

Hydro One Networks Inc.

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November 8, 2010

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

Dear Ms Walli:

EB-2010-0228 – Hydro One Networks Request for Fees Related to Distribution Generation Projects – Hydro One Networks Inc Reply Argument

Enclosed are Hydro One Networks Inc.'s Reply Submissions/Argument regarding the above-noted proceeding.

Yours very truly,

ORIGINAL SIGNED BY MICHAEL ENGELBERG

Michael Engelberg

enc

cc:Intervenors (Electronic Only)

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 Miscellaneous Charges

REPLY SUBMISSIONS OF THE APPLICANT, HYDRO ONE NETWORKS INC.

Introduction

Hydro One's Reply Submissions will address the submissions of Board staff and interveners regarding both issues that are the subject of this Application, namely:

- (A) the request for approval of joint use charges for generator attachments on the Applicant's distribution poles; and
- (B) the request for approval of fees for performing Connection Impact Assessments for generator connections.

Hydro One received reply arguments from Ontario Energy Board staff ("Board staff"), the Association of Power Producers of Ontario ("APPrO"), the Vulnerable Energy Consumers Coalition ("VECC"), Energy Probe and the Canadian Manufacturers and Exporters ("CME"). APPrO was supported in its submissions by the Ontario Waterpower Association ("OWA") and the Canadian Wind Energy Association ("CanWEA").

It is apparent from the submissions of Board staff and interveners that, in general, there is some agreement regarding the range of these fees and the principles involved, but there are differences emanating from the desire of some interveners to fine-tune the application of those principles and the creation of methodologies to a degree that may not be necessary or practical at this time.

Part A: Request for Approval of Miscellaneous Joint Use Charges for Generator Customers to Affix Their Generator Electrical Circuit Attachments to Hydro One's Distribution Poles

All parties generally structured their arguments around the following issues:

- a) The principles against which to assess Hydro One's proposal
- b) The threshold question of whether the proposed joint use rates may be unregulated
- c) Determining the appropriate space allocation factor
- d) Determining the appropriate cost level for a base joint use rate

- e) Hydro One's proposed sliding scale
- f) The appropriate fee adjustor
- g) Annual Adjustments
- h) Other Comments

Hydro One will respond accordingly.

a) Principles

Board staff's submission is guided by the following principles:

- There should be a similar treatment of distributors and generators requesting joint use of Hydro One's poles;
- All generators should be treated fairly and equally;
- No undue cross-subsidization should exist between generators and electricity distribution service customers; and
- Fees should be substantiated by appropriate costs.

All interveners agreed with these principles.

Hydro One's Response

Hydro One also agrees with these principles.

b) Whether The Proposed Joint Use Rates May Be Unregulated

Regarding Hydro One's request for a determination on whether joint use rates should be unregulated, Board staff expressed concerns respecting the possibility of inequitable treatment between generators, undue cross-subsidization between generators and distribution ratepayers, and the potential exercise of market power. Board staff also submit that from a regulatory perspective, a regulated joint use fee would be more efficient than potentially exposing the Board to alleged cases of market power abuse. The interveners generally agreed with these points. APPrO prefers a regulatory mechanism to ensure fair and reasonable rates for this service: it indicates that LDC rates for the same service are regulated and also states its concerns about negotiating issues. VECC and CME also submit that this service is a monopoly service and prefer regulated rates for reasons similar to those of the others. Energy Probe submits that no evidence was filed to lead the Board to a different decision from that taken in RP-2003-0249 (Canadian Cable Television Association proceeding). Energy Probe also supports the Board staff position on the remaining issues.

Hydro One's Response

Hydro One submits that it has substantiated the reasons that the joint use fees *could* be unregulated, not necessarily that they *should* be. Hydro One submits that, should the Board decide to regulate these charges, a Decision is needed that allows

appropriate allowance for inflation and also requires a true-up (using actual costs at regular five-year intervals) to ensure appropriate cost recovery with no cross-subsidization.

c) Determining the Appropriate Space Allocation Factor

All parties acknowledge the lack of clarity in the telecommunications methodology for determining the space allocation factor and have proposed alternative calculations to derive factors other than Hydro One's proposed factor of 28.1%. Board staff propose a factor of 29.4% for generators requiring 10 feet using a 40-foot pole, with 34 feet length representing the portion above the ground. VECC and APPrO submitted calculations demonstrating the likely approach used to obtain the telecom space allocation. On this basis, VECC recommends that Hydro One use a 31% power space allocation factor. APPrO states that the allocation factor must be reset appropriately for each pole height to ensure that the common costs are allocated fairly, since the methodology relies on embedded costs rather than on individual pole heights. It suggests a factor of 20% for 10 feet of space on a 50-foot pole, 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) and questions why this would not be used.

