

Submissions of Board Staff on the Connection Procedures of Great Lakes Power Limited

Introduction

The following are the submissions of Board staff on the proposed Customer Connection Procedures (“CCP”) filed with the Board by Great Lakes Power Limited (“GLPL”) 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 GLPL.

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 #13

Ref.(b) GLPL-CCP/ Procedure P2 - Available Capacity / subsection 4.1.2 & 4.1.3/p.22

Ref.(c) IR #14

Ref.(d) GLPL-CCP/ Procedure P2- Available Capacity /subsection 9.2.2(p. 25) & subsection 9.7.3 (p.26)

Issue

The requirement that demonstration of need must include a binding 5-year load forecast is inappropriate in light of the available capacity provisions of the TSC.

Analysis

The above sections of the CCP require, as demonstration of need for assigned capacity, that the customer provide not only a 5-year load forecast but also a letter signed by a person who can “bind” the customer to the load forecast. Board staff does not take issue with the requirement to provide a 5-year load forecast, although the need for a forecast that covers this long a period is not clear given the provisions of the TSC that allow access to unused assigned capacity by other customers in the event that the customer to whom the capacity has been assigned does not take it up within one year.

Board staff submits, however, that it is inappropriate to require a customer to “bind” itself to a 5-year load forecast that is provided as demonstration of need. It is also not clear what consequences GLPL expects will flow from a customer having “bound” itself to the load forecast if it should turn out to be the case that the customer’s actual load differs from the load forecast.

SECURITY DEPOSIT

2. Security Deposit

Ref(a). IR# 18

Ref(b). GLPL-CCP/ Procedure P3 – Security Deposit/ Sections 7/ p.30

Ref(c). CCRA / Section 24

Issue

These section contemplate that GLPL can increase the amount of a security deposit due to a “material change in financial risk” of the customer. Absent clarification as to the circumstances in which this applies, these section are not consistent with the TSC.

Analysis

In its response to Board Staff interrogatory IR# 18, GLPL explained that the purpose of the "Additional Security Deposit" provision is to protect GLPL in circumstances where an affiliate guarantee has been provided instead of a deposit and a "material change in financial risk" occurs resulting in GLPL requiring a different form of security. Board staff submits that this should be clarified in the CCP and CCRA, as the application of these provisions in the absence of clarification would be inconsistent with the TSC.

CUSTOMER IMPACT

3. Customer Impact

Ref.(a) IR #7

Ref.(b) GLPL-CCP/ Step 6/ subsection 6.2.2/ p.14

Ref.(c) IR #20

Ref.(d) GLPL-CCP/Procedure P4 – Customer Impact Assessment/
Section 3 (3.1.4 and 3.1.5)

Issue

GLPL's requirement in these sections of the CCP places the responsibility on the connecting customer to verify that equipment modifications of other customers are in place. This requirement is not consistent with section 6.4.5 of the TSC.

Analysis

Board staff raised these questions in IR# 7 and IR#20, as the sections of the CPP place responsibility on the connecting customer to verify that the equipment modifications of other customers are in place. The ESA is presumed to be in a position to evaluate whether or not the identified customers have in fact modified their equipment adequately to safely meet the new system conditions such as increased short circuits, as specified in the CIA.

GLPL, in its response to IR# 7 and IR #20, acknowledged that it is responsible for verifying compliance based on a review of the ESA connection approval and/or documentation of the modifications provided by the affected customer, but believes that the TSC does not preclude a customer from being tasked with coordination, planning and scheduling of the affected customer's upgrades.

Board staff submits that these are obligations that are not required or permitted by the TSC to be imposed on customers. Under the provisions of the TSC relating to Customer Impact Assessments, it is clear that responsibility for CIA-related matters rests with the transmitter.

4. Customer Impact

Ref.(a) IR #8

Ref.(b) GLPL-CCP/ Step 6/ subsection 6.2.3/ p.14

Issue

Section 6.2.3 of the CCP requires the submission of a covering letter signed and approved by a professional engineer confirming that the facility was designed, installed and tested to all applicable standards. This requirement is duplicative of other requirements set out in the TSC.

Analysis

Board staff questioned the need for this section of the CCP in its IR# 8, as it appears to be duplicative of other requirements. The connecting customer must not only provide assurance through various connection procedures including the commissioning process, but must also sign a Connection Agreement with GLPL that covers design standards and operating protocols.

GLPL's response to Board staff's IR# 8 references section 4.3.3 of the TSC as the basis for the additional requirement of a covering letter signed and approved by a professional engineer confirming the facility was designed, installed and tested to all applicable standards.

Board staff submit that this was not the intention of section 4.3.3, and believe that GLPL's requirement for a completed and signed Confirmation of Verification Evidence Report (COVER) Form along with the mandatory Connection Agreement should be sufficient to ensure the adequacy of the customer's facilities.

ECONOMIC EVALUATION

5. Economic Evaluation

Ref.(a) IR # 25

Ref.(b) GLPL-CCP/ Procedure P5 – Economic Evaluation/
Section 6/p.44

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

Issue

The application of direct and indirect overheads for connection projects is important and needs to be consistent with the TSC, and applied in a predictable manner in regard to determining transfer price and capital cost.

