Ontario Energy Board

Commission de l'énergie de l'Ontario

EB-2011-0361
EB-2011-0376

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 (Schedule B);

AND IN THE MATTER OF an application by Goldcorp Canada Ltd. and Goldcorp Inc. for an order under section 19 of the *Ontario Energy Board Act, 1998* declaring that certain provisions of the *Transmission System Code* are *ultra vires* the Ontario Energy Board's powers to enact under the *Ontario Energy Board Act, 1988* and certain other orders;

AND IN THE MATTER OF an application by Langley Utilities Contracting Ltd. for a determination as to whether certain services are permitted business activities for an affiliate of a municipally-owned electricity distributor under section 73 of the *Ontario Energy Board Act, 1998*.

BEFORE: Paul Sommerville
Presiding Member

Cathy Spoel
Member

Ken Quesnelle
Member

DECISION WITH REASONS AND ORDER

BACKGROUND

The Goldcorp Application

On November 4, 2011, Goldcorp Canada Ltd. and Goldcorp Inc. ("Goldcorp") filed an application (the "Goldcorp Application") with the Ontario Energy Board (the "Board") seeking the following:

1. An order under section 19 of the *Ontario Energy Board Act, 1998* (the "Act") declaring that sections 4.1.3, 6.7.6, 6.7.7 and 11.2 of the *Transmission System Code* are *ultra vires* the Board's powers to enact under the Act;

2. An order under section 19 of the Act declaring that Goldcorp is not under any legal obligation to pay bypass compensation to Hydro One Networks Inc. ("Hydro One") and that Hydro One may not demand such compensation from Goldcorp;

3. An interim order, under paragraph 7.1 of Hydro One's electricity transmission licence and under its implied obligation not to enforce any requirement contrary to the Act, that pending final determination of the Goldcorp Application Hydro One shall work cooperatively with Goldcorp in good faith and with all dispatch to complete all analyses and negotiations and to execute all required agreements, contracts or other instruments required in order to connect and energize Goldcorp's transmission line in the first quarter of 2012;

4. An order under section 3.06 of the Board's *Practice Direction on Cost Awards* and subsection 30(2) of the Act granting Goldcorp all of its costs of the Goldcorp Application; and

5. Such further and other orders as may be required.

Included in the Goldcorp Application was a Notice of Motion in support of the request for interim relief set out in paragraph 3 above.

On November 23, 2011, Goldcorp filed with the Board a letter setting out submissions respecting: The issue and legal test in its Application, notice, intervenors and costs.

The Board assigned file number EB-2011-0361 to the Goldcorp Application.

The Langley Utilities Application

On August 2, 2011, Langley Utilities Contracting Ltd. ("Langley Utilities") filed an application (the "Langley Utilities Application") with the Board under Rule 34 of the Board's *Rules of Practice and Procedure* (the "Rules of Practice") seeking a hearing before the Board to determine whether the services contemplated under City of Brampton contract No. 2008-079 (the "Brampton Contract") are permitted business activities for an affiliate of a municipally-owned electricity distributor under section 73 of the Act. The services at issue under the Brampton Contract are the performance of routine and emergency maintenance for street lighting and related devices.

The affiliate at issue in relation to the Brampton Contract is Enersource Hydro Mississauga Services Inc. ("EHMSI"), an affiliate of Enersource Hydro Mississauga Inc., an electricity distributor licensed by the Board. The Brampton Contract is also the subject of a civil proceeding in the Superior Court of Justice at Brampton (Court file number CV-10-3476-00), which has been stayed by agreement between the parties pending a decision by the Board in the Langley Utilities Application.

The Board assigned file number EB-2011-0376 to the Langley Utilities Application.

The Combined Hearing

The Board convened a combined hearing and determined that before deciding whether or not to hear the matters raised by the two Applications on their merits, it would hear argument on certain threshold questions. Accordingly, on November 25, 2011 the Board issued a Notice of Applications, Notice of Combined Hearing and Procedural Order No. 1 ("Notice and Procedural Order No.1"). The Notice and Procedural Order No. 1 set out the threshold questions pertaining to the two applications and the schedule for filing of applicant and intervenor submissions on the threshold questions. The Notice and Procedural Order No. 1 also set out the intervenors in the combined hearing and scheduled an oral hearing on December 19, 2011.