Hydro One's Response

Hydro One acknowledges that there may be some minor shortcomings with the telecommunications methodology but submits that there is urgency to have rates in place, given the volume of generators applying for connection. Hydro One also submits that the proposed space allocation factor and the resulting base rate are appropriate for the time being.

The Applicant accordingly requests Board approval of the space allocation factor and the resulting base rate as proposed by Hydro One, without a ruling on the methodology at this time. At the same time, as noted in part b) above, Hydro One submits that a clear and transparent methodology is important. Hydro One therefore agrees with VECC's suggestion that when the joint use rates with the distributors are subject to review, the methodology for determining the space allocation factor may also be opened for scrutiny in a broader proceeding, in which both generators and LDCs may participate.

d) Determining an Appropriate Base Joint Use Rate

Board staff submit that the costs used by Hydro One should use the forecasted costs underpinning its last distribution rate proceeding (EB-2009-0096), unless there is a sound reason for not doing so. Board staff also note the significant reduction in depreciation expense underpinning the original fee to that would be used for current fees, and have asked Hydro One for an explanation.

APPrO agrees with the need to utilize current costs and with the Board staff's question on depreciation expense. APPrO therefore supports the use of \$28.40, which Hydro One had developed for discussion at the Technical Conference as the actual 2010 cost of providing this service, rather than the originally proposed \$28.61, which was the base rate negotiated with the EDA. APPrO also recalculated the LDC rate using Hydro One's 3% annual inflation rate used to estimate its 2010 direct costs and derived an LDC rate of \$33.17. The result is that APPrO disagrees with Hydro One's statement that the current base rate for LDC joint use would not cover the needs associated with generator joint use. Finally, APPrO notes a large increase in the pole maintenance cost and recommends that Hydro One review this.

VECC, supported by CME, recommends that Hydro One use its current costs and the telecom methodology, which would give a rate of \$31.09 or \$32.31, depending on the number of attachers. VECC recommends the use of \$31.09 as a base rate.

Hydro One's Response

As stated above, in the response in part c), Hydro One requests approval of its proposed base rate at this time, with the willingness to open the methodology for review and assessment at a later date, perhaps at the time that the joint use rates for use with distributors are opened for review.

On the depreciation issue, Hydro One used its standardized depreciation rate of 1.83% for pole plant, representing an average useful life of approximately 50 years to calculate the depreciation cost shown in Exhibit KT2, for current depreciation costs. This rate was originally put forth for Hydro One's Distribution business in its 2006 test year submission in RP-2005-0020/EB-2005-0378 and was supported by an independent depreciation study by Foster Associates Inc., which was completed in June 2005. The Board accepted the costs flowing from the Depreciation Study for the purpose of supporting Distribution rates in 2006.

With regards to the discrepancy between the two depreciation rates, for the 2003 depreciation, Hydro One used the depreciation rate which had been approved as a result of the review of the telecom methodology, which had been based on that proposed by Milton Hydro. Hydro One is unaware of the depreciation rate employed by Milton Hydro in 1995. For reference, in its 2006 EDR Handbook proceeding (RP-2004-0188), the Board established a 4.00% amortization rate for distribution lines, feeders and associated plant, based on a useful life of 25 years.

The increase in the maintenance costs reflects Hydro One's focus, in recent years, to improve reliability through shorter vegetation management cycles and increased attention to pole maintenance and life cycle management.

Hydro One does not agree with APPrO's statement that the current joint use fees for distributors over-recover their costs. APPrO incorrectly states that Hydro One is charging LDCs an inflated rate (APPrO Final Argument, page 9). APPrO derives an

inflated rate of \$33.17 and states that the derived rate should address generators' costs.

As Mr. Boldt noted in response to APPrO's questions during the Technical Conference (page 15-16), the LDC agreements contain *provisions* for an inflation escalator, but Board approval was sought for the initial rate of \$28.61 only, per the Miscellaneous Fee Schedule. The provision for the escalation is present in the agreements, but Hydro One has not implemented these and has not returned to the Board to seek approval to escalate the approved rate.

