Ontario Energy Board

EB-2010-0059

Board Policy:

Framework for Transmission Project Development Plans

August 26, 2010

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1 Introduction

1.1 Purpose

This document sets out the policy of the Ontario Energy Board for a framework for new transmission investment in Ontario, in particular with regard to transmission project development planning. The policy describes how project development planning will work in conjunction with existing Board processes for licensed transmitters.

This policy is the end result of a consultation on facilitation of the timely and cost effective development of major transmission facilities that may be required to connect renewable generation in Ontario. The goal is the implementation of a process that provides, among other things, greater regulatory predictability in relation to cost recovery for development work. The Board believes that this policy will:

- allow transmitters to move ahead on development work in a timely manner;
- encourage new entrants to transmission in Ontario bringing additional resources for project development; and
- support competition in transmission in Ontario to drive economic efficiency for the benefit of ratepayers.

This introduction includes a background of the issue and history of the consultation. Section 2 of this paper describes principles and goals that the Board used to evaluate staff's proposal and the stakeholder comments in order to devise the final policy. Section 3 outlines the licensing process for transmitters intending to participate in the Board designation process. Section 4 outlines the process to be followed in designating a transmitter to undertake development work on enabler facilities and network expansions including: the method for identification of eligible projects; the trigger for the process; the decision criteria for designation and the filing requirements intended to solicit the information; and the implications of approval of a plan.

The Filing Requirements for Transmission Project Development Planning are published under separate cover on the Board's website[1].

[1] http://www.oeb.gov.on.ca/OEB/Industry/Rules+and+Requirements/Rules+Codes+Guidelines+and+Forms

1.2 Background

As a consequence of the passage of the *Green Energy and Green Economy Act, 2009* ("GEA"), there has been enormous interest in connecting renewable generation to both distribution and transmission systems. However, the ability of existing or approved transmission facilities in Ontario to accommodate more generation is limited. Based in part on the number of applications for contracts under the Feed-in Tariff ("FIT") program, the Board understands that significant investment in transmission infrastructure will be required to accommodate current FIT applicants as well as any future renewable generation projects.

Advance knowledge of the location and timing of new infrastructure should allow developers to site prospective generation projects along anticipated transmission corridors in order to reduce overall connection costs. Developers should be able to anticipate development of the system and plan its construction schedule to coincide with economic connection.

Board staff met with licensed transmitters to discuss how the transmission planning process might work. Transmitters have indicated the need for a clear process, including an articulation of the overall transmission planning, approval and rate recovery framework.

On April 19, 2010, the Board released a staff Discussion Paper[2] for comment by stakeholders. Board staff's proposals built on earlier work by the Board with respect to transmission connection cost responsibility and in particular on the process that the Board has developed for "enabler" transmission facilities. Staff's proposals focused specifically on development work for projects identified by the Ontario Power Authority ("OPA") as it assesses transmission investments associated with the connection of generation under the FIT program.

The Board received 27 comments[3] on staff's proposals from entities representing a variety of stakeholder groups: current Ontario transmitters and those who would be new to Ontario; generator groups; ratepayer groups; special interest groups; one distributor; the IESO and the OPA.

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[2] http://www.oeb.gov.on.ca/OEB/_Documents/EB-2010-0059/Staff_paper_Tx_Project_Dev_20100419.pdf
[3] Complete text of stakeholder comments is available at the Board's website at: http://www.oeb.gov.on.ca/OEB/Industry/Regulatory+Proceedings/Policy+Initiatives+and+Consultations/Transmission+Project+Development+Planning/Transmission+Project+Development+Planning

2 Board Principles

The Board's goal in developing a policy for transmission project development planning is to facilitate the timely development of the transmission system to accommodate renewable generation.

In developing this policy, the Board is guided by its objectives in relation to the electricity sector under the *Ontario Energy Board Act, 1998* (the "OEB Act"). Of particular relevance in this instance are the objectives of protecting the interests of consumers with respect to price, quality and reliability of electricity supply and facilitating economic efficiency in the development of the transmission system including the maintenance of a financially viable electricity industry. Also important in this instance is the new objective of the Board to promote the use of energy from renewable generation sources.

The Board has previously identified the principles it uses in fulfilling its objectives in transmission policy[4]: economic efficiency; regulatory predictability; and administrative efficiency. The Board has reviewed the staff proposal and the stakeholder comments with the goal of fulfilling its objectives and promoting these principles.

Within the context of transmission investment policy, economic efficiency can be understood to mean achieving the expansion of the transmission system in a cost effective and timely manner to accommodate the connection of renewable energy sources. The Board believes that economic efficiency will be best pursued by introducing competition in transmission service to the extent possible within the current regulatory and market system.

Regulatory predictability allows proponents to understand how and on what basis regulatory decisions are likely to be made. The Board achieves this through policy statements and guidance to the industry and through transparent processes leading to consistency in the determinations it makes and the orders that it issues. Transmission planning is an ongoing procedure. The Board intends to put in place a transmission investment policy and project development planning process that is robust enough to provide consistency of process through many cycles of planning.