With respect to Goldcorp's Motion for interim relief, the Board determined that it would hear the Motion immediately following the hearing on the threshold questions. Pursuant

to the Notice and Procedural Order No. 1, Hydro One filed its evidence in relation to the Motion on December 5, 2011.

By letter dated December 14, 2011, Goldcorp notified the Board that it had received the draft Connection Cost Recovery Agreement ("CCRA") from Hydro One and as such did not intend to proceed with its Motion for interim relief or for Orders 2(c) and 2(e) of its Application, as elaborated in pages 16 to 23 of its written submissions, so these matters were not considered by the Board.

In addition to submissions on the threshold questions, the Board also sought submissions from parties in regards to Goldcorp's request that it be granted its costs in relation to its Application, as well as on the question of the person(s) from whom cost awards should be recovered, in the event the Board were to award costs to Goldcorp. The Board also sought submissions from Langley Utilities and the intervenors in the Langley Utilities Application on the issue of cost awards in relation to their participation in the combined hearing.

Intervenors

Hydro One, School Energy Coalition ("SEC") and the Consumers Council of Canada ("CCC") requested and were granted intervenor status in respect of the Goldcorp Application. The Board also granted intervenor status to Lac Seul First Nation ("LSFN") as an intervenor in respect of the Goldcorp Application. LSFN was an intervenor in the leave to construct proceeding (EB-2011-0106). SEC and CCC also sought eligibility to apply for an award of costs. SEC, CCC, and LFSN were granted eligibility to apply for cost awards.

Powerline Plus Ltd. ("Powerline") requested and was granted intervenor status in relation to the Langley Utilities Application. The Board also granted intervenor status to Enersource Hydro Mississauga Services Inc. ("EHMSI") and the City of Brampton in respect of the Langley Utilities Application.

Following the issuance of the Notice and Procedural Order No.1, the Board received requests for intervention from the Electricity Distributors Association ("EDA") in respect of the Langley Utilities Application and from the Association of Major Power Consumers in Ontario ("AMPCO") in respect of the Goldcorp Application. AMPCO also sought

eligibility to apply for an award of costs. Both parties were granted intervenor status and AMPCO was granted eligibility to apply for cost awards.

Common Threshold Questions

As noted earlier in this Decision, the Board determined that it would proceed to hear argument on the following threshold questions pertaining to the Goldcorp Application:

A1 Does section 19 of the Act, in and of itself, provide a statutory basis for Goldcorp's Application?

A2 If section 19 of the Act does not provide a statutory basis on which Goldcorp may bring its Application, should the Board nonetheless proceed, on its own motion, to hear and determine the matters raised by the Goldcorp Application under section 19(4) of the Act?

The Langley Utilities Application was made pursuant to Rule 34 ("Format of Hearings and Notice") of the Rules of Practice. No provision of the Act was cited as the statutory basis for the Langley Utilities Application. The Board determined that, before deciding whether or not to hear the matters raised by the Langley Utilities Application, it would proceed to hear argument on the following threshold questions:

B1 Is there a statutory basis for the Langley Utilities Application under the Act?

B2 If the Act does not provide a statutory basis on which Langley may bring its Application, should the Board nonetheless proceed, on its own motion, to hear and determine the matter raised by the Langley Utilities Application under section 19(4) of the Act?

Pursuant to the Notice and Procedural Order No. 1, the Board received submissions from Goldcorp and Langley Utilities in relation to threshold questions and costs awards issues on December 5, 2011. The Board received written submissions from SEC, CCC, AMPCO and Board staff in respect of the Goldcorp Application. The Board received submissions from Powerline, EHMSI, EDA and Board staff in respect of the issues pertaining to the Langley Utilities Application.

The Threshold Questions

Scope of Section 19

As neither the Goldcorp nor the Langley Utilities applications were explicitly rooted in other sections of the Act, the issue before the Board was whether section 19 allows freestanding or standalone cases to be brought before the Board. "Freestanding" or "standalone" cases refer to applications that do not have an explicit origin in a section of the Act (or any other act which confers jurisdiction on the Board) which gives rise to specific forms of relief. For example, section 78 provides for the establishment of just and reasonable rates, section 92 provides for leave to construct facilities and so on.