Hydro One therefore continues to charge only the original approved rate of \$28.61.

e) Hydro One's Proposed Sliding Scale

Board staff agree with using a joint use base fee on a 50-foot pole and increasing it to reflect incremental OM&A cost increases. They also agree with Hydro One's use of the capital contributions to address incremental costs, as this prevents cross-subsidization across generators, and between generators and distribution ratepayers. APPrO, too, agrees with the sliding scale approach. VECC and CME, however, question its use and submits that this issue needs a review when rates are reset and accentuates the reason that the rate resetting should occur sooner than 2015.

Hydro One's Response

Hydro One notes that all parties except VECC agree with the sliding scale approach. As noted in response under part c), and given the agreement of the other parties to the use of the sliding scale as proposed, Hydro One submits that this mechanism should be approved for use at this time, and until such time as the Board determines that a review of the methodology for determining Joint Use Rates is warranted. Hydro One notes that it has received no objections from generators with respect to the use of this sliding scale.

f) The Appropriate Fee Adjustor

Board staff submit that use of the GDP-IPI FDD index, which is currently used as the inflation factor in its incentive regulation mechanism, would be more appropriate than Hydro One's proposed use of CPI. VECC agreed with this, but APPrO submits that, based on its calculation of the LDC rate, an inflation adjustment would contribute to over-recovery and therefore is not needed. Instead, APPrO recommends no inflation factor, but rather, that Hydro One track attachment costs for all users and submit a report on the need for potential adjustments during its next rate proceeding. Any excess or shortfall would be calculated in the base rates for the following five-year period.

Hydro One's Response

Hydro One stated during its Submissions (Argument-in-Chief, page 5) that it has no objections to using the GDP-IPI FDD index as an inflation factor. Hydro One addresses APPrO's incorrect conclusions respecting use of inflation on the distributor joint use fee in part d) above. APPrO is the only party that disagrees with the use of the approved inflation factor. Hydro One submits that APPrO has not substantiated the need for its alternative proposal. Furthermore, Hydro One submits that the alternative would be cumbersome and administratively inefficient to implement.

g) Annual Adjustments

Board staff agree with Hydro One's decision to request the same fees from all generators in the same year, but note that the approach is not clear. They suggest that the contracts reference Board-approved rates in any year to maintain uniformity. VECC notes that Hydro One's joint use arrangements with LDCs expire shortly. Given this and its concerns regarding the telecom methodology and the link of joint use base rates to costs and to other joint use rates, VECC submits that Hydro One should be directed to rebase and seek approval for its joint use rates for generators when this is done for LDCs. It submits that a review of the telecom methodology should be done at the same time. With this approach, it would then find Hydro One's proposal to reset rates every five years to be acceptable.

Hydro One's Response

As noted in the response in part c), Hydro One acknowledges the issues stated by VECC. However, given other parties' agreement with the sliding scale as proposed, and as there is an urgent need for the implementation of these joint use rates, the Applicant submits that the base rate should be approved, with the sliding scale, until the Board chooses to convene a proceeding or consultation with the involvement of the appropriate parties for the purpose of reviewing the methodology for determining the power space allocation. The proposed sliding scale may be reviewed again in that context, and Hydro One would be pleased to participate in this activity.

In response to the Board's comment regarding the need for clarity, Hydro One submits that it would define a set schedule according to which, every generator, regardless of the year in which it executed its contract, would have the rate reset. Therefore, should the Board approve this base rate for use in 2010 and the use of the GDP-IPI FDD index, for example, the 'reset' years would be 2015, then 2020, 2025, 2030 and so on. Escalation using GDP-IPI FDD would be applied in 2011, 2012, 2013, 2014, and the same for the four years after each reset year. It would not matter when the generator executed a joint use contract: all users would pay the same rate, as the reset year is the same for all and the same methodology would be used for all. The contracts would reference the Board Decision and rates, as seen in Appendix A to this Reply.

h) Other Comments

i) Capital Contributions

APPrO agrees with Hydro One’s approach, with one modification – that generators should not have to pay the replacement cost that ratepayers would have paid in any case, for pole replacements which have the effect of extending the life of the existing poles. APPrO therefore submits that Hydro One should recognize a deferral benefit – “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 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.”