Administrative efficiency relates to the level of effort required from the perspective of proponents and other interested parties for effective participation in processes. In

[4] Most recently in the Staff Discussion Paper: Generation Connections for Transmission Connection Cost Responsibility Review (EB-2008-0003) available at: http://www.oeb.gov.on.ca/OEB/_Documents/EB-2008-0003/Staff_Discussion_Paper_20080708.pdf

devising this process, the Board has sought to avoid duplication and unnecessary effort for transmitters, Board staff and other stakeholders.

Taken together, regulatory predictability and administrative efficiency should facilitate investment, planning and decision-making by transmission proponents and should help them to manage business risks.

These aims are consistent with broader movements in energy regulation around the world. In particular, the United Kingdom and the United States are both currently consulting on policy changes along similar lines.

Ofgem in the U.K. is proposing[5] to evolve its regulatory framework to the RIIO model: Revenue set to deliver strong Incentives, Innovation and Outputs. Ofgem acknowledges that changes are needed to "meet the demands of moving to a low carbon economy…whilst maintaining safe, secure and reliable energy supplies"[6]. Ofgem's new proposed framework to deliver long-term value for money for network services includes involving third parties in design, build, operation and ownership of large, separable enhancement projects. Third party participation is to be considered where long-term benefits, especially for new technologies, new delivery solutions and new financing arrangements, are expected to exceed long-term costs. Ofgem would be responsible for any competitive process.

FERC in the U.S. released a Notice of Proposed Rulemaking on June 17, 2010.

> "With respect to transmission planning, the proposed rule would (1) provide that local regional transmission planning processes account for transmission needs driven by public policy requirements established by state or federal laws or regulations; (2) improve coordination between neighbouring transmission planning regions with respect to interregional facilities ; and (3) remove from Commission-approved tariffs or agreements a right of first refusal created by those documents that provides an incumbent transmission provider with an undue advantage over a nonincumbent transmission developer."[7]

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[5] "Regulating energy networks for the future: RPI-X@20 Recommendations" available at: http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?file=RPI-X@Recommendations.pdf&refer=Networks/rpix20/ConsultDocs

[6] Ibid: Executive Summary.

[7] The Notice of Proposed Rulemaking: Transmission Planning and Cost Allocation By Transmission Owning and Operating Public Utilities (Docket No. RM10-23-000) by the Federal Energy Regulatory Commission, pg 1. available at: http://www.ferc.gov/whats-new/comm-meet/2010/061710/E-9.pdf .

The Board sees this proposal to improve interstate planning and align it with state and federal policy drivers (particularly clean energy requirements) and to level the playing field between incumbent and nonincumbent transmitters to be analogous to its own goals for transmission in Ontario.

3 Licensing

Section 57 of the OEB Act prohibits persons from undertaking various activities in the electricity industry in Ontario, including owning or operating a transmission system, unless they are licensed to do so by the Board.

In the Discussion Paper, Board staff proposed that new entrant transmitters who want to participate in the designation process should be licensed by the Board as transmitters. Board staff stated that the licensing process could be used to ensure that a new entrant transmitter meets certain minimum requirements in relation to both financial and technical capability, and that this would provide comfort that the new entrant transmitter is both qualified and committed to doing business in Ontario should it be designated.

Many stakeholders, including the existing transmitters and most of the new entrant transmitters, agreed with Board staff's proposal. Others suggested that the licensing process was a barrier to entry by being onerous, time-consuming or expensive and suggested a separate, rigorous pre-qualification stage before any designation process. Some stakeholders noted that certain provisions of the transmitter licence, such as the Affiliates Relationship Code or the legislative provisions pertaining to the planning requirement or smart grid development, were too burdensome on a prospective basis. The IESO suggested that new entrants could have a more general form of licence.

The Board considers it reasonable to require that new entrant transmitters be licensed in order to participate in the designation process. The licensing process will allow the Board to evaluate the financial viability and technical capabilities of the new entrant transmitters. The Board would need to evaluate these items regardless of whether it was done in a licensing process or another type of pre-qualification process. The Board's licensing process is neither unduly onerous nor time consuming.

Licence applications to the Board are usually handled through a written process and may involve interrogatories from Board staff to clarify information. Other parties may intervene in the application. Licences are generally issued within 90 days of a complete

application being received by the Board. An application form and sample licence is available on the Board's website[8].

The Board notes that some of the requirements in the transmission licence may not apply unless a transmitter has assets in Ontario. If a new entrant transmitter feels that there are particular requirements that should not apply to them, it may raise those issues as part of its application process.

Existing transmitters that are already licensed by the Board can participate in the designation process under their existing licence. No additional requirements or actions are needed.

Board Policy on Transmission Licensing

Transmitters will need a transmission licence from the Board to participate in the designation process.

Existing transmitters that are already licensed by the Board will participate in the designation process under their existing licence.

New entrant transmitters will need to apply for, and obtain, a transmission licence before being able to participate in the designation process.

4 Hearing to Designate a Transmitter

4.1 Identification of Facilities Requiring Designation

The staff Discussion Paper noted that one of the legislated objectives of the OPA is to conduct independent planning for electricity generation, demand management, conservation and transmission and to develop integrated power system plans[9] (the "IPSP"). By regulation, an IPSP is to be filed with the Board every three years. The Board's role is to review and either approve the IPSP or to refer it back to the OPA for further consideration.

