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November 5, 2010

Ms Kirsten Walli
Board Secretary
Ontario Energy Board
27th Floor
2300 Yonge Street
Toronto, Ontario M4P 1E4

Dear Ms Walli:

EB-2010-0229 – Hydro One Networks Request for Exemption from Certain Sections of the Distribution System Code – Hydro One Networks Inc. Reply Argument

Enclosed are Hydro One Networks Inc.'s Reply Submissions/Argument regarding the above-noted proceeding, for which the hearing was held on October 6, 2010.

Yours very truly,

ORIGINAL SIGNED BY MICHAEL ENGELBERG

Michael Engelberg

enc

cc: Intervenors (Electronic Only)

EB-2010-0229

ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF an Application by Hydro One Networks Inc.
for an Order or Orders approving exemptions to certain sections of the Distribution System Code

REPLY SUBMISSIONS OF THE APPLICANT, HYDRO ONE NETWORKS INC.

Introduction

Hydro One's Reply will address all the submissions of Board Staff and interveners, which were concerned primarily with the issues of fairness, categorization of the mitigating investments that need to be made for the connection of the subject renewable generators impacted by certain technical issues ("Subject Generators"), and the difficulties presented for large generators by the existing processing timelines regarding System Impact Assessments ("SIAs") and Transmission Customer Impact Assessments ("T-CIAs").

Hydro One (or "the Applicant") received final arguments from Ontario Energy Board Staff ("Board Staff"), the Association of Power Producers of Ontario ("APPrO"), Energy Probe and the Ontario Power Authority (the "OPA"), which addressed only the Capacity Allocation issue.

Part A: The Applicant's Request for Exemptions to the Distribution System Code or Changes to the Manner in which the Distribution System Code Has Been Applied, with Respect to Unforeseen Technical Issues

Board Staff Submissions

Board Staff submits that Hydro One's requested relief (with the exception of the distance limitations investments) should be denied for three main reasons:

a) the view that there would be potential inequity in granting the new cost responsibility benefits to the Subject Generators, vis-à-vis all others who operated under the principles articulated;
b) the view that deeming the proposed investments to be expansion investments would be tantamount to providing an exemption to a regulation (O. Reg. 330/09). [Board Staff agreed with Hydro One, however, that the Board does have the ability to grant relief for prospective investments which are clearly either expansions or renewable enabling improvements, given the prospective nature of the costs anticipated]; and

c) the view that, with the exception of the feeder distance limitations issue, these investments are not expansions or renewable enabling improvements.

Cost Treatment in the Absence of an Exemption

Board Staff agreed with Hydro One that allocating these costs to the Subject Generators would not be fair to the Subject Generators, but Board staff stated, without providing any evidence in support, that any potential negative impacts should have been identified in the connection impact assessments ("CIAs") and also in the connection cost agreements ("CCAs"), with mitigating measures and costs.

Hydro One's Response

a) Inequitable Treatment Vis-à-Vis Other Renewable Generators

Board Staff and Energy Probe state that had the Subject Generators wanted to take advantage of the new cost responsibility rules, they should have released their capacity and the certainty associated with that, and begin the application process again (as did other generation proponents); and that by not doing so, these generators forfeited their chance to benefit from these rules. Board Staff are of the view that allocating these costs to the distributor is somehow unfair to generators who had to pay costs under the former regime.

Hydro One submits that the Subject Generators' option to "release and reapply for" capacity is not germane. What is relevant is that these generators now face unforeseen costs, an action which Hydro One submits is unfair to them. Furthermore, the Applicant's proposed treatment is not unfair to generators who had to pay costs under the former regime. Those generators did not have to face unforeseen costs caused by technical issues identified only after receiving their CIAs and CCAs. There would therefore, be no unfairness to those generators who were processed and connected before the technical issues now faced by the Subject Generators.

In any event, however, the suggestion of Board Staff and Energy Probe that the Subject Generators should have released their capacity completely ignores the evidence presented both before and during the hearing regarding the fact that neither the Subject Generators nor Hydro One were aware of the technical issues that are the subject matter of this proceeding. Board Staff's and Energy Probe's argument implies that if the generators had had the foresight to anticipate these issues, or really wanted the chance to benefit from the new cost responsibility directives, they would have "played by the rules."