Section 19 does not provide for any particular type of application, nor does it provide any specific relief or outcome:

> **Board's powers, general**
> **Power to determine law and fact**
> 19. (1) The Board has in all matters within its jurisdiction authority to hear and determine all questions of law and of fact. 1998, c. 15, Sched. B, s. 19 (1).
>
> **Order**
> (2) The Board shall make any determination in a proceeding by order. 1998, c. 15, Sched. B, s. 19 (2); 2001, c. 9, Sched. F, s. 2 (1).
>
> **Reference**
> (3) If a proceeding before the Board is commenced by a reference to the Board by the Minister of Natural Resources, the Board shall proceed in accordance with the reference. 1998, c. 15, Sched. B, s. 19 (3).
>
> **Additional powers and duties**
> (4) The Board of its own motion may, and if so directed by the Minister under section 28 or otherwise shall, determine any matter that under this Act or the regulations it may upon an application determine and in so doing the Board has and may exercise the same powers as upon an application. 1998, c. 15, Sched. B, s. 19 (4).
>
> **Exception**
> (5) Unless specifically provided otherwise, subsection (4) does not apply to any application under the Electricity Act, 1998 or any other Act. 1998, c. 15, Sched. B, s. 19 (5).

> **Jurisdiction exclusive**
> (6) The Board has exclusive jurisdiction in all cases and in respect of all matters in which jurisdiction is conferred on it by this or any other Act. 1998, c. 15, Sched. B, s. 19 (6).

However, in the Board's view, neither of these applications is genuinely freestanding or standalone. Both are directly related to other conventional Board proceedings. In effect, the Board considers these cases to be adjuncts to or supplementary to other proceedings or actions which are based on conventional applications or Board processes.

In the case of Goldcorp, the application it has brought to have the Board declare sections of the Transmission System Code *ultra vires* is directly linked to its recent leave to construct application respecting the Red Lake mines (EB-2011-0106). It is clear to the Board that the reason for Goldcorp's current application is its dissatisfaction with the process leading to the creation of and performance of a CCRA. Specifically the company is dissatisfied with the requirement to pay a bypass compensation levy to Hydro One. During the oral argument, counsel for Goldcorp acknowledged that it was dissatisfied with the amount it would have to pay to Hydro One. Mr. Blue candidly acknowledged this in response to a question from the Board Panel:

> MR. SOMMERVILLE: And it's not -- it wasn't -- that wasn't an abstract idea. That was a very specific series of comments by the Board with respect to dealing with the price issue and holding ratepayers harmless. What did you think they were talking about?
>
> MR. BLUE: The fact that we were giving the line to Hydro One at no cost, and that $11 million compared to HONI's revenue requirement would be equivalent to taking a pail of water out of the dock at the foot of York Street and asking what the effect on the level was at Thunder Bay. But $11 million for Goldcorp is a lot of money.[1]

In the Board's view, Goldcorp's application is not "freestanding", but rather is an attempt to reopen the leave to construct proceeding respecting the Red Lake mines.

With respect to Langley Utilities, it is clear to the Board that its application is directly and inextricably linked to the interpretative bulletin issued by Board staff relating to section 73 of the Act. It is not an isolated, unconnected plea for a declaration, but rather a

[1] Oral Hearing Transcript Vol. 1, p. 20

request for clarification, from the Board itself, of the scope of the activities delineated in section 73. The Board will address this more explicitly later in this Decision.

Accordingly, proceeding with these cases is not dependent on a finding that the Board can accept and act upon applications that are rooted in nothing more than section 19.

Were it obligated to make such a finding, the Board would conclude that section 19 does not bestow any independent or freestanding jurisdiction upon the Board. In order to invoke the Board's jurisdiction parties must base their applications on specific sections of the Act, or other legislation, which address specific subject matters. The effect of section 19 is to endow the Board with the necessary authority to deal definitively with all of the reasonably associated aspects of applications before it, applications that are brought under the authority of specific sections of the Act, or other legislation, dealing with specific subject matters.