In addition, the OPA intends to assess transmission investments that in its view are required and economically justified to connect the FIT applications whose projects

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8 http://www.oeb.gov.on.ca/OEB/Industry/Licences/Apply+for+a+Licence/Apply+for+a+Licence+-+Electricity+Transmission

9 *The Electricity Act, 1998* section 25.2(1)(b)

cannot be accommodated by existing transmission capacity i.e. those in the FIT production line and FIT reserve. The OPA's assessment process is known as the Economic Connection Test ("ECT") and is expected to be completed every six months.

Further, the Board is aware that on May 7, 2010[10], the Minister of Energy and Infrastructure (as it was then known) asked the OPA to provide an updated transmission plan considering the sequencing necessary to meet the needs of the FIT program and the Korean Consortium.

The staff Discussion Paper proposed to use the results of the ECT as the inputs for a Board initiated process whereby interested transmitters would be designated to develop the enabler facilities and network expansions identified in the ECT. Staff proposed that the results of the ECT be accepted without prejudice and that a final determination of need for each project be deferred until the leave to construct hearing.

While most stakeholders accepted the ECT as a starting point, one ratepayer group noted that development funds would be spent by transmitters and recovered from ratepayers for projects that were subsequently found to be unnecessary or uneconomical. It argued that no approval should be given for any costs to be recovered from ratepayers until the economic feasibility of the projects could be fully tested, including the value of the energy being enabled. Some stakeholders suggested that the ECT must be fully tested in the designation process and others insisted that the only valid starting point is an IPSP.

The need for transmission projects may emerge in a number of different ways. New transmission is meant to achieve several purposes: increasing supply to new and existing load customers; facilitating interconnections; ensuring security, reliability and robustness of the system; and facilitating connection of FIT, non-FIT renewable, and non-renewable generation. The Board recognizes that, to the extent that the OPA's various planning tools and reports address differing combinations of these purposes, there is a hierarchy to the reports. An IPSP that considers all uses for transmission and all inputs from economic planning is preferable as a base for provincial transmission planning. However, an approved IPSP is not expected before the later half of 2011. The Board believes that waiting for an approved IPSP would be inconsistent with its statutory objective to promote timely expansion of the transmission system to facilitate connection of renewable generation. And while the hearing to approve an IPSP will be a thorough and comprehensive process, the evidence is not

[10] The letter from the Minister can be found at: http://www.powerauthority.on.ca/Storage/118/16599_MEI_Directive_to_update_H1_09_instruction_May_7_10.pdf

expected to be detailed enough over the three year planning cycle to allow final determination of need for any particular transmission project.

The Board agrees that the starting point for transmission project development planning should be an informed, effective plan from the province's transmission planner, the OPA. The Board believes that the ECT fits that description and is, therefore also a valid starting point for the process. Since the staff Discussion Paper was issued, the OPA has made progress in developing the process and substance of the ECT such as the announcement that the objective is 5% congestion of the system and an economic threshold of $500 of anticipated project cost per kW of new generation enabled[11].

The designation process is intended to be a preliminary stage in an increasingly disciplined process. The ECT is expected to provide a preliminary analysis of need sufficient for approving funding of preliminary development budgets. As budgetary and technical information becomes available, the Board will test need and prudence with increasing vigor. The Board considers that ensuring recovery of development costs before a final determination of need will advance the development of projects compared to the current process. In this way, it will promote the timely expansion of the transmission system and the use of energy from renewable sources.

While the ECT is focused on two of the many purposes of transmission, designation is simply the beginning of the development process and the Board expects the selected transmitter to consult with the OPA and IESO regarding the purposes of the project in order to bring a full justification of need to a leave to construct hearing. Therefore testing of the more detailed information developed after designation will take place in the next stage of the process, likely a leave to construct hearing.

One stakeholder objected to the enabler screening criteria described in clause 3A of the Transmission System Code being replaced by the ECT. The Board sees no conflict as the OPA has used the requirement of the Transmission System Code (the "TSC") in defining and scoping enabler facilities within the ECT. The Board notes that the staff Discussion Paper clarified that the proposal dealt specifically with enablers identified by the OPA through the ECT but the process could also apply to enabler facilities identified in the other two ways set out in the TSC. i.e. a renewable resource cluster is identified in an IPSP or the enabler facility and associated renewable resource cluster is the subject of a direction by the Minister to the OPA. The Board agrees.

[11] A presentation by the OPA on the ECT can be found here: http://fit.powerauthority.on.ca/Page.asp?PageID=122&ContentID=10630&SiteNodeID=1137&BL_ExpandID=272

A few stakeholders commented that the Board's proposed approach presumes the approval of the IPSP in relation to transmission and, as such, the approach pre-empts the due process of an IPSP proceeding and aboriginal consultation and accommodation requirements. The same argument was made in the consultation on transmission connection cost responsibility, in which the Board stated that:

> "The Board is not, through this process, determining whether [transmission] facilities will be identified in an IPSP, nor what those facilities might be nor when or on what conditions the Board might approval the IPSP once it has been re-filed with the Board. Any aboriginal consultation and accommodation requirements associated with the IPSP and/or with the siting and construction of any [transmission] facilities remain unaffected by the Board's proposals…"[12]

The Board maintains the view set out above and reiterates that the OPA remains responsible for independent transmission planning in Ontario. The Board's mandate is restricted to those review and approval authorities given in the legislation. Further, the Board notes that legislation grants to the Minister of Energy the authority to direct the OPA to implement procedures for consulting aboriginal peoples (among others) in relation to the planning and development of transmission systems and to establish measures to facilitate the participation of aboriginal peoples in the development of renewable generation facilities and transmission systems.