Analysis

Board staff submits that, to be consistent with the Board Policy Decision and the intent of the TSC, any cost estimate submitted by GLPL for a job or a service to a customer must include all applicable direct and indirect overheads.

Board staff interrogatory IR# 25 explored the following: (1) under alternative bid, the connecting customer is required to pay the transmitter for inspection, testing and commissioning by the transmitter. It is expected that the customer would normally include these costs in determining the project's transfer price; and (2) what is the rationale for adding additional costs and overheads to the transfer price as described in section 6.2 of GLPL's CCP to determine GLPL's final capital cost?

In its response to IR #25, GLPL indicated that its approach would eliminate the need to bill the customer for these costs if it were simpler to just add the costs to the transfer price.

CONTESTABILITY

6. Contestability

Ref.(a) IR #27

Ref.(b) GLPL-CCP/ Procedure P6 – Contestability/ Section 5/p.49,50

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

Issue

The language in section 5.5.4 of the CCP is not consistent with the Board Policy Decision or the intent of the TSC, as GLPL does not include the overhead components to the capital cost estimate submitted to a customer who chooses to build a connection facility and transfer ownership to GLPL.

Analysis

Board staff submits that, to be consistent with the Board Policy Decision and the intent of the TSC, any cost estimate submitted by GLPL for a job or a service to a customer must include all applicable direct and indirect overheads.

GLPL's response to Board staff IR# 27, covering the issue in regard to section 5.5.4, is that its approach of not including overheads eliminates the need to bill the customer for these costs where it is simpler to add the costs to the transfer price.

DISPUTE RESOLUTION

7. Dispute Resolution

Ref.(a) IR #28

Ref.(b) GLPL-CCP / Procedure P8 - Dispute Resolution / pp. 55-58

Issue

The proposed CCP does not contemplate that arbitration decisions or settlement minutes will be made public.

Analysis

In its response to Board staff interrogatory #28, GLPL indicated that it does not intend to make these matters public as it considers them to be private business dealings between itself and the customer. GLPL goes on to state that if the Board were to require GLPL to make such information public, GLPL would do so if the connecting customer consents to such disclosure and if all confidential information were redacted. Board staff acknowledges that the Code does not require that these matters be made public except where the dispute has arisen under a Connection Agreement. Nonetheless, Board staff submits that it would be in keeping with the provisions of the Connection Agreement for arbitration decisions and settlement minutes to be made public (subject to redaction of confidential information). Board staff also submits that transmitters should maintain records of all disputes and that those records should be available to the Board upon request.

8. Dispute Resolution

Ref.(a) IR #29

Ref.(b) GLPL-CCP / Procedure P8 - Dispute Resolution /
pp. 56-57 / subsection 2.5.1

Issue

The proposed CCP is unclear regarding whether joint agreement of the parties is required to submit a dispute to arbitration.

Analysis

In its response to Board staff interrogatory #29, GLPL proposed a modification to section 2.5.1 to eliminate the inconsistency created by the reference to arbitration being by "joint agreement" in that section relative to section 2.4.1. However, Board staff would appreciate confirmation from GLPL that submission to arbitration can be unilateral in cases where there is not yet a contractual arrangement in place between the parties.

9. Connection and Cost Recovery Agreements – Term of Agreement
Ref. CCRA (load version) / Recitals / Section 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. Board staff notes that section 47 of the CCRA states that if any provision of the CCRA is inconsistent with the Code, the provision of the CCRA shall be deemed to be amended so as to comply with the Code. It is not clear whether GLPL intends for this reference to the Code to include a reference to the CCRA. It is also not clear whether GLPL intends that an “inconsistency” 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.

10. Connection and Cost Recovery Agreements – Security Requirements
Ref. CCRA / Section 10.2, Section 16(d) and Section 21.2

Issue

Sections 10.2, 16(d) and 21.2 of the CCRA contemplate circumstances in which GLPL may delay in completing the construction work.

Analysis

These sections appear to contemplate that GLPL 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 appear to be inconsistent with section 12.1.3 of the Code, which prohibits a transmitter from ceasing work or slowing the pace of work without leave of the Board in the event of a dispute.

11. Connection and Cost Recovery Agreements – Security Requirements
Ref. CCRA / Section 24

Issue

Section 24 of the CCRA contains provisions that do not appear to be consistent with the Code.

Analysis

Section 6.3.11(a) of the Code allows the customer to select the type of security deposit to be provided. Section 24 of the CCRA states that security must be in a form acceptable to GLPL and may consist of certain specified types of security. To the extent that the reference to security being “in a form acceptable to GLPL” (and similarly the reference in Schedule D of the generator version of the CCRA to a security deposit being “as selected by the [customer] and agreed to by GLPL”) is intended to allow GLPL to require that a particular type of security (cash, letter of credit, etc.) be provided in any given case, Board staff submits that this would be inconsistent with section 6.3.11(a) of the Code.