Hydro One’s Response

Hydro One finds APPrO’s recommendation to be unclear, and Hydro One further submits that its own approach is appropriate. While the economic evaluation model used to determine the capital contribution is beyond the scope of this proceeding, Hydro One can assure the Board that the discounted cash flow methodology accounts for the incremental costs associated with replacing poles earlier than otherwise planned, and seeks to hold ratepayers harmless with respect to those advancement costs.

ii) “Renewable Energy Expansions”

APPrO correctly notes on pages 13 and 14 of its Argument that “Renewable Energy Expansions” does not appear in the Distribution System Code, and asks that Hydro One clarify its reference to such expansions.

Hydro One’s Response

Hydro One acknowledges that the term appears only in the Distribution System Code as part of the “renewable energy expansion cost cap”. Hydro One’s intended reference was to expansions that are constructed to connect energy generation facilities. Hydro One and APPrO appear to be in agreement, nonetheless, that Joint Use occupancy by privately-owned circuits on distributors’ poles is a separate, albeit sometimes concurrent, activity from distribution system expansions to connect generation facilities.

iii) Effective Date

APPrO recommends splitting the effective date of the siding scale depending on the date when a generator executed its OPA contract, as follows:

- For proponents who had executed these contracts after October 21, 2009, the implementation date for the sliding scale should be January 1, 2010.
- For all others, the implementation date should be January 1, 2011.

APPrO's reasoning is that impacted generators are not aware of all the implications of the sliding scale, nor of the capital contributions that most would be required to make.

Hydro One's Response

Hydro One submits that APPrO is misapplying the October 21, 2009, date, which applies to the cost responsibilities for changes to the distribution system or a generator's assets in order to enable an electrical connection. The October 21, 2009 amendments do not relate to joint use, nor do they alter distributors' rights to recover their costs for such services as joint use. In any case, Hydro One's application for recovery effective January 1, 2010, is known to all the generators who have executed, or are executing their contracts. Hydro One submits that the normal issues with retroactivity are not a concern in this case.

Part B: The Applicant's Request for Approval of Miscellaneous Fees for the Performance of Connection Impact Assessments for Generator Connections

a) Transitional Fees

In its June 30, 2010, Application, Hydro One had requested approval of lower fees of \$3,000, \$5,000 and \$6,000 for the performance of Connection Impact Assessments ("CIAs") for small, mid-sized and large projects, respectively, for a temporary period, from June 30, 2010 until August 31, 2010. Hydro One's rationale was that it had been using those fees previously and, in pre-consultations during the previous Fall (of 2009), had made commitments to generators to assess their applications at those lower fees. The CIA Application Dates were effectively determined by the OPA which gave FIT proponents, designated "windows" when they could start applying for their CIA. Hydro One did not receive the majority of these applications until on or after May 1, 2010 – the effective date for the Applicant's higher CIA fees. The purpose of the June 30th Application, therefore, was to enable Hydro One to keep its commitment to these generators and help them manage the transition to the new higher cost fee structure because Hydro One had been utilizing the lower fees and wanted to continue to use them until August 31, 2010, at which time, it believed that all proponents whose applications Hydro One had committed to assess at the lower fees would have been completed and the higher fees could then be implemented.

On August 18, 2010, the Board's Procedural Order No. 1 stated that it would not implement the proposed fees on an interim basis, preferring to change fees or rate levels only after a full review of the Application's merits. The Board did declare the current (i.e., the approved higher fees) to be interim, which Hydro One interpreted to mean that it could not continue to implement its proposed fees. Accordingly, the

Applicant implemented its approved fees of \$10,335 and \$10,405 on August 27, 2010, because time to develop the communications and announcement for its website was required. Therefore, the higher fee structure was implemented about three business days earlier than the planned September 1, 2010 date.

Board staff, VECC and APPrO submit that Hydro One misinterpreted the Board's Order, the intent of which was to declare the approved fees to be interim until the issue of the transitional fees could be settled. Board staff and VECC note that as there are no objections to the higher fees, they support their continued use. Energy Probe, overall, does not oppose the relief proposed, but takes no position on the manner in which it might be granted.