Board policy on project identification

When the Board receives the results of an ECT from the OPA, it will begin a process on its own motion to designate a transmitter to undertake development work on any incremental enabler facilities or network expansions identified. If a recently approved IPSP is available, its transmission recommendations may be used for the designation process.

4.2 Notice and Invitation to File a Plan

Under section 70 (2.1) of the OEB Act, every transmitter's license is deemed to have as a condition that the licensee is required to prepare plans, in the manner and at the times required by the Board regarding expansion or reinforcement of the system to accommodate the connection of renewable generation. Plans may also be required for the development of the smart grid in relation to the licensee's system.

[12] Notice of Revised Proposal to Amend a Code dated April 15, 2009: http://www.oeb.gov.on.ca/OEB/_Documents/EB-2008-0003/Notice_REVISED_Proposed_Amendments_TCCRR_20090415b.pdf

In order to promote the connection of renewable generation, the Board will use the planning provision to ensure that needed transmission projects are being actively developed. As existing transmitters undertake capital planning as part of their normal business operations and the Board already has the authority to require transmitters to build projects for reliability purposes, the Board does not, at this time, anticipate requiring general "Green Energy Plans" under this section. There may be a future requirement for smart grid plans, either specifically or as part of cost of service rate filings.

The staff Discussion Paper anticipated that the ECT would identify four types of projects.

1. Capacity enhancements;
2. Network reinforcement;
3. Enabler facilities; and
4. Network expansions.

Staff proposed that the Board give Notice of a Hearing (a "Notice") on its own motion to designate a transmitter to develop projects of types 3 and 4. Staff proposed that the incumbent transmitter be directed and other licensed transmitters be invited to file plans in three months from the date of the Notice.

Several of the transmission companies pointed out that clarification was required with respect to the definition of network expansions, specifically if new lines in existing or widened transmission corridors were expansions or reinforcements. One transmitter noted that new entrants might harm the existing relationships between incumbent transmitters and landowners along corridors.

The Board notes that transmission corridors typically have multiple uses and therefore multiple companies have landowner agreements. The rights of way for most transmission corridors belong to the provincial government through the Ontario Realty Corporation[13] and should not be considered a part of existing infrastructure or a transmission asset. The Board believes that introducing competition in transmission development will improve economic efficiency and lead to better outcomes for the consumer. It is, therefore, in the public interest to keep the definition of network

[13] Pursuant to Part IX.1 of the *Electricity Act, 1998*, ownership of corridor land was transferred from Hydro One Inc. (and its subsidiaries) to Her Majesty in right of Ontario in 2002.

expansion as broad as possible and to classify new lines on existing or widened corridors as expansions subject to designation.

Several stakeholders requested clarification as to whether all transmitters who file a plan and/or the designated transmitter will be permitted to recover the costs of preparing plans. In addition some stakeholders commented that the ability of the incumbent transmitter to recover the cost of preparing the plan as directed by the Board could provide an unfair advantage for the incumbent.

The Board agrees and, similar to the situation regarding corridors above, the Board sees benefit in keeping the process as open and unbiased[14] as possible. Also the Board does not consider it appropriate for consumers to fund a transmitter's efforts to expand its commercial business through preparation of a plan seeking designation.

Therefore, when the Board receives an ECT report from the OPA and issues Notice of a designation hearing, the Board will invite all licensed transmitters to submit plans in the form mandated by the filing requirements. The incumbent transmitter is not obligated to file a plan at this point. Only the transmitter that is successful in being designated will be able recover the costs of preparing a plan. This is comparable to the more usual business model in which proponents prepare proposals or bids at their own cost and own risk. In this way, the Board seeks to ensure that all transmitters will be on equal footing when submitting plans and ratepayers will not pay for multiple plan preparation.

If there are no plans filed for a particular project, the Board will direct the incumbent to file a plan. The incumbent will then be able to recover the costs of plan preparation.

The staff Discussion Paper asked for comment on the period of time between a Notice and the filing deadline for plans. The paper gave examples of the Ofgem and Texas PUC contracting processes that allowed three months for an apparently similar stage of information. Some stakeholders questioned the comparison of plan preparation with either the Qualification to Tender for Ofgem or the statement of intent for Texas PUC. While many stakeholders felt that three months was an appropriate period for some projects depending on the level of detail expected in plans, some stated that larger or more complex projects would require more time to prepare adequately.

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[14] The Notice of Proposed Rulemaking: Transmission Planning and Cost Allocation By Transmission Owning and Operating Public Utilities (Docket No. RM10-23-000) by the Federal Energy Regulatory Commission states that neither incumbent nor nonincumbent transmission facility developers should…receive different treatment in a regional transmission planning process. http://www.ferc.gov/whats-new/comm-meet/2010/061710/E-9.pdf .

