

Submissions of Board Staff on the Connection Procedures of Hydro One Networks Inc.

Introduction

The following are the submissions of Board staff on the proposed customer Connection Procedures (“CCP”) filed with the Board by Hydro One Networks Inc. (“H1N”) under section 6.1.5 of the Transmission System Code (the “TSC” or the “Code”).

Board staff’s submissions are focused on two elements:

- i. provisions of the CCP that appear to be unclear and require clarification in order to render them more readily understandable or complete, or to confirm that they are consistent with the Code; and
- ii. provisions of the CCP that appear to be inconsistent with the Code.

Board staff’s submissions include submissions in respect of the template Connection and Cost Recovery Agreements (“CCRA”) that are referred to in the CCP. The template CCRA’s were filed in response to interrogatories. As a result, Board staff has not had an opportunity to seek clarification by way of interrogatories in relation to those documents. Some of Board staff’s submissions may invite clarification from H1N.

Submissions

The following submissions are organized by subject-matter following the structure of the CCP. Where submissions are made in relation to an element of the CCP that has a corresponding or related provision in the template CCRA’s, this is noted in the relevant place. Submissions that relate exclusively to the template CCRA’s are presented last. Unless otherwise noted, submissions in relation to the template CCRA apply equally to the load and generator versions.

AVAILABLE CAPACITY

1. Available Capacity
Ref.(a) IR #6
Ref.(b) H1N-CCP/ 2.2 Available Capacity Procedure/ Step 2.2/p. 10

Issue

The CCP refers to “deeming of contracted capacity” which is a term not used in the TSC, and its use in the CCP would lead to confusion.

In the TSC the following are terms used to recognize the rights of customers to capacity: (a) "Contracted Capacity" refers to new or reinforced connection facilities and there is a contract to address the rights and responsibilities of both parties; and (b) "Assigned Capacity" refers to an existing customer's right to capacity on existing connection facilities.

Analysis

Hydro One's response to Board staff's IR# 6 indicated that, in addition to all of the situations listed by Board staff, the "addition of a new Feeder Breaker for the purpose of increasing supply would require the execution of a CCRA and involve the recognition of a contract capacity".

Board staff submit that the use of "Contract Capacity" in the TSC refers strictly to the amount of Contracted Capacity on either a Transformation Connection Facility (e.g., a new transformer station) or a Line Connection Facility (typically a new tap or reinforced radial transmission line supplying other customers).

The addition of new "feeder breakers" in an existing transformer station can occur to accommodate a new feeder position. Hydro One may need a CCRA to cover the construction phase. There is no obligation on the transmission customer to use the existing transformation capacity, beyond what is prescribed in the TSC.

Board staff submits that, based on the above-noted description of the TSC provisions regarding the rights of customers to capacity, the true-up provisions of the TSC would not apply in relation to the provision of a "feeder position".

2. Available Capacity

Ref.(a) IR #8

Ref.(b) H1N-CCP/ 2.2 Available Capacity Procedure/
steps 2.4 and 2.5/ p. 11

Issue

The CCP is proposing adjustments to "Assigned Capacity" that are inconsistent with the approach set out in the TSC. Hydro One rationalizes this citing discrepancy between actual peak on a connection facility and the calculated amount for assigned capacity. The two values serve two different purposes, and can both be tracked without a need to deviate from the TSC.

Analysis

Board staff submits that the third sentence of Step 2.5 of the CCP mismatches two aspects; namely, "Contract Capacity", and "Assigned Capacity".

Contract Capacity covers new or reinforced connection facilities and is governed by the Code provisions for economic evaluations/capital contributions, while "Assigned Capacity" covers existing connection facilities. Board staff submits that the third sentence of Step 2.5 of the CCP is inconsistent with the intent of the Code, as it states that "The customer's final assigned capacity will be the greater of the customer's adjusted assigned capacity or the customer's contracted capacity for that year". That sentence should be replaced in a manner that conveys that the final adjustment to Assigned Capacity must reflect section 6.2.2 of the Code.