Given our finding on the threshold question that these cases are not genuinely "freestanding" it is unnecessary to consider questions A2 and B2. However it still remains to consider how the Board will proceed with these cases.

Goldcorp Decision

Goldcorp seeks to have the Board declare specific sections of the Transmission System Code *ultra vires*. These specific sections deal with the compensation required from load customers when they bypass system assets that have been put in place to service their requirements.

Goldcorp's position is that had the legislature intended to bestow upon the Board the authority to impose "burdensome" financial obligations through its codes it would have provided for that much more explicitly than it has done.

As noted above, Goldcorp's application arises directly from its very recent leave to construct application respecting its Red Lake mining property. That leave to construct application, which was required by section 92 of the Act, authorized Goldcorp to construct facilities related to the power requirements of the mines. That authorization followed a hearing and carried with it a series of conditions. It is these transmission

facilities associated with the Red Lake mines that give rise to the demand for bypass compensation from Hydro One to Goldcorp.

In the leave to construct decision the Board made several relevant findings respecting the respective obligations of Goldcorp and Hydro One to give effect to the bypass compensation provisions of the Transmission System Code.

Specifically the Board made the following statements:

> However, where a proponent builds and then transfers a facility to a licensed transmitter (as is the case here), the rate impacts are addressed in the context of the Connection and Cost Recovery Agreement ("CCRA"). The Board notes that Goldcorp has provided assurances that the intent is for the CCRA, which will ultimately be entered into by Goldcorp and Hydro One, to hold provincial ratepayers harmless. The Board also notes that the terms of the CCRA are governed by the Transmission System Code and are a condition of Hydro One's licence. Further, parties will have an opportunity to examine the transfer of assets and the associated cost recovery in a future Hydro One rate application.[2]

The Board further stated:

> With respect to the matter of impact on ratepayers, as noted earlier in this Decision and Order, due to the fact that the proponent is paying for the facility, there is no ratepayer impact to be assessed. With regard to the intended future transfer of the assets, Hydro One, as a condition of its licence, is required to comply with the terms of the Transmission System Code Economic Evaluation when entering into the CCRA with Goldcorp thereby holding ratepayers harmless. Hydro One has an ongoing requirement to comply with the Transmission System Code and adherence to the Economic Evaluation provisions is a matter to be examined when Hydro One applies to have assets added to its rate base in a cost of service application.[3]

It is very clear from the record that it was only once the amount of the bypass compensation requirement was known that Goldcorp sought relief through this current application:

> MR. BLUE: …. Mr. Warren referred to the leave-to-construct decision at the highlighted portions. My submission there is everything in those statements is true, and that was the evidence of Goldcorp and there is nothing inconsistent in

[2] Decision and Order, EB-2011-0106, p.7
[3] *Ibid*., p.12

> those statements between what was said there and what Goldcorp is suggesting here.
>
> Clearly we will comply with the transmission code, all of the provisions of it that are legal.
>
> MR. SOMMERVILLE: Did you make that qualification at the time, Mr. Blue?
>
> MR. BLUE: No, because, as I said, Mr. Sommerville, at the time, we thought we were dealing with reasonable people at Hydro One, and I thought we could negotiate a trade-off between the system benefits that Goldcorp was making and the degree of bypass compensation.
>
> And we are still of that view today. We are still prepared to do that, but Hydro One was not prepared to discuss that issue. But at the time that we were before the Board, we did not have an *ultra-vires* argument in mind.[4]

In fact, it appeared that Goldcorp was perfectly content to conform to the requirements of the Transmission System Code, and the conditions imposed by the Board until its negotiations with Hydro One became difficult.

In the Board's view this background is very important in determining whether it should exercise its discretion to hear this matter on its own motion.

In the Board's view this application can be viewed in three ways:

First, it is really in the nature of an application for review of the leave to construct decision. The various undertakings made by Goldcorp in that case and the Board's findings are really the cause of Goldcorp's problem. This application appears to be nothing more than a collateral attempt to unseat that decision and the obligations to conform to the Transmission System Code that attend it.

The Board has very specific procedures in its Rules of Practice to deal with reviews of its decisions. Sections 42 through 45 of the Board's Rules of Practice provide a comprehensive template for motions to review, including guidance with respect to the grounds necessary to sustain such an application.