Hydro One has stated, in both prefiled evidence and during cross-examination, that it did not have knowledge, nor could it have had knowledge, of these technical issues; and accordingly, neither it nor the generators could have possibly foreseen these problems at the time that the CIAs were being performed. The Subject Generators have played by the rules then in place, similarly to all other proponents, but have

found themselves in exceptional circumstances, for reasons that were neither their fault nor the fault of the Applicant. Hydro One submits that there was no evidence introduced by Board Staff or any intervener to contradict the evidence submitted by Hydro One in its prefiled evidence and during testimony at the oral hearing. Therefore, Hydro One submits that it would be incorrect to say that providing the benefit of the new rules to this specific group would amount to inequitable treatment vis-à-vis the treatment of other proponents. Board Staff has provided no evidence to support the allegation that granting the relief requested in this Application regarding the technical issues that emerged, would be unfair to other generators.

b) The Board's Jurisdiction Pursuant to O. Reg. 330/09

Hydro One is pleased that Board Staff agree with Hydro One's Submission (Argument-in-Chief, page 8) that the Board does, in fact, have the authority to grant relief respecting the mitigation investments, given that these investments are prospective in nature. Furthermore, Hydro One strongly submits, contrary to Board Staff's Submission, that granting the relief and treatment requested by Hydro One would not be to "reach back and give application to a regulation that was never intended." Hydro One submits that there is absolutely nothing in the regulation to indicate that costs incurred after the regulation came into force were intended to be excluded from the cost allocation treatment created by the regulation. Similarly, nothing in the regulation indicates that the date of application for connection is the sole or appropriate delineator for defining cost responsibility.

c) The Definition of the Investments

Energy Probe's view is that Hydro One misidentifies the proposed investments as expansions. Board Staff and APPrO address each type independently, as discussed below.

i) Delta-Y Transformers

With respect to Delta-Y transformers, "In Board staff's view, this work by Hydro One does not consist of adding new facilities to its main distribution system to connect new generators as these generators are all already connected or have completed CIAs, and thus any needed expansion would have been completed or described in the CIA" (page 11). During the cross-examination, APPrO suggested that these investments might also be determined to be renewable enabling improvements ("REI"). It recommends that should the Board make such a determination, it could exempt Hydro One from s. 3.3.4 of the Distribution System Code, which requires a distributor to have rates set based on a cost of service application following 2010 in order for such investments to be recoverable from ratepayers. APPrO proposes that such exemption would be based on a full prudence review prior to disposition.

Hydro One continues to submit that these investments meet the definition of an expansion as provided in s.1.2 of the Distribution System Code as "a modification or addition to the main distribution system in response to one or more requests for one or more additional customers that otherwise could not be made…." As noted during the cross-examination, some of these grounding transformer assets will benefit more than one generator (Transcript, Vol. 1. page 75, lines 4-9). Given the function of these transformers (that is, to protect the distribution system from over-voltages), Hydro One also has stated that they could be defined as renewable enabling improvements, as noted in s. 3.3.2 (a) of the Code, which states that "renewable enabling improvements…are limited to…modifications to, or the addition of, electrical protection equipment." (Transcript, Vol. 1, page 99, lines 24-28 and page 100, lines 1-2.

To Board Staff's comment, Hydro One submits that the exclusion of the need for grounding transformers from the CIA does not preclude their classification as expansion assets. The issue is that their use was not anticipated at the time when the CIAs were completed, because the issues which precipitated the change from the Delta-Y to the Y-Delta standard could not have been foreseen by either the generator or the Applicant. The later identification of the need for different standards and new facilities (grounding transformers) to meet those standards does not in any way negate their classification as expansion assets.