3. Available Capacity

Ref.(a) IR #10

Ref.(b) H1N-CCP/ 2.2 Available Capacity Procedure/ step 6.4/ p.15

Ref.(c) Board Policy Decision (RP-2002-0120) Dated June 8, 2004
/subsection 8.9.1/p. 104

Issue

The Board Policy Decision and the TSC prohibit minimum billing provisions or provisions covering revenue loss where bypass of a connection facility situation occurs. Rather, in circumstances where bypass compensation is payable Net Book Value ("NBV") must be the basis for compensation. Hydro One appears to describe a situation where a customer shifts load, and then when caught would restore the load. Hydro One prescribes a remedy for that action, which is inconsistent with the TSC.

Analysis

Hydro One's response to Board staff IR# 10 stated that Step 6.4 of the CPP deals with potential bypass situations that do not result in permanent bypass and the appropriate compensation (section 6.7.7 of the Code). Hydro One further explained that where permanent by-pass has not occurred, it would be premature for Hydro One to notify the customer of the amount of by-pass compensation required based on NBV. In these situations, compensation should only be based on lost revenue.

Board staff submits that the TSC is clear as to the compensation available to a transmitter, and what Hydro One is proposing in Step 6.4 of the CCP is inconsistent with the Code. The rationale provided by Hydro One to the effect that compensation based on lost revenue applies to situations that do not amount to permanent bypass, in addition to being without support in the Code, is also contradictory to the Board's Policy Decision. In that Decision, the Board indicated clearly that other than the truing up process for new connection facilities (prescribed in section 6.5 of the Code), no form of minimum payment is allowed: *"As a result of these requirements to carry out periodic true-up reassessments, the Board is of the view that*

any additional minimum payments obligations for existing load or future load shall not be permitted.”.

Provisions of the CCRA that raise similar issues are addressed below.

4. Available Capacity

Ref.(a) IR #11

Ref.(b) H1N-CCP/ 2.2 Available Capacity Procedure/ Step 6.4/
Projection by Hydro One of available capacity for future
years/second bullet/ p. 16

Issue

The CCP refers to the addition of a breaker position or line tap as events that could lead to “contracted capacity”.

Any of such events would lead to a financial arrangement, such as a time payment plan, but the amount of capacity that may be needed due to that expansion falls under: (a) an “Assigned Capacity” regime; or (b) is already covered by an existing “Contract Capacity” for that connection facility (e.g. transformer station).

Analysis

Board staff submits that Hydro One’s interpretation that “additions of a breaker position or line tap” are events that can lead to “Contract Capacity” is not consistent with the intent of the TSC.

In the response to Board staff IR# 11, Hydro One stated that in an existing facility with available capacity, a customer can request additional contracted capacity (e.g., new breaker positions at transformer stations or line taps to existing transformer stations). The reference is intended to cover the possibility that a customer may, in the future, obtain contracted capacity at a connection facility – either by causing a modification to that facility that requires an economic evaluation, or where a subsequent customer requires contracted capacity in accordance with section 6.2.24 of the Code.

Board staff submits that the notion that a customer request for a feeder position in an existing transformer station, which may require an economic evaluation, constitutes a request for additional “contracted capacity” is problematic.

In the case of an existing transformer station, any capacity needed would, according to the TSC, be part of a request for an increase in available capacity. A CCRA to cover the added investment (feeder position) that can be tied to a payment schedule (time payment plan) may be required. According to the TSC, such investment is not classed as “Contracted Capacity” and the true-up provisions of the TSC would not apply.

SECURITY DEPOSIT

5. Security Deposit

Ref.(a) IR #12

Ref.(b) H1N-CCP/ 2.3 Security Deposit Procedure/
Security Deposits in the Form of Cash/ p. 19 (bottom)

Ref (c) CCRA (load version) / Standard Terms and Conditions /
Section 19 and Appendix A (definition of “Interest”)

Ref (d) CCRA (generator version) / Standard Terms and Conditions
/ Section 1 (definition of “Interest”) and Section 16

Issue

There is lack of clarity in the TSC in regard to the appropriate interest rate to be paid by the transmitter on security deposits.