APPrO, however, submits that Hydro One, by implementing the higher fees, has not kept its commitment to proponents who might be relying on the lower fees. APPrO has no objection to proceeding with the higher fees on the basis that Hydro One apply the lower fees to all proponents to whom Hydro One made such commitments, including those whose CIAs were completed after August 31, 2010. APPrO also stated a particular concern regarding generators who relied on the lower prices and whose project approvals may have been delayed by the time it took Hydro One to complete its project assessments.

Hydro One's Response

Hydro One submits that it believed that the Board's Order directed it to *implement* its *approved fees* on an interim basis until the issue of the transitional fees could be addressed, following a proper review. On the basis of that belief, Hydro One developed its communications and implemented the approved, higher fees on August 27 -- only three days remained before the proposed September 1st implementation date for the higher fees. Hydro One intended to charge these lower fees only until August 31, and because these "discounted" fees do not fully recover the costs of the work, is unwilling to extend the offer past that date without an assurance that they can be recovered, and with clarification of the recovery mechanism. Hydro One submits that all of the generators who had been relying on the lower fees had their CIA applications accepted by August 27. Therefore, there is no need to retroactively apply the transitional fees, particularly to generators whose CIAs were completed after August 31, 2010.

Furthermore, Hydro One does not understand APPrO's position respecting delays to project approvals due to the time taken to do project assessments. Hydro One receives project applications for assessment only *after* they have been approved in the form of conditional contracts from the OPA. In this case, Hydro One received these applications several months later than had originally been planned.

b) New Fees

Hydro One had requested approval of the following new fees for the performance of

CIA's for generator connections, effective immediately:

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

Board staff, VECC and APPrO all support the implementation of the above fees.

Hydro One's Response

Hydro One agrees.

c) Implementation of Approved Fees

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

- i) Small and Mid-sized Projects – \$10,335
- ii) Large Projects -- \$10, 405

Board staff and VECC support the implementation of the above fees. APPrO offers no objections, as long as Hydro One agrees to honour its commitment to charge the lower cost fees that had been proposed as transitional and then removed a few days before the September 1 deadline.

Hydro One's Response

Hydro One agrees with the Board staff and VECC, but as stated in the response in part a) above, does not agree with APPrO's comments.

d) Use of a Deferral Account

Board staff, supported by CME, propose the use of a CIA fee deferral account which would track costs and revenues associated with the proposed new CIA fees.

Hydro One's Response

Given that the Board staff and other parties all support the implementation of the new fees, Hydro One questions the requirement for what it submits is a variance (rather than deferral) account. Hydro One is concerned that, given the large volume of applications requiring assessments, the effort involved in tracking and true-up of CIA costs and revenues will be much greater than the benefits of determining these fees with certainty.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

ORIGINAL SIGNED BY MICHAEL ENGELBERG

Michael Engelberg, Counsel for the Applicant

**APPENDIX A:
EXCERPT FROM HYDRO ONE'S JOINT USE CONTRACT
WITH GENERATORS**

Subject to the remaining provisions of this Section 9.5 and Sections 9.7 and 9.9, in October of each year, the Owner will calculate the Permit Fee for the forthcoming calendar year and shall advise the Licensee of same as soon as practicable after completion of the said calculation. If at any time during the Term, the then current Permit Fee payable by the Licensee becomes regulated by the Ontario Energy Board or any other governmental authority or a different pole rental rate is approved by the Ontario Energy Board or any other governmental authority, the said Permit Fee shall be amended accordingly, if applicable, to reflect the fee established by the Ontario Energy Board or other governmental authority and such amended Permit Fee shall be payable by the Licensee per Joint Use Pole from and after the effective date thereof as determined by the Ontario Energy Board or governmental authority. If the amended Permit Fee becomes effective on a date after which time the Licensee has already paid the then current Permit Fee per Joint Use Pole to the Owner, then for each calendar year during which the amended Permit Fee is to be effective and for which the Licensee has already paid the then current Permit Fee per Joint Use Pole one of the following shall occur as may be applicable:

- (a) if the amended Permit Fee is higher than the then current Permit Fee, the Licensee shall pay the difference per Joint Use Pole to the Owner for each said calendar year within 30 days after receipt of an invoice therefor from the Owner;
- (b) if the amended Permit Fee is lower than the then current Permit Fee, the Owner shall pay the difference per Joint Use Pole to the Licensee for each said calendar year within 30 days after receipt of an invoice therefor from the Licensee