Regarding APPrO's suggested exemption from s. 3.3.4 of the Code should the Board decide to classify these investments as REI, Hydro One submits that s. 3.3.4 in fact, refers back to s. 3.3.3a), which focuses on "enhancements," rather than REI (which is the subject of s.3.3.3b). Accordingly, APPrO's suggestion does not address the issue. In any case, Hydro One had already committed to include REI work in its 2010-2011 plans for distributed generation (Vol. 1, page 98, lines 17-20) during its last distribution rate proceeding. The Board recognized the need for such work and related funding requirements, so it approved use of a deferral account and rate rider (EB-2009-0096, Board Decision with Reasons, April 9, 2010, page 37). Hydro One submits that should the Board classify and authorize these investments as REI, these investments could be managed in a similar fashion.

ii) Dual Secondary Winding Transformers

As Hydro One stated in its prefiled evidence (Exhibit B, Tab 1, Schedule 4, page 2), dual secondary winding transformers are transmission assets. Board Staff submit that it would therefore be inappropriate for Provincial Consumers (via Hydro One Distribution's proposed cost recovery process) to provide the funding for these mitigation investments. Board Staff are of the view that granting this exemption would result in two areas of risk:

- the view that a precedent would be created for a large number of transformer stations with transformers with similar issues; and
- the fact that the OPA has no economic evaluation for these facilities.

Hydro One submits that the treatment it proposes would not create a precedent in that it has been careful throughout this Application to constrain its proposed treatment to only the Subject Generators whose projects are the subject of this Application. Furthermore, as noted in Hydro One's earlier Submissions (Argument-in-Chief, page 5), the Applicant proposes that the intent of the cost responsibility provisions in the Transmission System Code and the Distribution System Code would be preserved if the Board were to recognize a capital contribution by Hydro One Distribution, made to the transmitter, as an "eligible investment".

Hydro One acknowledges that as the dual secondary winding transformers are transmission connection assets, they would not fall within the scrutiny of the OPA's economic connection test ("ECT"). In their Argument, Board Staff state that having Provincial Consumers pay for costs that are not scrutinized through the ECT "would have the effect of moving the risk of uneconomic connections from the connecting generators onto the provincial ratepayers." Hydro One does not claim that the unforeseen investments in question are economic, only that recovering them from the generators would be unfair. Further, the risk to Provincial Customers of uneconomic connections as a result of this proposed cost treatment would not exist under the ECT, because this limited exemption is not being requested for any projects that will be subject to an ECT.

iii) Feeder Distance Limitations

Board Staff agree with Hydro One that the feeder distance limitations work qualifies as an expansion. They submit that if Hydro One can demonstrate that this investment will contribute to additional capacity for future renewable generation connection and that the capacity is needed to support the FIT program, a portion of the related costs could be eligible for inclusion in future Green Energy Plan ("Plan") expenditures. They state that Hydro One's proposal to include these investments as an addendum to its current Green Energy Plan, however, cannot be addressed at this time, due to lack of certainty around the investments and Board Staff's view that approval of a new Green Energy Plan is not within the scope of this proceeding. Therefore, Board Staff state that some or all of the costs associated with the near-term projects impacted by this issue may be recorded in a deferral account, which would be the subject of a future prudence review.

In response, although Hydro One agrees with Board Staff's suggestion, the Applicant submits that the suggestion is not sufficient, in that it would address only the projects with the highest probability of exhibiting these problems and the earliest in-service dates. Treatment of the costs identified for the remaining two sets of distance limitation projects would remain unclear. Hydro One is currently studying projects with in-service dates which range from this month through 2011 for which, full mitigation measures, if needed, are estimated to cost $23M. The third category of projects, although expected to have a lower probability of such problems, also could require mitigation measures totaling about $17M. Greater certainty around the

treatment of these potential investments is also needed at this time, and Hydro One submits that this Application is the appropriate place to deal with the remaining two sets of distance limitation projects.

Hydro One is not seeking approval of a new Green Energy Plan. It is merely asking that the Board, having reviewed the proposed investments in this proceeding, approve them for inclusion in Hydro One's Green Energy Plan. Hydro One submits that this proceeding provides the Board with sufficient information about the need for and the nature of the investments covered herein, to allow them to be included as expansions in Hydro One's Plan. The inclusion in the approved Plan is necessary so that these investments can be defined, in their entirety, as the Distributor's cost responsibility. Hydro One acknowledges that there exists a "lack of certainty around the costs associated with these investments", but maintains that this need not preclude the inclusion of these investments in the approved Plan. Indeed, the prudence review of all of these investments can take place after the costs are recorded in a deferral account.