Board staff notes that the CCRA defines the term “Interest” in this context as “the interest rates specified by the OEB to be applicable to security deposits in the form of cash as specified in Subsection 6.3.11(b) in the *Transmission System Code*”. In “subsection 6.3.11 (b)” of the TSC, the interest rate is defined as the “prime lending rate set by the Bank of Canada”.

Hydro One responded to Board staff IR# 12 by stating that the appropriate rate is the “Bank of Canada Bank Rate”, since the Bank of Canada does not set the prime lending rate.

Analysis

Board staff submits that there are two options for the interest rate: (1) the “Bank of Canada Bank Rate”; or (2) the “Prime Business Rate” set by the Bank of Canada.

Board staff submits that the purpose of prescribing an interest rate is to ensure that: (a) the financial risk of Hydro One is mitigated, but not to financially benefit it; and (b) the level of the interest rate is appropriate to pay customers for the amount they could earn on the funds held.

The two options will be compared on that basis.

Option 1 – Use of “Bank of Canada Bank Rate”

The “Bank Rate” is the rate of interest that the Bank of Canada charges on one-day loans to financial institutions. This rate is defined as “The minimum rate at which the Bank of Canada extends short-term advances to members of the Canadian Payments Association [financial_institutions].” Board staff submits that this rate of interest has no relationship to any entity in the electricity industry.

For illustrative purposes, the Bank Rate on November 29, 2006 was 4.5%. Use of the Bank Rate of 4.5% less 2% (where the interest relates to the situation described in section 6.3.11(b)(i) of the Code) = 2.5%. Considering a simple cashable GIC pays about 3.5%, Hydro One would financially benefit from the deposits (1 % spread).

Option 2 – Use of the “Prime Business Rate” set by the Bank of Canada

The Bank of Canada publishes a “Prime Business Rate”, which can be accessed at the Bank’s website, under Daily Digest.

For illustrative purposes the Prime Business Rate published by the Bank on November 29, 2006 was 6 %. Use of this rate of 6% less 2% (where the interest relates to the situation described in section 6.3.11(b)(i) of the Code) = 4%. Considering a simple cashable GIC pays about 3.5%, Hydro One’s financial benefit would be less than under Option 1 (0.5 % spread).

Board staff notes that use of the “Prime Business Rate” would be consistent with the interest rate that the Distribution System Code requires be used by electricity distributors within the context of consumer security deposits.

ECONOMIC EVALUATION

6. Economic Evaluation

Ref.(a) IR #22

Ref.(b) H1N-CCP/ Section 2.5 Economic Evaluation / p. 37

Ref.(c) Board Policy Decision (RP-2002-0120) Dated June 8, 2004/
section 7.2/ p. 87

Issue

The proposed calculation of the capital cost where it involves transfer pricing is inconsistent with both the Board Policy Decision and the TSC.

Analysis

Board staff submits that the proposed calculation of the capital cost is inconsistent with both the Board Policy Decision and the TSC since it does not provide the customer with cost estimates (for capital cost or for services such as inspection, testing and commissioning) that include direct and indirect overheads for purposes of the establishment of a Transfer Price by the customer.

Board staff also submits that, in order for a customer to determine a transfer price for a project, the customer should have all pertinent make-ready costs, including direct and indirect overheads. The capital cost

would be the sum of the Transfer Price plus the Capital Costs of Hydro One (Uncontestable Work including direct and indirect overheads).

Board staff submits that Hydro One's proposal contained in its response to Board staff IR# 22, which indicated that appropriate adjustments will be made to "capital cost", did not indicate any specific adjustments and would not address the inconsistency with the TSC.

CONTESTABILITY

7. Contestability

Ref.(a) IR #24

Ref.(b) H1N-CCP/ Section 2.6 Contestability / pp. 39 and 40

Issue

The definition of "sole benefit", and use of the words "expansion" and "may permit" in certain parts of Section 2.6 of the CCP (Contestability) are at variance with what the TSC intended.

Analysis

Hydro One's CCP defines "Contestable Work" as:

" New connection facilities that are for the sole benefit of the connecting customers(s) that do not involve:

- (a) The modification of or expansion of the transmitter's existing assets, or,*
- (b) The utilization of an existing station site or an existing right-of-way over which the transmitter has ownership, easement or other land rights.*

The transmitter may permit the connecting customer to terminate their lines at Hydro One's assets."

