> which would ensure that LDCs and generators pay more or less the same amount for a similar attachments (transcript page 48 lines 16-25). On

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<sup>32</sup> Exhibit B, Tab 1, Schedule 1, Page 7

<sup>33</sup> Transcript Page 16, Lines 9-16

<sup>34</sup> Transcript Page 83, Lines 12-23

<sup>35</sup> Transcript Page 15, Lines 1-10

<sup>36</sup> Transcript Page 79, Lines 2-13

that basis APPrO concludes that the new base rate for LDC attachments is expected to remove the CPI inflation adjustments that were made over the last five years.

Since inflation adjustments have not been approved for other joint-use (communications and streetlights) and they do not appear to be required in addition to periodic cost adjustments based on the LDC fees, APPrO submits that the Board should reject Hydro One's request for annual inflation adjustments, but allow the company to adjust the base rates every five years to reflect actual costs approved by the Board. Periodic approval of the joint-use base rate will ensure that other parties, generators and the Board will have an opportunity to review the appropriateness of the charges and those charges can be adjusted to reflect the actual costs to ensure all uses pay the same for their share of the common costs. As Hydro One tracks these costs on an annual basis, the information should be readily available at minimal cost.

Rather than approve annual inflation factor based on CPI or GDP-IPI FDD, APPrO recommends that the Board direct Hydro One to continue to track attachment costs for all users and report back to the Board on the need for CPI adjustments in its next rates case. At that time any shortfall or excess recovery could be included in the calculation of the base fee for the next five-year period. APPrO believes that this is a practical approach to recovering the actual costs given the fact that the communication and streetlight fees have no inflation adjustment and the escalation clause in the LDC rate has significantly over recovered Hydro One's actual costs.

#### Effective Date

Since there is no approved rate for generator attachments, Hydro One used the \$28.61 rate approved by the Board for LDCs to develop sliding scale rates which were inserted in the 20 year attachment contracts that Hydro One entered into with three generators. Unlike the single LDC rate approved by the Board, the proposed sliding scale rates varied by height, inflation and periodic cost adjustments. Hydro One confirmed that generators were made aware of the proposed sliding scale base fee structure for 2010 without the CPI and periodic cost adjustments. It also confirmed that the generators were not aware of the details and that none have been sent invoices. On the basis of these facts, Hydro One requests an effective implementation date of January 1, 2010.<sup>37</sup>

Given the significance of the details related to the proposed rate that have come to light as a result of this rate review proceeding, APPrO is concerned that generators may not have been aware of all of the implications proposed rates or that the LDC rate was not a cost based rate. Most notably, Hydro One did not indicate whether the impacted generators were aware of the need for significant capital contributions for attachment to poles exceeding 60 feet.

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<sup>37</sup> Exhibit B, Tab 1, Schedule 1, Page 9, Lines 3-7

Retroactive application of the sliding scale rates would not seem reasonable if the impacted generators were not aware of the capital contributions that most generator attachments would require. APPrO notes that the wording in the excerpt from the attachment contract filed by Hydro One (Exhibit B, Tab 2, Schedule 2) states that the rates are subject to OEB approval so there should not be any concern with adjusting the rates or the effective date.

Based on the evidence provided in this proceeding, APPrO recommends that the Board approve a cost based rate of \$28.40 to be effective January 1, 2010 and applied to any generation attachments that will be or have been installed in 2010, and that the proposed sliding scale rates take effect January 1, 2011 following the Board's decision.

As a general principle, APPrO does not support changing rates retroactively, particularly when the change would have a negative impact on generation project economics. But since Hydro One has based its 2010 attachment contracts on \$28.61 and the actual costs are \$28.40, APPrO submits that the cost based rate should be approved for the current year. Any shortfall from the \$28.40 rate being applied in 2010 to higher pole attachments will be recovered in the capital contribution.

APPrO notes that Board staff based its recommendation for a January 1, 2010 effective date on the assumption that joint use applications have been executed after the development and implementation of the regulations and related matters under the Green Energy and Economy Act.<sup>38</sup> Although APPrO does not have access to the contracts signed to date it believes that a large portion, relate to projects that were developed prior to GEGE Act coming into effect.