Goldcorp's current application does not conform with those provisions of the Rules of Practice.

[4] Oral Hearing Transcript, p. 107-108

Alternatively, this application can be seen as an application to amend the Hydro One license to exempt Hydro One from requiring conformity with the requirements of the bypass compensation sections of the Transmission System Code. This approach was taken recently in the case of a number of hydro generation projects on Crown lands. (see EB-2011-0067 Ontario Waterpower Association, May 5, 2011) In those instances, Hydro One was exempted from imposing the sections of the Distribution System Code respecting payment of funds to Hydro One in aid of construction. This approach would have the effect of eliminating the operation of the sections which Goldcorp now finds unpalatable. However, Goldcorp has explicitly turned away from this approach in its current application.

Finally, also alternatively, the application can be seen as an application to amend the Transmission System Code by deleting the bypass compensation sections.

Sections 70.1 through 70.3 of the Act provide a very specific procedure for the amendment of any of the Board codes. The process for amending the codes, including the Transmission System Code, is intended to be highly transparent, formal and consultative. An excerpt from the Act containing the relevant sections is attached as Appendix “A” to this Decision for ease of reference.

In the Board's view Goldcorp’s current application can safely be characterized as in substance an application to amend the Transmission System Code, by deleting the sections respecting bypass compensation. As such, it is subject to all of the procedural requirements codified in sections 70.1, 70.2 and 70.3.

Accordingly, in the Board’s view, it would certainly be acting outside of its jurisdiction were it to entertain such an application for amendment to the Transmission System Code in any manner that did not conform to all of the requirements of those sections of the Act.

It is the Board’s view that before it can proceed to address Goldcorp’s concerns Goldcorp must determine what form of application it wants to pursue.

To the extent that Goldcorp seeks to amend or vary the decision of the Board in the leave to construct case, such relief can only be obtained after due consideration of a

properly constituted motion for review. The Board's requirements for motions to review are stipulated in sections 42 through 45 of its Rules of Practice.

To the extent that Goldcorp seeks to amend the license of Hydro One to exempt it from the application of the impugned sections of the Transmission System Code, the Board has entertained cases of this nature, and would deal with a properly constituted application to do the same here.

In its submissions Goldcorp suggested that even if the Board rejected its application for a declaration that the sections of the Transmission System Code were *ultra vires*, the Board should resolve the outstanding issues within the context of this current application. The Board disagrees. As has been noted above, each of the applications which could give rise either to a reconsideration of the leave to construct decision, or for the amendment of Hydro One's license, or the Transmission System Code itself have specific procedural and substantive components. The choice of which method Goldcorp chooses to adopt is up to Goldcorp, and the Board will not advise it in any direction. It is also to be noted that each of the approaches open to Goldcorp carry different exposure to cost responsibility. For this reason alone it is important that Goldcorp determine for itself which course it chooses to follow, if any.

Langley Utilities Decision

Where Goldcorp has many options to consider in its objective to avoid the consequences of the Transmission System Code, Langley Utilities has none to pursue its objective of having the Board itself provide an interpretation of section 73 of the Act.

As noted above section 73 provides what purports to be an exhaustive inventory of activities permitted to the affiliates of licensed distributors.

Board staff had prepared two interpretive bulletins which suggest that streetlighting services should be considered to be included in those activities, even though they are not explicitly referenced. It is clear that parties have acted upon Board staff's interpretive bulletin, and it is also clear that there is disagreement about its correctness.

Considerable effort was made to characterize the Langley Utilities application as a veiled compliance matter, and therefore subject to the procedures encoded in sections

112 through 120 of the Act. This suggestion is that the Langley Utilities Application is a collateral and inappropriate effort to circumvent the compliance mechanism in the Act. The Board does not consider it to be that at all.

Langley Utilities and the intervenor Powerline find themselves in a position where a nonbinding interpretative opinion by Board staff appears to be governing the situation. Even though Board staff's bulletins are expressly not binding upon the Board, they do and they are expected to assist regulated and non-regulated parties in ordering their business relationships. This is a particularly useful measure when all of the parties interested generally can agree or accept the guidance provided in the bulletins.