The reference to "sole benefit" is a restriction where two new connecting customers may be involved in proposing to have a new transmission line built to serve their needs, and may want under the TSC contestability provisions to explore their options. As such, Board staff submits that inclusion of those words may restrict the application of the contestability provisions of the TSC (section 6.6.2) in a manner that was not intended.

Board staff also submits that the phrase "or expansion" in paragraph (a) is problematic, because any extension to an existing transmission line can be defined as an expansion. To be consistent with TSC, Board staff submits that the words "or expansion" should be removed to avoid restricting the application of the contestability provisions of the TSC (section 6.6.2) in a manner that was not intended.

To be consistent with section 6.2.2 of the TSC, Board staff also submits that the words “may permit” be changed to words that convey that Hydro One will permit the connecting customer to terminate its lines at Hydro One’s assets subject to satisfying various technical and operating conditions and requirements as set out in the TSC and the IESO’s Market Rules.

8. Contestability - Hydro One Acting as Contractor for Customer

Ref.(a) H1N-CCP / Section 2.6 Contestability / pp. 39, 40 and 43

Ref.(b) H1N-CCP / Contestability Procedure / Option 3/p. 43

Ref.(c) CCRA/p. 7/Ownership/bolded text in brackets (“[insert description of anything being constructed, installed or put together by Hydro One that is to be owned by the Customer]”)

Ref.(d) CCRA/p. 8/Work Chargeable to Customer

Ref.(e) Compliance Bulletin 200605

Issue

References in the above materials make references to situations that could include system components or elements being constructed, installed or put together by Hydro One in circumstances where the components or elements will be owned by the customer. This appears to contemplate that Hydro One may be acting as a contractor on behalf of the customer in relation to customer-owned facilities.

Analysis

In Compliance Bulletin 200605, which addresses issues relating to compliance by distributors with section 71(1) of the *Ontario Energy Board Act, 1998*, it is stated that the following activity would not be a permitted business activity for a distributor: “provision of engineering and construction services, where such services are provided outside the scope of a distributor’s obligations (for example, in relation to privately-owned electrical infrastructure”. Board staff is not aware of any reason why transmitters should be treated differently from distributors in this regard. On that basis, Board staff submits that acting as a contractor on behalf of a customer is not a permitted business activity for a transmitter under section 71 of the *Ontario Energy Board Act, 1998*.

DISPUTE RESOLUTION

9. Dispute Resolution

Ref.(a) IR #29

Ref.(b) H1N-CCP/ Section 2.8 Dispute Resolution / pp. 48-50

Issue

The proposed CCP does not specify what would happen if a Settlement Agreement is signed but a party fails to comply with the terms of the settlement.

Analysis

In its response to Board staff interrogatory #29, Hydro One indicated that where a party fails to comply with the terms of the settlement, the other party could approach the Board for resolution. Board staff submits that the CCP should expressly address this issue. Board staff notes that settlement can occur at two different times; notably, before any arbitration is commenced or during the course of an arbitration. Board staff submits that resolution by the Board would be consistent with the Code where the settlement is reached prior to the commencement of arbitration, although commencing arbitration could also remain an option if the parties so agree. Board staff notes that, where settlement is reached during the course of arbitration, the issue appears to be addressed by reference to the dispute resolution provisions of section 17 of the Connection Agreement. Specifically, section 17.5 11 of the Connection Agreement appears to deal with this situation.

10. Dispute Resolution

Ref.(a) IR #36

Ref.(b) H1N-CCP/ Section 2.8 Dispute Resolution / Summary of Dispute / p. 50

Issue

Hydro One's response to Board staff interrogatory #36 confirms that Hydro One will retain records relating to the resolution of formal disputes and will provide that information to the Board on request. However, the provision of information to the Board is made contingent on the consent of the other party.

Analysis

Board staff does not believe that the provision of information to the Board should be conditional on the consent of the other party. Board staff notes, in this regard, that Hydro One's electricity transmission licence requires that Hydro One provide information to the Board as the Board may from time to time require. The exercise of the Board's authority in this regard is not contingent on the consent of a third party.