If that is the case and the Board decides to approve the rates retroactively, APPrO recommends that sliding scale rates take effect January 1, 2010, but only for those generators that have signed a contract with the Ontario Power Authority after October 21, 2009 (which is the date in the DSC that allows distributors to recover costs related to renewable generator connections from the provincial rate base). For all other generators, the effective date for the sliding scale rates should be January 1, 2011.

### Benefits of Coordinated Planning

At the technical conference, Hydro One confirmed that its planning department approaches distributors when it builds or replaces its distribution lines on boundary roads where there is a possibility for joint-use and that attachment requirements for

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<sup>38</sup> Board Staff Submission Page 11, Paragraph 1

generators cannot be determined until they are under contract since it would not know what the height requirements are for the shared pole<sup>39</sup>.

Hydro One did not confirm or deny that it has a statutory responsibility to facilitate renewable energy connections through joint-use service, but it did confirm in its Argument-in- Chief that new lines would not be built to accommodate generators, except where distribution service is required in the near term.<sup>40</sup>

Even without a legislative requirement, APPrO contends that it would be practical and efficient for Hydro One to contact generators who are planning to install generation facilities in areas where system expansions, reinforcements and distribution line extensions are being considered by Hydro One to determine if there are potential joint-use opportunities with generators. Hydro One confirmed that it contacts generators, but it does not include their requirements in its planning or build extra space on its poles to accommodate generator attachments.<sup>41</sup>

APPrO recommends that Hydro One treat generators the same as distributors with respect to joint-use opportunities on expansion, reinforcement and pole replacement projects and that at a minimum Hydro One should make its pole construction and replacement planning information available when requested by a generator or a generation developer. APPrO notes that Hydro One in conjunction with an IESO process has initiated discussions on joint use opportunities with the 30 to 40 generators identified as joint use candidates<sup>42</sup>, but submits that generators or generation developers should also be able to initiate discussions with Hydro One with respect to planned expansion, reinforcement and replacement projects.

In addition, to the extent that Hydro One intends to reconfigure existing poles or replace them with taller poles to accommodate a generator with a FIT contract, projects that are in the FIT production line that want to make use of the same poles should be allowed to request poles that are tall enough or reconfigured to also accommodate their project, provided they make a financial commitment to guard against unnecessary investments.

### Negotiated Rates

Hydro One has asked the Board to determine whether the joint-use fees for generators require Board approval or whether they can be treated as commercially negotiated fees which can be adjusted without further oversight by the Board. The only justification that Hydro One provides in support of its request for unregulated joint-use arrangements is

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<sup>39</sup> Transcript Page 17, Line 18 to Page 18, Line 19; Page 57, Line 18 to Page 58, Line 7

<sup>40</sup> Submissions (Argument) of the Applicant, Page 3, Section (c)

<sup>41</sup> Transcript Page 18, Lines 3-19

<sup>42</sup> Transcript Page 37, Lines 19-24

its conclusion that joint use is a competitive service because generators have two viable economic alternatives: attach to Hydro One's poles or build their own dedicated line.

APPrO does not see the logic in this conclusion since the same statement could be made for the communication, streetlight and LDC attachments which have been approved by the Board for some time. In addition, even when the LDC rate was negotiated with the EDA, Hydro One continued to seek Board approval for the base rate. Unfortunately, as a result of negotiated escalation factors, the actual rates paid were inflated above the actual costs approved by the Board.

In APPrO's view there would be only one viable economic alternative in any given situation and that would be the most economic option from the generator's perspective. In almost all cases that would be joint use of the assets owned by the distributor. The potential to compete with a large monopoly distributor for pole and line locations based on capital and maintenance costs would be very limited. In any case, the range of competitive options is certainly not robust enough to protect the public interest and justify regulatory forbearance. If Hydro One applied the same logic to the situation that occurs when a bypass line is being considered, it would need to ask the Board to deregulate its distribution rates because an economic bypass option might be viable. Since for most cases the preferred choice will be joint-use, that option should be available at a regulated rate to ensure the costs are reasonable and unnecessary duplication of pole lines can be avoided.

APPrO notes that the Board was very clear in its EB-2003-0249 Decision that the duplication of poles is neither viable nor in the public interest. APPrO agrees with this position and submits that avoiding the duplication of poles promotes the economic efficiency and cost effectiveness in the generation and distribution of electricity.