Section 24 of the CCRA states that the customer is entitled to interest in relation to a security deposit if the Customer is not in default under the CCRA. Section 6.3.11(b) of the Code states that interest is required to be paid upon returning a security deposit that is in the form of cash. The Code does not make the payment of interest conditional on the customer not being in default under an agreement with the transmitter. Board staff therefore submits that the reference to the customer not being in default in section 24 of the CCRA is inconsistent with the Code.

Sections 6.3.5(b), 6.3.9 and 6.3.10 of the Code identify when a security deposit is to be returned to a customer. Section 24 of the CCRA refers to a security deposit being returned to the customer “once all obligations are fulfilled”. To the extent that the reference to “once all obligations are fulfilled” refers to circumstances that are not contemplated in sections 6.3.5(b), 6.3.9 or 6.3.10 of the Code, Board staff submits that this would be inconsistent with the Code except where retention of the security deposit is permitted in accordance with section 6.3.11(c) of the Code.

Section 24 of the CCRA makes reference to the occurrence or deemed occurrence of an Event of Default. Board staff submits that clarification is required as to what contemplates a “deemed occurrence” of an Event of Default.

12. Connection and Cost Recovery Agreements – Connection Agreement and Transmission System Code
Ref. CCRA / Section 30

Issue

Section 30 of the CCRA states that the parties agree to make such amendments to the CA as may be necessary to ensure compliance with the mandatory requirements of the Code.

Analysis

Section 9.2 of the CA states that that the parties may by mutual agreement amend the CA to reflect changes that may from time to time be made to the Code during the term of the CA. Board staff submits that section 30 of the CCRA eliminates the element of mutual agreement in relation to amendments to the CA that is contemplated in section 9.2 of the CA. Board staff therefore does not consider it appropriate for GLPL to stipulate to this term and condition in the CCRA.

13. Connection and Cost Recovery Agreements – General
Ref. CCRA / Section 35

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 the “Entire Agreement” clause calls into question the application of the CCP to customers that have signed a CCRA.

14. Connection and Cost Recovery Agreements – General
Ref. CCRA / Section 38

Issue

Section 38 provides that each party agrees that it has participated in the drafting of the CCRA.

Analysis

The CCRA is a template document that has been prepared by GLPL and filed with the Board. In addition, it is a template document that is the subject of a regulatory proceeding. Board staff submits that, in that context, section 38 of the CCRA is inappropriate.

15. Connection and Cost Recovery Agreements – General
Ref. CCRA / Section 39

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 GLPL's CCP. Board staff submits that this eventuality should be expressly addressed in the CCRA.

16. Connection and Cost Recovery Agreements – General
Ref(a). IR # 28
Ref(b). CCRA / Section 42

Issue

The dispute resolution provisions 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 #28, GLPL confirmed that the dispute resolution provisions of the CCP apply to disputes arising under the CCRA. Section 42 of the CCRA stipulates that "Disputes" that arise before the existence of OEB-Approved Connection Procedures may be referred to the Board for determination. A "Dispute" is defined as a dispute with respect to any matter under 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*, GLPL's transmission licence or the Transmission System Code. Section 6.1.4 of the Code states that a dispute between a transmitter and a customer that arises in relation to any of the matters referred to in section 6.1.4 of the Code may be submitted to the Board for determination in either of two circumstances. One circumstance is referred to in the CCRA definition of "Dispute". The second (where a party is refusing to include a term or condition that is required to give effect to the Code), however, is not. Board staff therefore submits that section 42 of the CCRA is not consistent with the Code in relation to disputes that arise prior to approval by the Board of GLPL's connection procedures.

In relation to disputes arising once GLPL's connection procedures have been approved, Board staff submits that the definition of "Dispute" in the CCRA appears to limit the application of the CCP dispute resolution procedure to only a sub-set of the possible disputes referred to in section

12.1.1 of the Code. It is also therefore not clear how disputes that do not allege that a party is seeking to impose a term that is inconsistent with the statutes and regulatory instruments referred to in section 42 of the CCRA are to be resolved. In addition, Board staff notes that section 20.1 of the CCRA appears to apply to disputes regarding the allocation of costs, and it is not clear whether this would be incremental to pursuit of the dispute resolution process set out in the CCP.

17. Connection and Cost Recovery Agreements – Definitions

Ref. CCRA / Definition of “GLPL Connection Work – Recoverable” and “GLPL Connection Work – Recoverable-Network Facilities”

Issue

The definitions used in the CCRA create uncertainty in relation to references to the recovery by the transmitter of costs associated with the construction or modification of network facilities.

Analysis

Under section 6.3.5 of the Code, recovery by a transmitter of costs for network construction or modifications in exceptional circumstances is contingent on receiving direction from the Board. The term “GLPL Connection Work – Recoverable” makes reference to the recovery of, among others, “in exceptional circumstances Network Facilities where the costs will be allocated to the Generator”. That definition does not, however, make reference to the direction of the Board. The term “GLPL Connection Work – Recoverable – Network Facilities” makes reference to the recovery of work associated with “Network Facilities (provided a direction is obtained from the OEB)”, but makes no reference to exceptional circumstances. Board staff submits that these two definitions create uncertainty in relation to the nature of the costs that can be recovered from a customer in relation to the construction or modification of network facilities.

All of which is respectfully submitted.