TRANSMISSION PLANS

11. Transmission Plans

Ref.(a) IR #37

Ref.(b) H1N-CCP/ Section 3.0 Transmission Plans/ p. 51

Issue

Hydro One proposes to exclude certain classes of plans from the requirement set out in section 6.3.6 of the TSC. The exclusions cover situations that are classed as either customer-driven or as network facilities.

Analysis

In Board staff IR # 37, Board staff asked why Hydro One seeks to exclude certain classes of plans from the requirement set out in section 6.3.6 of the TSC, In its response, Hydro One addressed different exclusions as described below.

Hydro One stated that the exclusion covers “New or modified transformation and line connection facilities that step down voltage from above 50kV to below 50kV and supply one delivery point, or several delivery points for one customer. These facilities are customer-driven and would not otherwise be planned by the transmitter.” Board staff submits that plans resulting from other transmitter customers’ requests that involve new, or the reinforcement of, Line Connection Facilities should be included because this would have an impact on a new customer’s options for requesting to connect.

Hydro One stated that the exclusion covers “Changes to the transmission system that are requested by load customers for the purpose of improving delivery point supply reliability beyond the requirements of the Code. These facilities are also customer-driven and would not otherwise be planned by the transmitter.” Board staff notes that a customer’s request and payment for new or reinforcement of a transmitter’s transmission connection facilities does not prevent other customers from benefiting from such facilities subject to all relevant provisions of the TSC, which protects all customers in terms of capital contribution and proprietary information. Board staff submits that inclusion of such a plan would be very important to customers as the plan provides a complete picture of the transmission system expansion in any particular area.

Hydro One stated that the exclusion covers “Changes to the transmission system that are already being addressed through Hydro One’s Delivery Point Performance Standards process. While this type of work may also require a capital contribution, it is funded by a separate (OEB-approved) process and not through the connection process.” Board staff submits

that inclusion of such a plan would be very important to customers as the plan provides a complete picture of the transmission system expansion in any particular area.

Hydro One stated that the exclusion of plans covers new or modified network facilities, as they are not part of the “connection facilities” referred to in Section 6.3.6 of the Code. Board staff submits that the exclusion of plans regarding new or modified network facilities could have an impact on options for requesting to connect (e.g., if the plan includes building a new Network Transmission Line in a certain area that may be an attractive option to a customer, but would be missed if the proposed exclusion was retained).

CONNECTION AND COST RECOVERY AGREEMENTS

12. Connection and Cost Recovery Agreements – Term of Agreements
Ref. CCRA (load version) / “Term” / p. 2

Issue

The term of the load version of the CCRA is such that it may be in force concurrently with the Connection Agreement (the “CA”) that is subsequently executed between the parties.

Analysis

The fact that the CCRA and the CA may be in force at the same time raises the potential for inconsistencies between the rights and obligations of the parties under the CCRA and their rights and obligations under the CA in relation to the same subject-matter. Board staff submits that the CA is intended to be a complete codification of the rights and obligations of the parties from the date of execution onwards. Board staff therefore submits that, to the extent that the CCRA coexists with the CA, it should be clear that in the event of an inconsistency between the two documents on the same subject-matter the CA governs. For this purpose, an inconsistency would include a situation where the CA makes provision for a right or obligation in relation to a particular subject-matter that is not captured by the CCRA. In addition, Board staff notes that certain provisions of the CCRA appear to have application only to the period that would already be covered by the CA. Board staff submits that it is unclear why provisions that appear to apply only apply post-connection are included in the CCRA at all.

13. Connection and Cost Recovery Agreements - By-Pass
- Ref.(a) CCRA (load version) /pp. 2 and 3/Right of Customer to By-Pass Existing Load Facilities/ Items 1. and 2.
 - Ref.(b) CCRA (load version) /p. 6/CUSTOMER CONNECTION WORK/EXISTING LOAD/TABLE and Notes explaining how “Existing Load” is Computed (Annual Average Monthly Peak Load)
 - Ref.(c) Board Policy Decision (RP-2002-0120) Dated June 8, 2004 /subsection 8.9.1/p. 104

Issue

The load version of the CCRA appears to introduce obligations that are inconsistent with TSC.