But where there is fundamental dispute, and the issue is one that can have extremely important implications for some commercial interests, both regulated and unregulated, it is incumbent upon the Board itself to provide clarity and direction.

The record discloses that Langley Utilities, and Powerline have diligently attempted to achieve this outcome. They have asked for Board guidance on the subject, they have waited, and they have now taken this step to seek the Board's assistance in understanding the scope of section 73.

Accordingly the Board, on its own motion, will consider Langley's request to the extent that it seeks the Board's view with respect to the scope of section 73 activities. It is the Board's opinion that because of the very particular circumstances of this case it should provide further guidance. Those special circumstances include the potential commercial significance of the issue, the fact that requests for reconsideration of the issue have been made serially over a number of years, by a number of parties without success, and the fact that section 73 is not explicit on the subject.

The Board wishes to make it as clear as possible that it does not regard anyone to be in violation of section 73, or subject to compliance action from the Board at this time. Any enforcement or compliance activities which may arise would in these circumstances be prospective in nature, and would take into account the reasonable actions and expectations of parties who have ordered their business associations and activities in a reasonable manner and in light of Board staff's interpretive bulletin, whatever the outcome of the Board's consideration of this section may be.

The Board would welcome any suggestions respecting notice to interested persons respecting the determination of the issue.

Cost Awards

Goldcorp seeks its costs. The Board disagrees. As has been acknowledged by counsel for Goldcorp, and as outlined elsewhere in this Decision, this applicant had a number of avenues available to it. In choosing to characterize this application the way that it did, as striking out as *ultra vires* the bypass provisions of the Transmission System Code, the applicant engaged the participation of many of the parties who would have no interest whatsoever had the applicant chosen some of the other courses open to it. They very likely would not have appeared in the case and accordingly would not have incurred any costs associated with this case.

Further, the Board views this application to be a collateral attack on the leave to construct decision, and Goldcorp's pursuit of its desired relief through such a broad legal challenge is opportunistic. The Board finds that Goldcorp has put the intervenors and other parties to considerable effort and will award costs to those parties found eligible, to be paid by Goldcorp.

No party asked for costs of the motion in the Langley matter and none will be awarded.

With respect to the Board's costs in relation to the combined hearing, the Board has decided that it will apportion these costs equally between Goldcorp and the Langley Utilities application. Goldcorp shall pay its share of the Board's costs immediately upon receipt of the Board's invoice. With respect to the portion of the Board costs related to the Langley Utilities application, the recovery of these costs shall be determined as part of the hearing of the Langley Utilities Application.

The Board Orders that:

1. Intervenors eligible for costs in respect of the Goldcorp Application shall file with the Board and forward to Goldcorp their respective cost claims within **14 days** from the date of this Decision. The cost claims must conform to the Board's *Practice Direction on Cost Awards*.

2. Goldcorp shall file with the Board and forward to intervenors any objections to the claimed costs within **21 days** from the date of this Decision.

3. Intervenors shall file with the Board and forward to Goldcorp any responses to any objections for cost claims within **28 days** of the date of this Decision.

4. Goldcorp shall pay its share of the Board's costs and incidental to, this proceeding upon receipt of the Board's invoice.

DATED at Toronto, January 23, 2012

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

APPENDIX A

TO DECISION WITH REASONS AND ORDER

SECTIONS 70.1, 70.2 & 70.3 OF THE
ONTARIO ENERGY BOARD ACT, 1988

BOARD FILE NO: EB-2011-0361 & EB-2011-0376

DATED JANUARY 23 2012

Codes that may be incorporated as licence conditions

70.1 (1) The Board may issue codes that, with such modifications or exemptions as may be specified by the Board under section 70, may be incorporated by reference as conditions of a licence under that section. 2003, c. 3, s. 48.

Quorum

(2) For the purposes of this section and section 70.2, two members of the Board constitute a quorum. 2003, c. 3, s. 48.

Approval, etc., of Board

(3) A code issued under this section may provide that an approval, consent or determination of the Board is required, with or without a hearing, for any of the matters provided for in the code. 2003, c. 3, s. 48.

Incorporation of standards, etc.