Cost Treatment in the Absence of an Exemption

Hydro One has provided considerable evidence in prefiled evidence and during cross-examination that it could not have foreseen these technical issues, which emerged only after generator connections were made (in the case of the distance limitations and dual secondary winding issues), or for which there was no broad consensus on standards (for the Delta-Y configuration). Therefore, Hydro One could not possibly have identified these issues, nor the variety of options to mitigate the problem and related costs, in the CIAs and connection cost agreements, as now suggested by Board Staff. Hydro One submits that there was no evidence introduced by Board staff or any intervener to contradict the evidence submitted by Hydro One in its prefiled evidence and during testimony at the oral hearing.

APPrO Submissions

APPrO essentially agrees with Hydro One's positions that:

- the evidence makes clear that these circumstances are unique, the costs arose as a result of the generator connections and neither Hydro One nor the generators could have foreseen these technical issues at the time of developing the CIAs and connection cost agreements;
- the subject investments are prospective and the Board clearly has the authority to approve them as the responsibility of the distributor; and
- the Board could apply the same "approval in principle" approach as was applied in the provisional approval of the Applicant's Green Energy Plan, with a later prudence review of the investments and definition of local versus Provincial Consumer allocation of costs, when more complete information is available.

Although APPrO of course disagrees with Hydro One's position that Hydro One has the legal right to charge additional amounts to the Subject Generators where those additional

amounts are a consequence of the technical issues being examined in this proceeding, APPrO agrees with Hydro One that this Application is not the appropriate forum to address the issue of cost responsibility if Hydro One's Application is denied by the Board. APPrO also states that such an inquiry is not required to draw the conclusions urged by APPrO and Hydro One in this proceeding.

Hydro One's Response

As acknowledged by APPrO in its Final Argument, Hydro One filed Schedule A to its Submissions (Argument-in-Chief) to respond to the Board panel's question as to what Hydro One relies on (in the contracts between it and the Subject Generators, and otherwise) to state that the Subject Generators will be liable in law to Hydro One for the additional amounts that are attributable to the technical issues that are the subject matter of this Application. Hydro One submits that Schedule A fully responds to the Board panel's question, and Hydro One reiterates that it has the authority, and will (as stated in cross-examination) have no choice but to pursue the Subject Generators for those amounts if the Board denies Hydro One's Application. APPrO and Hydro One both agree that this proceeding is not the appropriate forum for an inquiry into that issue, and Hydro One also agrees with APPrO's submission that such an inquiry is not required to draw the conclusions urged by both Hydro One and APPrO regarding the appropriate cost responsibility for the mitigation measures that are the subject of this proceeding. Hydro One also appreciates APPrO's support for Hydro One's Application.

Part B: The Applicant's Request for Exemptions to the Distribution System Code with Respect to Capacity Allocation Issues

All parties generally structured their arguments around the following issues:

a) the scope of the Application and implications for other distributors and large generators,
b) additional time requirement for execution of connection cost agreements,
c) the concept of provisional capacity,
d) specific exemptions required from the Distribution System Code,
e) monitoring requirements, and
f) other questions and comments.

Hydro One will respond to these issues accordingly.

a) Scope of Application and Implications for Other Distributors and Large Generators

Board Staff and interveners support explicitly limiting this Exemption Application to the 12 generators under discussion. They recommend that future generators with similar potential processing issues should be addressed on a case-by-case basis. Board Staff and the interveners, however, also all agree that this issue could affect other large generators. Board Staff note that other distributors may need similar exemptions, while the OPA asks

the Board to consider a process which would provide for the application of any exemption requested here, to these other distributors. APPrO recommends that the Board consider processes to align the relevant provisions of the Distribution System Code and the Transmission System Code in these aspects and also to clarify sections of the Distribution System Code which, as a result of this Application, seem to be subject to more than one interpretation.

Although Hydro One made this Application on behalf of its *current* set of 12 proponents with large projects which must undergo System Impact Assessments ("SIAs") and Transmission Customer Impact Assessments ("T-CIAs"), it agrees with the OPA that it would be beneficial for the Board to consider a process which would address the similar needs of all distributors with connection applications from large generators. Hydro One requests that the Applicant be included in such a process on behalf of other large generators who apply for connection to Hydro One's distribution system in the future.