Analysis

Board staff submits that the section of the load version of the CCRA under the heading “Right of Customer to By-Pass Existing Load Facilities” reads like a minimum payment obligation indicating the load that a customer must maintain and a requirement to compensate Hydro One for lost revenue in the event that the load is not maintained. Board staff submits that this is not consistent with the Board Policy Decision and appears to allow for a form of bypass compensation that is not contemplated in the Code, as discussed in above in item 3 of these submissions. Board staff also submits that, if a transmitter considers that temporary load shifting is an area of concern that is not adequately addressed, the matter should be brought to the attention of the Board for consideration.

Board staff submits that, in the Table on page 6 of the CCRA, the algorithm for calculating “EXISTING LOAD” is inconsistent with the section 6.2.2 of the TSC to the extent it is designed to establish minimum load at any given existing delivery point. Under the TSC, the establishment of a level of load that is recognized as existing load occurs when system expansion is contemplated and a customer wishes to preserve its entitlement to a level of load established according to section 6.2.2 of the TSC, or when a customer bypasses an existing connection facility.

14. Connection and Cost Recovery Agreements – “Entire Agreement”

- Ref(a). CCRA (load version) / p. 3
- Ref(b). CCRA (generator version) / item VI(a) / p. 4

Issue

The CCRA states that it “constitutes the entire agreement between the parties with respect to the subject-matter of this Agreement, and supersedes all prior oral or written representations and agreements concerning the subject matter of this Agreement”.

Analysis

Board staff submits that transmitters are at all times required to comply with the Code and to satisfy their obligations thereunder. Board staff also submits that it should be clear that the transmitter's obligations under the Code apply equally during the period in which the CCRA is in force, to the extent that those obligations are applicable to activities conducted during that period. Board staff also submits that the "Entire Agreement" clause calls into question the application of the CCP to customers that have signed a CCRA.

15. Connection and Cost Recovery Agreements – Land Use Costs
Ref(a). CCRA (load version) /p. 4 / Hydro One Connection Work /
"Notes" under Parts 1 and 2
Ref(b). CCRA (generator version) / Schedule D / Note 7

Issue:

The subject "Notes" under the two referenced sections indicate that the cost associated with obtaining easements and other land rights from third parties are not included in the initial cost estimate but the actual cost of obtaining the easement is reflected in the final cost estimate and capital contribution

Analysis

Board staff submits that it is important that a customer be given the cost estimates associated with obtaining easements and other land rights from third parties in the initial cost estimate. The purpose of the "Contestability" provisions in the TSC is to allow a customer to compare the total cost offered by Hydro One with that from another service provider. Therefore, obtaining cost estimates of all components of a project serves comparability, transparency and could reduce future disputes.

16. Connection and Cost Recovery Agreements – Standard Terms and
Conditions
Ref(a). CCRA (load version) / Standard Terms and Conditions /
Section 14.2(a) and Section 28
Ref(b). CCRA (generator version) / Standard Terms and Conditions
/ Section 12.7

Issue

Sections 14.2(a) and 28 of the Standard Terms and Conditions of the load version of the CCRA and section 12.7 of the Standard Terms and Conditions of the generator version of the CCRA provide that in the event of an inconsistency between the Code and certain provisions of the CCRA, the Code governs.

Analysis

Board staff submits that the Code governs in the event of any inconsistency between the CCRA and the Code. Board staff therefore submits that the CCRA should contain a general provision to this effect, and that the application of that provision should not be limited to certain sections of the CCRA only.

17. Connection and Cost Recovery Agreements – Standard Terms and Conditions

Ref. CCRA (load version) / Standard Terms and Conditions / Section 14.2(c)

Issue

This section of the Standard Terms and Conditions of the load version of the CCRA relates to costs associated with work that is the subject-matter of Compliance Bulletin 200606.

Analysis

Board staff submits that the intention and implications of this section are not clear. Clarification is required from Hydro One in order for Board staff to better understand this section and confirm whether it is consistent with the Code.