(4) A code issued under this section may incorporate by reference, in whole or in part, any standard, procedure or guideline. 2003, c. 3, s. 48.

Scope

(5) A code may be general or particular in its application and may be limited as to time or place or both. 2003, c. 3, s. 48.

Legislation Act, 2006, Part III

(6) Part III (Regulations) of the Legislation Act, 2006 does not apply to a code issued under this section. 2003, c. 3, s. 48; 2006, c. 21, Sched. F, s. 136 (1).

Transition

(7) The following documents issued by the Board, as they read immediately before this section came into force, shall be deemed to be codes issued under this section and the Board may change or amend the codes in accordance with this section and sections 70.2 and 70.3:

1. The Affiliate Relationships Code for Electricity Transmitters and Distributors.

2. The Distribution System Code.

3. The Electricity Retailer Code of Conduct.
4. The Retail Settlement Code.

5. The Transmission System Code.

6. Such other documents as are prescribed by the regulations. 2003, c. 3, s. 48.

Proposed codes, notice and comment

70.2 (1) The Board shall ensure that notice of every code that it proposes to issue under section 70.1 is given in such manner and to such persons as the Board may determine. 2003, c. 3, s. 48.

Content of notice

(2) The notice must include,

(a) the proposed code or a summary of the proposed code;

(b) a concise statement of the purpose of the proposed code;

(c) an invitation to make written representations with respect to the proposed code;

(d) the time limit for making written representations;

(e) if a summary is provided, information about how the entire text of the proposed code may be obtained; and

(f) a description of the anticipated costs and benefits of the proposed code. 2003, c. 3, s. 48.

Opportunity for comment

(3) On giving notice under subsection (1), the Board shall give a reasonable opportunity to interested persons to make written representations with respect to the proposed code within such reasonable period as the Board considers appropriate. 2003, c. 3, s. 48.

Exceptions to notice requirement

(4) Notice under subsection (1) is not required if what is proposed is an amendment that does not materially change an existing code. 2003, c. 3, s. 48.

Notice of changes

(5) If, after considering the submissions, the Board proposes material changes to the proposed code, the Board shall ensure notice of the proposed changes is given in such manner and to such persons as the Board may determine. 2003, c. 3, s. 48.

Content of notice

(6) The notice must include,

(a) the proposed code with the changes incorporated or a summary of the proposed changes;

(b) a concise statement of the purpose of the changes;

(c) an invitation to make written representations with respect to the proposed code;

(d) the time limit for making written representations;

(e) if a summary is provided, information about how the entire text of the proposed code may be obtained; and

(f) a description of the anticipated costs and benefits of the proposed code. 2003, c. 3, s. 48.

Representations re: changes

(7) On giving notice of changes, the Board shall give a reasonable opportunity to interested persons to make written representations with respect to the changes within such reasonable period as the Board considers appropriate. 2003, c. 3, s. 48.

Issuing the code

(8) If notice under this section is required, the Board may issue the code only at the end of this process and after considering all representations made as a result of that process. 2003, c. 3, s. 48.

Public inspection

(9) The Board must make the proposed code and the written representations made under this section available for public inspection during normal business hours at the offices of the Board. 2003, c. 3, s. 48.

Amendment of code

(10) In this section, a code includes an amendment to a code and a revocation of a code. 2003, c. 3, s. 48.

Effective date and gazette publication

70.3 (1) A code issued under section 70.1 comes into force on the day specified in the code. 2003, c. 3, s. 48.

Publication

(2) The Board shall publish every code that comes into force in The Ontario Gazette as soon after the code is issued as practicable. 2003, c. 3, s. 48.

Effect of non-publication

(3) A code that is not published is not effective against a person who has not had actual notice of it. 2003, c. 3, s. 48.

Effect of publication

(4) Publication of a code in The Ontario Gazette,

(a) is, in the absence of evidence to the contrary, proof of its text and of its issuance; and

(b) shall be deemed to be notice of its contents to every person subject to it or affected by it. 2003, c. 3, s. 48.

Judicial notice

(5) If a code is published in The Ontario Gazette, judicial notice shall be taken of it, of its content and of its publication. 2003, c. 3, s. 48.