The Board agrees. Therefore, the Notice will specify a deadline for filing of plans: the default period will be three months but will be as long as six months for some projects at the Board's discretion.

Some stakeholders also felt that the knowledge advantage of the incumbent transmitter with respect to the technical configuration of connections points created an unfair advantage and suggested that the Board create rules regarding the timing and information that must be provided to proponents. The TSC primarily references requirements for the incumbent transmitter to provide connection information to customers (loads); the IESO; and neighbouring transmitters and primarily for the purposes of connection impact assessments, system operations or third party design. The Board agrees that the incumbent could frustrate other transmitters by delay in providing technical information on the relevant potential connection points and thus gain a competitive advantage. The Board therefore intends to begin a process to amend the TSC in order to provide specific instruction to incumbent transmitters on the level and timing of information to be provided. Comment on these issues will be received in the Notice and Comment process for those TSC amendments.

Board policy on notice and invitation to file

Definitions

Enabler facilities (subject to designation and plan approval process): As defined in Board's Transmission System Code, these are transmitter-owned connection facilities designed to connect clusters of renewable resources to the existing network; and

Network expansions (subject to designation and plan approval process): Transmission work undertaken to expand the transmission network, in particular the major bulk transmission system, through construction of new network facilities. For clarity, this includes greenfield projects and new lines in existing or expanded transmission corridors.

When the Board receives an ECT report from the OPA, it will issue a Notice of a hearing to designate development of any enabler facilities and network expansions identified in the ECT report. In the Notice, the Board will invite all licensed transmitters to submit plans in the form mandated by the filing requirements. Only the transmitter that is successful in being designated will be able recover its costs of preparing a plan.

If no plans are submitted for a particular project, the Board will require the incumbent transmitter to file a plan.

The Notice will specify a deadline for filing of plans. The period will be at least three months but may be as long as six months for larger or more complex projects.

4.3 Decision Criteria

In the Discussion Paper, Board staff had suggested project decision criteria that built on the general threshold of licensing to look at specific project related issues: organization and experience; technical capability; schedule; costs; financing; and landowner and other consultations. Staff asked for comments on the proposed criteria and prospective weightings for each one.

Many stakeholders commented that the criteria were appropriate. A few stakeholders suggested that organization, technical capability and financial capacity should be threshold (pass/fail) criteria and that cost, schedule and consultation should be evaluated. Most stakeholders suggested that the Board should balance the criteria at their discretion on a case by case basis. Others suggested that cost or consultation should be the most important.

The Board agrees that it would be irresponsible to risk the ratepayers' money with an entity (either a single transmitter or an identified consortium) that does not have the ability to see a project through to completion and that the criteria of organization, technical capability and financial capacity are crucial. However, the Board's process is not the same as a procurement process. The Board's hearing process does not lend itself to threshold tests nor is the Board convinced that it will be possible to examine those three criteria without substantial reference to the evidence regarding cost, scheduling, and consultation plans for the project.

The decision criteria and filing requirements are in regard to a specific project and are all critical to the successful construction of the project. However, the Board acknowledges that depending on the size, complexity and location of a particular line, some criteria will be relatively more important than the others. Therefore, the criteria will be weighted by the Board, based on the evidence in the proceeding, taking into account the individual circumstances of the project.

In fact, a few stakeholders suggested that socio-economic benefits (local employment or First Nation ownership) or environmental sustainability interests should be included as specific criteria. The IESO suggested that by focusing only on the rate-regulated model of transmission, the Board was excluding other models such as merchant generation.

The Board notes that, while the environmental assessment is a separate process, the criteria listed were meant to emphasize the Board's priorities, not to be exclusive. The filing requirements include an allowance for "any other information that [the applicant] considers relevant to its plan." It is here that a transmitter could include information on local employment, community partnerships, innovative models, etc. Where projects were otherwise equivalent or close in the other factors, this information could prove

decisive. In particular, financial models that do not put the risk on ratepayers or increase rates would be of interest to the Board, although it is hard to see how these might arise in the context of FIT-associated transmission.

Board policy regarding decision criteria

Organization; technical capability; financial capacity; schedule; costs; landowner and other consultations; and other factors will be weighted by the Board, based on the evidence in the proceeding, taking into account the individual circumstances of the project.

4.4 Filing Requirements

Stakeholders were generally supportive of the filing requirements proposed by Board staff. Some suggested that they should be high level as befits the level of information available before development of a project begins. Others suggested that they should be as specific as possible to avoid ambiguity and wasted effort by the transmitters.

Where specific suggestions were made regarding the Filing Requirements, the Board has generally incorporated them. The general question regarding major risks and mitigation strategies has been bolstered by specific inquiries regarding permitting and consultations. The Board acknowledges that major projects may be in a very preliminary stage of plan development and has allowed transmitters to identify alternatives with a method for subsequent selection.

In addition, the Board has removed a question that implied that transmitters must undertake consultation as part of plan preparation.

The Filing Requirements published as G-2010-0059[15] are adopted by the Board as the manner required for transmitters filing plans seeking designation for a project identified in a Notice by the Board. The Board considers them appropriate until it has gained more experience with the practice of transmission plans and the amount of information available.