18. Connection and Cost Recovery Agreements – Standard Terms and Conditions

Ref(a). IR #29

Ref(b). CCRA (load version) / Standard Terms and Conditions / Section 20, Section 29 and Section 34

Ref(c). CCRA (generator version) / item VI(b) / p. 4 / and Standard Terms and Conditions / Section 25

Issue

The dispute resolution provisions of the Standard Terms and Conditions of the CCRA differ from those of the CCP and do not in all cases allow a right of the parties to seek resolution of a dispute by the Board.

Analysis

In its response to Board staff interrogatory #29, H1N indicated that the dispute resolution provisions of the CCP apply to disputes arising under the CCRA. Board staff submits that this does not appear to be the case.

Section 20 of the Standard Terms and Conditions of the load version of the CCRA and section 25 of the Standard Terms and Conditions of the generator version of the CCRA stipulate that “Disputes” that arise once the Board has approved H1N’s CCP are to be determined in accordance with

the approved CCP. A “Dispute” is defined in the CCRA as a dispute with respect to any matter under any of the matters referred to in section 6.1.4 of the Code where either party is alleging that the other is seeking to impose a term that is inconsistent or contrary to the *Ontario Energy Board Act, 1998*, the *Electricity Act, 1998*, H1N’s transmission licence or the Transmission System Code, or refusing to include a term that or condition that is required to give effect to the Code. Section 29 of the Standard Terms and Conditions of the load version of the CCRA contemplates that certain matters will be determined by arbitration. Section 34 of the Standard Terms and Conditions of the load version of the CCRA and item VI(b) on page 4 of the generator version of the CCRA contemplate that all other disputes will be determined by the courts of Ontario. Section 12.1.1 of the Code requires that the transmitter’s dispute resolution procedure apply in relation to *any* dispute regarding the transmitter’s obligations under the *Ontario Energy Board Act, 1998*, the *Electricity Act, 1998*, the transmitter’s transmission licence, the Code or any of the transmitter’s connection procedures. Section 12.1.2 of the Code stipulates that parties have a right to bring any such dispute to the Board for resolution, subject only to section 12.1.4 of the Code. The definition of “Dispute” in the CCRA appears to limit the application of the dispute resolution procedure set out in the CCP (and hence the right to bring a matter to the Board for resolution) to only a sub-set of the possible disputes referred to in section 12.1.1 of the Code. Sections 29 and 34 of the Standard Terms and Conditions of the load version of the CCRA and section VI(b) of the Standard Terms and Conditions of the generator version of the CCRA contain different dispute resolution mechanisms (arbitration and action before the courts, respectively) which do not expressly contemplate the right of a party to bring the matter to the Board for resolution.

19. Connection and Cost Recovery Agreements – Standard Terms and Conditions

Ref(a). CCRA (load version) / Standard Terms and Conditions / Section 21

Ref(b). CCRA (generator version) / Standard Terms and Conditions / Section 26

Issue

Section 21 of the Standard Terms and Conditions of the load version of the CCRA and section 26 of the Standard Terms and Conditions of the generator version of the CCRA stipulate that H1N will not cease work or slow the pace of work without leave of the OEB if a “Dispute” arises.

Analysis

A “Dispute” is defined in the CCRA as a dispute with respect to any of the matters listed in section 6.1.4 of the Code where either party is alleging that the other is seeking to impose a term that is inconsistent or contrary

to the *Ontario Energy Board Act, 1998*, the *Electricity Act, 1998*, H1N's transmission licence or the Transmission System Code, or refusing to include a term that or condition that is required to give effect to the Code. Under section 12.1.3 of the Code, a transmitter cannot cease work or slow the pace of work without leave of the Board in relation to *any* dispute. Board staff submits that the scope of section 21 of the Standard Terms and Conditions of the load version of the CCRA and section 26 of the Standard Terms and Conditions of the generator version of the CCRA are narrower than the scope of section 12.1.3 of the Code and, as such, are inconsistent with the Code. Board staff also notes that other provisions of the CCRA (Schedule "A", Part 6 ("Scope") and section 16 of the Standard Terms and Conditions in the load version, and sections 2 and 14 of the Standard Terms and Conditions in the generator version) appear to contemplate that H1N may delay in completing the construction work. If and to the extent that the issues addressed in those provisions are the subject of a dispute between the parties, such delay would also appear to be inconsistent with section 12.1.3 of the Code.