APPrO submits that the costs associated with continuing to regulate joint-use fees as miscellaneous service charges would be considerably lower than having to determine the costs that need to be eliminated from Hydro One's revenue requirement for the provision of a non-utility service. In addition, the revenues associated with the provision of a regulated service would be much simpler to assess. And finally, even with a standard rate and template contract in place there may be areas such as the capital contribution level which cannot be resolved expeditiously with Hydro One, and may need to be resolved by the Board in any case.

On page 2 of its Argument-in-Chief on, Hydro One refers to the term "Renewable Energy Expansions" and attempts to differentiate it from infrastructure investment required to accommodate joint use arrangements with generators. This term was not used in the technical conference or in Hydro One's pre-filed evidence; nor was it defined in Hydro One's submissions or in the Distribution System Code ("DSC"). APPrO

recommends that the Board seek clarification on whether Hydro One is referring to the terms "Expansions" and "Renewable Enabling Improvements" defined in the DSC or just the latter. APPrO submits that depending on how the term is defined joint use may or may not be separate from Renewable Energy Expansions, since practically speaking, the two are often conducted in parallel for a single project. APPrO agrees with Hydro One, however, that joint use on existing poles is different than joint use on expansion, reinforcement and replacement projects planned by Hydro One.

Based on input from its members, APPrO remains concerned with negotiating delays and imposed terms. Hydro One's negotiating process requires generators to deal with two legal departments and sign two different agreements with differing terms for the same poles. Response times from Hydro One that extended well past 30 days for minor edits have in some cases resulted in Joint Use Agreements being executed post-connection. More important, when building a standalone line is not commercially viable, the Joint Use Agreements are essentially "non-negotiable" and generators may be forced to accept less than favourable terms. While the terms of the Joint Use Agreements will continue to need to be negotiated, the implementation of a regulated rate for joint use poles will remove one aspect of this negotiation process and provide certainty regarding one of the key terms of the Joint Use Agreements.

The question that Hydro One has asked the Board to consider in this application on whether joint-use fees should be regulated was previously submitted by the EDA (with support from Hydro One) in the RP-2003-0249 proceeding with respect to cable and telecommunication attachments. Essentially the distributors argued that unless the Canadian Cable Television Association (the "CCTA") could demonstrate that there has been a systematic abuse of monopoly power, the Board should allow the parties to continue to negotiate joint-use fees. In its decision, the Board agreed with the CCTA that the electricity distributors do have monopoly power and concluded that power poles are essential facilities. The Board stated that it is a well established principle of regulatory law that where a party controls essential facilities, it is important that non-discriminatory access be granted to other parties. Not only must rates be just and reasonable, there must be no preference in favour of the holder of the essential facilities. The Board concluded that it should set access [i.e. joint-use] charges.

For all of these reasons, APPrO recommends that the Board continue to regulate joint-use rates to ensure that Hydro One charges generators and other users a just and reasonable rate to attach to the monopoly distribution system. Continued regulatory oversight will also provide the transparency to make sure the rates recover no more and no less than the costs associated with the provision of the service. Continued regulation will also facilitate the development and use of a standard rate which will ensure consistent application of the rates so that all attachers pay their fair share of the

common costs as determined by the Board in RP-2003-0249.<sup>43</sup> In addition, regulatory oversight and recourse through the Board will ensure that the terms of the service are applied fairly to all users in the form of standard terms. In APPrO's opinion these benefits cannot be accomplished through negotiations with different groups of users.

## **Connection Impact Assessment Fees**

Hydro One is seeking Board approval for a number of new rates related to the Connection Impact Assessment ("CIA") work that it must undertake to accommodate generator connections in accordance with the Distribution System Code.

Hydro One has requested approval for the following new fees, effective immediately:

- (a) All Capacity Allocation Exempt ("CAE") Projects -- \$3,000
- (b) All Reassessed Projects – 50% of the otherwise applicable fee
- (c) All Net Metering Projects --\$3,000

APPrO supports the immediate implementation of these cost-based rates as proposed by Hydro One.

Hydro One has also requested confirmation that it may continue to apply the fees previously approved in EB-2009-0096 and which, the Board ordered Hydro One to implement on an interim basis on August 18, 2010:

- (d) Small and Mid-sized Projects<sup>2</sup> – \$10,335
- (e) Large Projects -- \$10, 405

APPrO has no objection to the continuation of these cost-based Board-approved rates provided Hydro One agrees to honour its previous commitments to generators to charge the lower cost rates that it proposed as transitional rates as discussed below.