The Board reminds prospective participants in the process that filing requirements are the starting point for the public record and additional information may be required as the hearing progresses.

[15] Available on the Board's website at:
http://www.oeb.gov.on.ca/OEB/Industry/Rules+and+Requirements/Rules+Codes+Guidelines+and+Forms

In fact, the Board emphasizes that the designation hearing is an open, public process. Information that the transmitter considers to be commercially sensitive should be identified as such and confidentiality requested according to the Board's "Practice Direction on Confidential Filings"[16]. The Board will then make a determination of the degree of confidentiality to be provided to balance the competing interests of private intellectual property and commercially sensitive information with the public interest in a transparent process. Potential solutions include redacted evidence, *in camera* proceedings, and undertakings by counsel to maintain confidentiality.

4.5 Implications of Plan Approval

The staff Discussion Paper recommended that the budgeted development costs of the designated transmitter be determined to be recoverable in a future rate proceeding. Most stakeholders supported the recovery of budgeted development costs for the designated transmitter provided that normal Board practices apply, including material overages being at risk until subsequently approved. Some stakeholders requested greater clarity as to what costs are considered "development costs".

The Board accepts the premise that designation should carry with it the assurance of recovery of the budgeted amount for project development. When subsequent analysis by the OPA suggests that a project has ceased to be needed or economically viable (e.g. FIT applications have dropped out of the reserve such that the project falls below the economic threshold), the transmitter is entitled to amounts expended and reasonable wind-up costs. Threshold materiality for amounts beyond the approved budget could be established in the order and would likely be in relation to the total budget.

From the Board's perspective, the objective of the development phase is to bring a project to the point where there is sufficient information for the transmitter to submit a leave to construct application. Therefore development costs begin when a transmitter is designated and end when a leave to construct application is submitted. The Board expects, therefore, the development budget to include route planning, engineering, site/environmental reports and some (but not all) consultation.

Where a leave to construct is not required for a designated project[17], the end point is when costs begin to be capitalized against the project.

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[16] Available on the Board's website at: http://www.oeb.gov.on.ca/documents/practice_direction-confidentiality_161106.pdf

[17] Ontario Regulation 161/99 clause 6.2 lists situations where Subsection 92(1) of the OEB Act does not apply. http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_990161_e.htm

In recent rate cases, Hydro One Networks Inc. (EB-2009-0416)) and Great Lakes Power Transmission LP ("GLPT") (EB-2009-0409) received approval of deferral accounts for IPSP and other long term projects' preliminary planning costs and GEA related planning expenses, respectively.

In its Decision and Order in each case, the Board stated that each company "is cautioned that this approval does not provide any assurance, either explicit or implicit, that the amounts recorded in the account will be recovered from ratepayers. No finding of prudence is being made at this time….A full test of prudence will be undertaken when [the company] applies for disposition of the account[s]."

The staff Discussion Paper also suggested that the Board's order for designation might have conditions such as milestones or reporting requirements. The purpose of establishing the designation process is to promote timely expansion of the transmission system for connection of renewable generation by ensuring that identified projects are being developed. If a designated transmitter is failing to make progress on developing the project and is not making progress toward bringing a leave to construct application, the Board needs the ability to rescind the designation both to limit the exposure of the ratepayer and to allow a different transmitter to be designated. Therefore, the Board order of designation will have conditions such as performance milestones (in particular, a deadline for application for leave to construct) and reporting requirements on progress and spending that, if not met, will result in the designation being rescinded and will put further expenditures at risk. Designated transmitters who are having trouble meeting the milestones for any reason, but intend to carry through with the work may apply to the Board for an amended schedule.

In the Discussion Paper, Board staff asked for comments on the potential of two transmitters being designated to develop the same project. Some stakeholders did not feel that it would ever be appropriate to allow ratepayers to fund development of two projects when only one will need to be constructed. Others felt that there may be extra-ordinary conditions where it might be justified.

The Board agrees with stakeholders that designation of two transmitters should be an exceptional circumstance where the Board is persuaded that:

- Two proposed projects to meet the same need cannot be directly compared since they are so significantly different
    - as to route, or
    - as to technology to be employed; or
- The amount saved on construction cost could be more than the cost added by the funding of a second development project.

The staff Discussion Paper also noted limitations on the Board's ability to guarantee a transmitter the ability to construct and operate a particular project. Many stakeholders expressed concern over this issue and looked for further assurance that the successful transmitter would be able to construct and operate the facilities.

The designation process of the Board is not a procurement process where the end result is a contract. Neither the Board, the OPA, nor the IESO has statutory authority to procure transmission. Under normal circumstances, the Board would expect that the transmitter who is designated would construct and operate the facilities. There are two instances where this might not be the case.

One circumstance is where the designated transmitter makes arrangements to assign the project to another transmitter. A project designation, particularly once a leave to construct has been issued, could have commercial value. The Board would not preclude this option but would have to grant permission to assign the project and be assured that there was no adverse ratepayer impact of the transaction and that the assignee was also licensed and equally qualified to undertake the work.