20. Connection and Cost Recovery Agreements – Standard Terms and Conditions
Ref. CCRA (load version) / Standard Terms and Conditions / Section 29

Issue

Section 29 of the Standard Terms and Conditions of the load version of the CCRA states that if any of the transmission service rates are rescinded or the methodology materially changed, the parties agree to negotiate a new mechanism for the purposes of the CCRA.

Analysis

Board staff submits that, to the extent that this provision contemplates that true-ups will be calculated based on transmission service rates that are different from those that were used in carrying out the initial economic evaluation, the provision is inconsistent with the Code. Specifically, section 6.5.4 of the Code requires that, for true-up calculations, the transmitter must use the same methodology used to carry out the initial economic evaluation and the same inputs except for load. .

21. Connection and Cost Recovery Agreements – Standard Terms and Conditions
Ref(a). CCRA (load version) / Standard Terms and Conditions / Section 32
Ref(b). CCRA (generator version) / Standard Terms and Conditions / section 28

Issue

Under section 6.1.6 of the Code, the Board may amend a transmitter's connection procedures.

Analysis

The CCRA does not expressly contemplate the possibility of changes to the CCRA that may be required to reflect the exercise by the Board of its power to amend H1N's CCP. Board staff submits that this eventuality should be expressly contemplated in the CCRA. Board staff also submits that the CCRA should expressly contemplate circumstances where the parties may be required to amend the CCRA as a result of amendments made by the Board to the Code.

22. Connection and Cost Recovery Agreements – Standard Terms and Conditions
Ref. CCRA (load version) / Standard Terms and Conditions / Section 36

Issue

Section 36 of the Standard Terms and Conditions of the CCRA requires the customer to provide, or to authorize the IESO to provide, monthly bills associated with the transmission of electricity from the Existing Load Facilities and/or the Customer's Facilities.

Analysis

Board staff assumes that H1N requires the information referred to in section 36 of the Standard Terms and Conditions of the CCRA in order to monitor and address assigned capacity, contracted capacity, by-pass and true ups. If so, this section would appear to have application only after a CA has been signed. Board staff submits that it is unclear why H1N's information requirements are not adequately addressed in the Code and the CA.

23. Connection and Cost Recovery Agreements – Standard Terms and Conditions
Ref. CCRA (load version) / Standard Terms and Conditions / Section 39

Issue

Section 39 of the Standard Terms and Conditions of the CCRA requires the customer to notify H1N of any intended reductions in Average Monthly Peak Load prior to the reduction and provides for notification of the reduction to be given by H1N to other customers. The section also requires the customer to agree that this section will be a term of the CA.

Analysis

Board staff submits that it is unclear why this section is required in the CCRA when it appears to have application only after a CA has been signed. Board staff also submits that the CA is intended to be a complete codification of the rights and obligations of the parties from the date of execution onwards. While parties to the CA are allowed some flexibility to

include additional terms and conditions in the CA by mutual agreement, Board staff does not consider it appropriate for H1N to stipulate to this term and condition in the CCRA.

24. Connection and Cost Recovery Agreements – References to Code
Ref. CCRA / various sections

Issue

Various sections of the CCRA refer to the Code. In some cases, the reference is to the *Transmission System Code* and in others it is to the *Transmission System Code* dated July 25, 2005.

Analysis

The CCRA defines the term “*Transmission System Code*” as the Code “as it may be amended, revised or replaced in whole or in part from time to time”. Section 29 of the Standard Terms and Conditions of the generator version of the CCRA contains a provision that states that, unless otherwise specified, a reference to (among other things) a Board approved document includes a reference to such document as amended, restated or re-enacted from time to time. It is not clear whether references in the CCRA to the “*Transmission System Code* dated July 25, 2005” are intended to restrict the reference to the Code to the Code as it existed on July 25, 2005 (i.e., without regard to any amendments).

All of which is respectfully submitted.