Hydro One agrees with APPrO that greater clarity on these issues for all distributors would be helpful. The Applicant would willingly participate in a consultation convened by the Board.

b) Additional Time Requirement for Execution of Connection Cost Agreements

While Board Staff and interveners agree with Hydro One that additional time is required, they believe that the approach should not be open-ended. The following are the parties' proposals for timelines for all tasks, i.e., the development of cost estimates through execution of the connection cost agreement ("CCA"), which begin after the SIA and T-CIA are complete:

- Board Staff – six months, when cost estimates for either or both distribution and transmission upgrades are required.
- OPA – six months, when cost estimates for distribution upgrades are required and nine months, when cost estimates for both distribution and transmission upgrades are required.
- APPrO – the earlier of up to nine months for transmission cost estimation when needed and 45 days after both transmission and distribution cost estimates are complete, for the generator to arrange financing and execute the CCA.[1]

Hydro One submits that it has not requested open-ended timelines for all aspects of this Application. The time requirements requested for the processing of projects requiring only distribution upgrades and those with transmission work were addressed separately, due to the differences in the time frames for developing cost estimates between the two.

Hydro One's proposal agrees with Board Staff and the OPA recommendation on the need for six months, when only distribution work is needed. To be clear, for applications with only distribution upgrades, Hydro One has already committed in its prefiled evidence

[1] APPrO also includes 15 days following receipt of the SIA and T-CIA, for proponents to agree to a detailed cost estimate.

(Diagram 2) and in its Submissions ("Argument-in-Chief," page 10), to a one- to four-month period within which to develop the relevant cost estimates, following the completion of the SIA and the T-CIA. That is, up to four months (to develop distribution-related cost estimates), with the addition of up to another two months (for generators to assess their costs and settle their needed financing), comprise the six months after the issuance of the D-CIA, to complete the process and execute the CCA, as shown in Diagram 2 in Exhibit C, Tab 1, Schedule 1, page 6.

With respect to the time required for transmission cost estimates, Hydro One would try to work within the timeline proposed by APPrO. A maximum nine-month period for producing transmission cost estimates would better reflect the time requirements of addressing the complexities introduced by the SIA review.

c) Provisional Capacity

Board Staff and interveners do not agree with Hydro One's request for provisional capacity allocation.

Hydro One acknowledges that if generators are granted sufficient time to execute their CCAs,(also allowing the distributor and transmitter to develop reasonable cost estimates), there should be no need for provisional capacity allocation. The concept of provisional capacity allocation was introduced only to signify that capacity had been allocated to a proponent, should the period for that proponent's SIA, T-CIA, cost estimation and CCA become extended and in the absence of a definite timeline for completion of these tasks. Hydro One submits that should the Board grant an adequate extension for the transmission cost estimation work, there will be no need for the concept of provisional capacity allocation..

d) Specific Exemptions Required from the Distribution System Code

Section 6.2.4.1e) i. -- Board Staff and interveners agree that an exemption to s. 6.2.4.1 e) i. of the Code is required, to enable an extension of the timeline by which the CCA must be executed.

Hydro One agrees.

Section 6.2.4.1c – Board Staff and interveners disagree with Hydro One's request for an exemption from the requirements of this section, which states that a CIA will not be completed unless a proponent has the appropriate in-service date for water power or other type of project.

Hydro One agrees that this section applies to projects that do not yet have CIAs, and that the generators who are the subject of this Application already have CIAs. The Applicant's concern has stemmed from its occasional need to redo CIAs of certain projects, to assess the impact on them, of connecting subsequent capacity allocation exempt generators to the same feeder or station. In light of intervener arguments, the

Applicant, however, is willing to address, on a case-by-case basis, any issues which might arise in such situations. Accordingly, Hydro One is willing to forgo its need for an exemption from this particular section of the Code.

Section 6.2.16 -- Board Staff and interveners oppose Hydro One's request for an exemption to this section, which commits the distributor to provide the applicant with a detailed cost estimate and an offer to connect by the later of 90 days after the receipt of payment from the applicant and 30 days after the receipt of comments from a transmitter or distributor that has been advised under section 6.2.17. Board Staff have interpreted "comments from a transmitter" in s. 6.2.16 as the transmission cost estimate. Board Staff also state that 90 days for the provision of transmission cost estimates is reasonable, given that Hydro One's approved Transmission Connection Procedures state a 45-calendar day period on a "best efforts basis". APPrO believes that this section commits the distributor to provide only its costs for distribution work in these time frames, which Hydro One has said it can manage. The OPA believes that Hydro One did not provide sufficient evidence to demonstrate its need for this exemption.