The other possibility is that another transmitter brings a leave to construct application for a different project that meets the same need in a better way. The Board cannot prevent any person from submitting an application for any matter under its jurisdiction. However, the undesignated transmitter would have undertaken development at its own cost which would not be recoverable from ratepayers. The transmitter would also need to adequately explain why it had not taken part in the designation process. Once a leave to construct is granted, the Board would not grant another transmitter approval for duplicative facilities.

Board Policy regarding implications of plan approval

The transmitter designated for a particular project will be assured of recovery of the budgeted amount for project development. Material overages will be at risk until a future prudence review. Threshold materiality for amounts beyond the approved budget could be established in the designation order and would likely be in relation to the total budget. When subsequent analysis by the OPA suggests that the project has ceased to be needed or is no longer economically viable, the transmitter will be entitled to appropriate wind-up costs.

The Board order of designation will have conditions such as performance milestones based on the project schedules (in particular, a deadline for application for leave to construct) and reporting requirements on progress and spending that, if not met, will result in the designation being rescinded and will put further expenditures at risk.

Under exceptional circumstances, the Board may designate two transmitters to proceed to the development phase where the Board is persuaded that:

- Two proposed projects to meet the same need cannot be directly compared since they are so significantly different
    - as to route, or
    - as to technology to be employed; or
- The amount saved on construction cost could be more than the cost added by the funding of a second development project.

Final project selection will take place after application for leave to construct.

5 Hearing for Leave to Construct

Section 92 of the OEB Act prohibits any person from constructing, expanding or reinforcing a transmission line without an order of the Board granting leave. Clause 92(2) and Ontario Regulation 161/99 provide exceptions to this requirement including relocation or reconstruction of a line without new land requirements; lines that are less than 2 km in length; and interconnections between two adjacent transmission systems. Section 96 specifies the issues that the Board may consider in finding that proposed work is in the public interest. The GEA amended the OEB Act to include as one of those issues the use of energy from renewable resources, where applicable and in a manner consistent with the policies of the Government of Ontario.

A designated transmitter is ensured recovery of development costs with the objective of submitting a leave to construct application. The requirements of a leave to construct application are described in the Board's existing Filing Requirements for Transmission and Distribution Applications[18].

The staff Discussion Paper included an illustrative flow chart of the Board's processes. One stakeholder stated that it did not show the Environmental Assessment approval process. Stakeholders should note that it does not include any stages of a project that are not under the Board's jurisdiction, such as the System Impact Assessment from the IESO that must be filed as part of the leave to construct application or the Connection Impact Assessment that must be completed by any transmitter to which the new project will connect.

The flow chart has been updated to show the Board's policy.

[18] http://www.oeb.gov.on.ca/documents/minfilingrequirements_report_141106.pdf

The following is an illustrative flow chart of the OEB designation and transmission project plan approval process, and where it fits with leave to construct and rate proceedings. For convenience, the chart shows the recovery of cost flowing from a cost of service rate hearing. However, a rate rider could be approved at other points in the process.