## **Transitional Rates**

One of the key principles which help to ensure the efficient, cost-effective generation and distribution of electricity is the need for costs to be stable and predictable in order for investors to make economic decisions. The main concern with the transitional rates being withdrawn is the fact that Hydro One committed to applying the lower costs and the impacted generators would have relied on those commitments when planning and financing their projects.

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<sup>43</sup> DECISION AND ORDER, RP-2003-0249, Page 10, Paragraph 2

In its application of June 30, 2010, Hydro One requested approval of transitional rates of \$3,000, \$5,000 and \$6,000 for the performance of CIAs on small, mid-sized and large projects, respectively, until August 31, 2010. The purpose of this request was to help generators manage the transition to the new higher cost fee structure.<sup>44</sup>

As Hydro One further explained in its interrogatory response to VECC IR#5, the lower rates were proposed in recognition of the fact that HONI had quoted the lower fees to generators applying for connection prior to the higher fees approved in EB-2009-0096 coming into effect in May 2010.

Hydro One's response is worth repeating to provide the proper context for the Board:

*Hydro One undertook pre-application consultations with generation proponents from the late fall of 2009 through the early spring of 2010. During this time, the Company quoted its lower costs then in use for CIAs, on the assumption that it would be able to process these applications prior to the May 1st, 2010 effective date for the new fees, should they be approved. Due to delays, however, many of these applications continued to arrive after May 1st. Hydro One believed it was appropriate, therefore, to request a transition period up through August 31st, 2010. This additional time would enable the Company to complete its assessments of these projects at the fee level previously discussed and avoid a sudden step-change in the costs for these proponents.*

In its Argument-in Chief<sup>45</sup>, however, Hydro One stated that it no longer requires the transitional fees as it has implemented the higher fees of \$10,335 and \$10,405 as ordered by the Board on August 18, 2010. No explanation of the reason for this change was provided at the technical conference when Hydro One presented a dedicated witness to update the parties on the CIA fees. As Board staff clarified in its submission, Hydro One misinterpreted the Board's Order and there was no need to implement the rates on an interim basis as they were already in effect.

While APPrO is concerned by the proposed change, it has no objection to proceeding on that basis provided Hydro One is prepared to meet its previous commitments to generators that the CIA fee would be at the lower rates. APPrO notes that Board staff's conclusion that phase-in rates are no longer required was based on no objections being presented to the Board. APPrO does object to Hydro One disregarding its previous commitments to transitional rates.

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<sup>44</sup> Exhibit C, Tab 1, Schedule 1, Page 3, Lines 15-21

<sup>45</sup> Submissions (Argument) of the Applicant, Page 6



If Hydro One is not prepared to provide such assurances, APPrO recommends that the Board approve the continuation of the transitional rates (which APPrO understands were the rates in place prior to EB-2009-0096) in the interest of avoiding rate shock and in recognition of Hydro One quoting the lower fees to generators with the expectation that those projects would be completed before the EB-2009-0096 rates were effective. Given the interim nature of the higher rates, APPrO recommends that the lower rates be applied to all generators where Hydro One made commitments to use the lower rates, including those where the CIAs were completed by Hydro One after August 31, 2010.

Under these circumstances, APPrO submits that it is reasonable for Hydro One and the Board to extend the lower fees on a transitional basis until August 31, 2010 or later as there will be no adverse impact on ratepayers. APPrO believes that Hydro One should be required to meet its commitments to generators who relied on those prices, particularly where the project approvals may have been delayed by the time it took Hydro One to complete its project assessments.

## **Costs**

As the party that would be impacted the most by the proposed rates, APPrO addressed all aspects of the proposed rates from the varying perspectives of its membership, the Ontario Waterpower Association and the Canadian Wind Energy Association. APPrO worked diligently with these associations and other generators to review and assess the rate proposals and provide a consensus submission to the Board covering all of the issues that arose during the proceeding. APPrO believes that its active participation in the clarification of the rate proposals at the technical conference and its comprehensive review and submissions will help to complete the record and assist the Board in its deliberations. Accordingly, APPrO requests an award of costs in the amount of 100% of its reasonably-incurred fees and disbursements.

All of which is respectfully submitted on behalf of APPrO.

A handwritten signature in black ink, appearing to read 'JB', with a stylized flourish at the end.

Jake Brooks

Executive Director