Hydro One submits that, if the Board determines that Board Staff's interpretation of "transmitter comments" *are* the transmitter's cost estimates, it will not need an exemption to this section. Hydro One agrees with Board Staff that *both* distribution and transmission cost estimates must be provided, in accordance with s. 6.2.18a of the Code, which requires that the CCA stipulate payment of 100% of the proponent's connection cost ("total estimated allocated cost of connection") at the time of the agreement's execution.

e) Monitoring Requirements

Board Staff and interveners agree that progress reporting by Hydro One on the 'processing' of these affected generators would be helpful. Board Staff particularly believe it would be helpful to provide some transparency around the connection process and as a form of early notice regarding emerging issues for any of the affected generators. They note Hydro One's agreement in principle to quarterly reporting and notification of obstacles to connection of projects. The OPA and APPrO suggest monthly reports and are generally aligned in the proposed contents, with the OPA providing a sample table of milestone events and dates for each project. The OPA also requests that Hydro One be directed to distribute the Board's Order from this proceeding to all the affected generators.

As stated in its Submissions (Argument-in-Chief), Hydro One agrees to provide the Board with status reports on its progress with these generators. However, Hydro One submits that preparing monthly reports would be onerous and inefficient, with no benefit over somewhat less frequent reports. Hydro One therefore submits that quarterly reports with the information considered by APPrO and the OPA would be sufficient, with the proviso that material events for projects would be reported as they occur. Of course, Hydro One would also distribute the Board's eventual Decision in this proceeding to the affected generators.

f) Other Questions and Comments

The OPA notes Hydro One's comment that only one of the affected generators has applied to obtain its SIA and has asked for the reasons behind this. Hydro One has not questioned the generators and is therefore not in a position to respond, though it is reasonable to assume that these generators are assessing the results of their D-CIA. Hydro One notes that there is no stipulated timeline for proponents to pay for their SIA and T-CIA, although they have been informed about the six-month timeline for CCA execution.

Conclusion

Hydro One reiterates that this Application is driven by the need for fair treatment of a limited number of renewable generation proponents who, for reasons beyond their control and beyond the control of their subject local distribution company, may find their projects to be no longer financially feasible due to certain technical issues, or who may lose their allocated capacity to other proponents due to issues with processing timelines.

The technical issues discussed in this proceeding emerged only after the first renewable generation projects were either placed into service or were well into construction.

No evidence at all was provided by either interveners or Board Staff to displace the uncontroverted evidence of the Applicant, in both the prefiled evidence and under cross-examination at the hearing, that neither the Subject Generator nor the Applicant knew, or could have known, at the applicable time, of the technical issues that have been established. Furthermore, Board Staff acknowledge that allocating the mitigating costs to the generators would be unfair to them and that the Board has the jurisdiction, pursuant to O. Reg. 330/09, to grant the allocation relief requested, given that the mitigation costs are prospective and do not apply to any time period prior to the coming into force of the Regulation.

Hydro One respectfully submits that in its Submissions and in this Reply, it has fully answered the matters raised by interveners and Board staff regarding the eligibility and appropriateness of treatment of the investments as either expansion investments or renewable enabling improvements within the meaning of the provisions of the amendments made to the *Ontario Energy Board Act, 1998*, by the *Green Energy and Green Economy Act, 2009*, and by O. Reg. 330/09, all in the context of the Government's desire to promote the construction and connection of renewable energy generation projects such as the ones affected by this Application.

Regarding the issue of timelines associated with System Impact Assessments and Transmission Customer Impact Assessments, Hydro One submits that its original proposals and its modified proposals as suggested in this Reply (which modifications depend on the Board's granting of a sufficient extension to enable the completion of cost

estimates for transmission work when needed and its interpretation of certain provisions of the Code) are realistic. Hydro One also submits that these proposals are fair and reasonable and will address the issues surrounding the existing timelines established by the Distribution System Code and their effects on large generation proponents.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

ORIGINAL SIGNED BY MICHAEL ENGELBERG

Michael Engelberg, Counsel for the Applicant