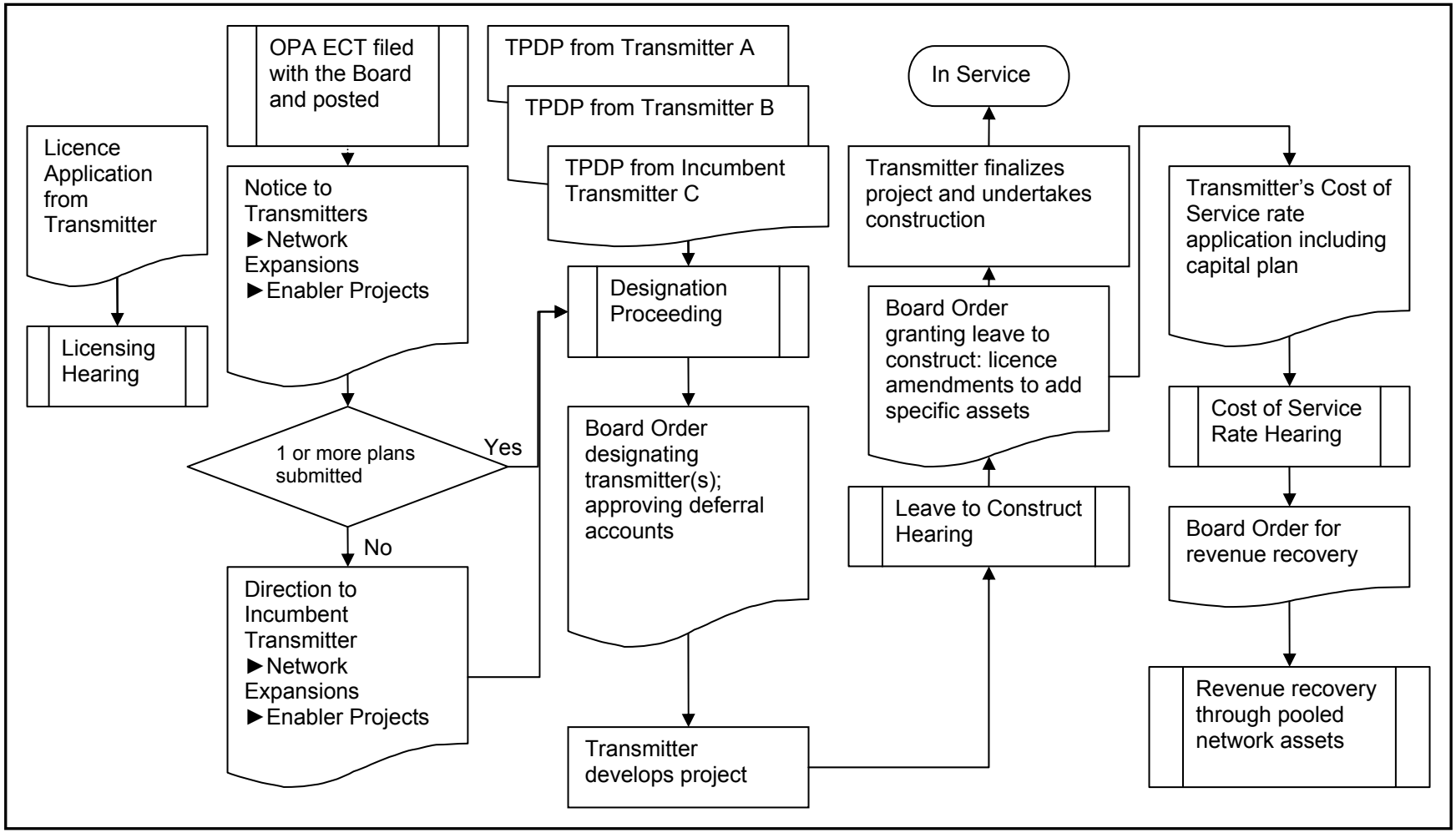

Figure 1: OEB Process for Transmitter Designation and Transmission Project Development Plan Approval

The ECT focuses on transmission needed to accommodate FIT applications and the projects of the Korean Consortium. As mentioned above, transmission serves other needs as well. The Board expects that during the development phase, the designated transmitter will consult with the OPA and the IESO regarding capacity, configuration and final routing that would support those other needs.

The Board expects that the OPA will support transmitters in preparing evidence of need for a transmission project.

There are two types of projects that could be identified in the ECT that would not be subject to designation: capacity enhancements and network reinforcements. As these types of projects are work on the incumbent transmitter's system, the incumbent will undertake them directly. It is highly likely that network reinforcements will require a leave to construct. The incumbent transmitter should develop these projects and prepare a leave to construct under the assurance that reasonable development costs will be recoverable from ratepayers at a future proceeding by reference to the ECT results. The Board expects that the OPA will support proof of need at this time.

6 Hearing for Rate Recovery

In the staff Discussion Paper, Board staff suggested that development costs by both incumbents and new entrants could be recovered through the Uniform Transmission Rates of Ontario (the "UTR"). Several stakeholders requested clarification of the workings of the Uniform Transmission Rate.

Section 78.(1) of the OEB Act prohibits a transmitter from charging for transmission of electricity except in accordance with an order of the Board. The UTR is a Board ordered schedule of tariffs charged to all transmission customers. There are 5 currently licensed transmitters that are rate regulated. Each one has a periodic hearing to determine its cost of service revenue requirement. After each Hydro One Networks Inc. hearing,[19] these revenue requirements are summed to determine the total transmission revenue requirement in Ontario. This revenue requirement is then spread over the total transmission service in the province to determine appropriate postage stamp transmission rates. The IESO is tasked with charging out this rate, collecting it from transmission customers and then paying it out to the transmitters. The payments to

[19] The most recent proceeding to set and allocate the Uniform Transmission Rate resulted in an Order released January 21, 2010 (EB-2008-0272). It is expected that the current Hydro One Networks Inc. case (EB-2010-0002), will result in a revised UTR.

transmitters are according to an allocation that has been predetermined by the Board based on each transmitter's percentage of the total transmission revenue requirement.

If a designated transmitter had development costs but did not construct the facilities[20], those costs could be converted into a regulatory asset for rate recovery. The regulatory asset would create a revenue requirement that would be added to the total provincial transmission revenue requirement and included in the calculation of the UTR. Then, the IESO would bill all transmission customers, collect the revenues and remit the appropriate amount to the designated transmitter.

Construction budgets would be part of the capital budget for a transmitter's cost of service rate hearing. Alternative mechanisms as set out in the "Report of the Board: The Regulatory Treatment of Infrastructure Investment in Connection with the Rate-regulated Activities of Distributors and Transmitters in Ontario" (EB-2009-0152)[21] could be requested.

Some network reinforcement and many capacity enhancement projects (not subject to designation) may not require a leave to construct. The incumbent transmitter should proceed to develop the projects and include them in the capital budget for the appropriate cost of service application. The project's inclusion in an ECT is sufficient support for recovery of reasonable development costs. Approval of construction budgets is subject to a determination of need for the capital budget. The Board expects that the OPA will support proof of need at that time.

[20] E.g. the facilities were ultimately determined to be not necessary.
[21] Available on the Board's website at http://www.oeb.gov.on.ca/OEB/_Documents/EB-2009-0152/Board_Report_Infrastructure_Investment_20100115.pdf