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NOTICE OF AMENDED PROPOSAL TO ISSUE A CODE

PROPOSED REVISED TRANSMISSION SYSTEM CODE

BOARD FILE NO.: RP-2004-0220

TO: All Participants in Proceeding RP-2004-0220
All Other Interested Parties

Background

By Notice of Proposal to Issue a Code dated December 17, 2004, the Ontario Energy Board (the "Board") proposed to issue a revised Transmission System Code (the "Revised Code") under section 70.2 of the *Ontario Energy Board Act, 1998*. Relative to the original version of the Transmission System Code issued by the Board on July 14, 2000 (the "July 2000 Code"), the Revised Code incorporates changes that were designed principally to implement the Board's June 8, 2004 decision in proceeding RP-2002-0120 (the "Phase One Decision"), which was initiated by the Board to conduct a broad-based review of the July 2000 Code. The Revised Code also incorporates changes designed to clarify and, in some cases, modify the rights and obligations of transmitters and customers alike.

The Board received 20 submissions on the Revised Code. The Board has considered the submissions received from parties on this matter and is now proposing amendments to the Revised Code.

The Board's Amended Proposal

The following is a synopsis of some of the more significant amendments to the Revised Code that are proposed by the Board. It is intended to provide only an overview of certain of the proposed amendments. All of the Board's proposed amendments to the Revised Code are included in the clean and comparison versions of the amended proposed Revised Code that are attached to this Notice of Amended Proposal.

The proposed amendments are designed to serve various purposes, including:

- addressing certain issues that arise as the result of the transition from the July 2000 Code to the Revised Code;
- enhancing the degree of symmetry between customer obligations and transmitter obligations;
- incorporating additional provisions arising out of the decision of the Board in proceeding RP-1999-0057/EB-2002-0501 (the joint application by Hydro One Networks Inc., Ontario Power Generation Inc. and Bruce Power L.P.);
- allowing additional flexibility in relation to the exercise of certain rights or the performance of certain obligations, while clarifying the scope of others; and
- minimizing the likelihood of disputes arising between a transmitter and its customers.

In addition, largely in response to comments received on the original version of the Revised Code, the Board is proposing amendments that address gaps, inadequacies or issues in relation to the Revised Code.

As a general rule, the Board is not proposing amendments to the technical provisions of the Revised Code (sections 8, 9 and 10 of the body of the Revised Code and Schedules A, E, F and G of both versions of Appendix 1 (the form of Connection Agreement)). By way of exception, amendments are being proposed:

- to sections 8.2.1 and 10.7 of the Revised Code for consistency with section 1.7 of Schedule G of both versions of Appendix 1; and
- to a limited number of the Schedules of both versions of Appendix 1 to incorporate additional provisions arising out of the decision of the Board in proceeding RP-1999-0057/EB-2002-0501.

The Board's intention remains to invite stakeholders to establish a working group to consider the need for, and where appropriate to recommend, changes to the technical provisions of the Revised Code.

The Board acknowledges the study filed by Hydro One Networks Inc. as part of its submissions on the Board's December 17, 2004 Notice of Proposal. That study contains a discussion of the potential rate implications of the Board's approach to the bypass of transformation facilities. The issue of bypass in relation to a customer's existing load was addressed in the Board's Phase One

Decision, where it was determined that such bypass should be permitted if compensation is paid based on the net book value of the bypassed assets. The Board remains of the view that this approach is appropriate and does not consider it necessary to revisit that approach at this time. To the extent that this approach may have an impact on pooled transformation rates, a transmission rate proceeding is the appropriate forum in which to address that impact.

The Board also anticipates that potential bypass situations will more often than not involve bypass by distributors. Where a distributor wishes to bypass a transmitter's existing transformation facility in favour of building its own, there is opportunity for the Board to assess the prudence of such bypass in terms of the overall economic efficiency to end-use customers.

Overview of Proposed Amendments

1. Transition to the Revised Code

(a) Application of Revised Code to Existing Customers

A number of comments received in relation to the original version of the Revised Code highlighted the need for additional clarity around the transition from the July 2000 Code to the Revised Code, and in particular the issue of the application of the revised versions of Appendix 1 to existing customers.

The Board is of the view that the preferred approach in this regard is for all transmitters and all customers to be subject to the same set of rules on a going-forward basis. In addition to promoting fairness across all customers, this approach will provide greater certainty to transmitters and customers alike as to the rules that will govern their relationship once the Revised Code has come into effect. However, the Board also believes that elements of existing agreements that have been freely negotiated between the parties should be preserved to the extent that they are not contrary to or inconsistent with the Revised Code.

Accordingly, the Board is proposing amendments to the Revised Code to clarify that, as of the date of coming into effect of the Revised Code (now defined in the Revised Code as the "Code revision date"), existing connection agreements will be deemed to be amended to conform to the applicable version of Appendix 1 of the Revised Code that results from this proceeding. Thus, as of the Code revision date the relationship between the parties will, with two exceptions, be governed on a going-forward basis by the applicable version of Appendix 1 of the Revised Code. The two exceptions are:

- provisions that have been freely negotiated between the parties and that are not contrary to or inconsistent with the Revised Code will remain in effect. It is also clarified that such provisions will not

be considered to be inconsistent with the Revised Code simply because the Revised Code is silent on the point; and

- provisions of existing connection agreements that relate to parallel provisions in the applicable version of Appendix 1 that are required to be completed by the parties will remain in effect.

Consistent with this approach, it is also confirmed that a provision in an agreement entered into before the Code revision date that requires the parties to realign their relationship in a manner consistent with the Revised Code remains valid.

The above approach is now embodied in sections 3.0.7 to 3.0.9 of the Revised Code. Similarly, the Board is proposing amendments to section 4.1.3 of the Revised Code to provide that, where a customer does not have an executed connection agreement, the parties will as of the Code revision date be bound by the applicable version of Appendix 1 of the Revised Code. It is the expectation of the Board that all future connections will be the subject of an executed connection agreement, and it is not intended that section 4.1.3 will apply to facilities that are connected after the Code revision date.

The Board is also proposing related amendments to section 3.0.6 of the Revised Code to clarify that the above approach is not intended to obligate a transmitter to conduct a new economic evaluation for existing customers. The amendments in this regard are expressed as being without prejudice to the resolution of any disputes in relation to existing economic evaluations. The Board's intention is, however, that the provisions of the Revised Code relating to contracted capacity and true-ups should apply to existing customers (determined on the basis of existing economic evaluations), and the Board is therefore proposing to amend section 6.5.3 accordingly by deleting the reference to June 8, 2004.

(b) Other

The Board recognizes that parties may need the benefit of time in order to arrange their affairs and adjust to certain requirements of the Revised Code. Accordingly, the Board is proposing to incorporate transitional provisions into the Revised Code as follows:

- proposed amendments to sections 4.5 and 6.1 that allow a transmitter a period of one year from the Code revision date to file its delivery point performance standards and its connection procedures for approval by the Board. It is anticipated that the one-year period will provide sufficient time for a transmitter to complete these documents and to obtain input from all interested stakeholders prior to submitting them to the Board. The proposed amendments include provisions that allow the Board to approve

incomplete performance standards or connection procedures pending filing of the completed documents, and to address the manner in which transmitters are to process requests for connection pending approval of their connection procedures; and

- proposed addition of a new section 14.3.1 to both versions of Appendix 1 of the Revised Code that acknowledge that time may be required for the parties to provide certain information to one another; and
- proposed amendments to section J.3.2 of the load version of Appendix 1 that defers implementation of the obligations in relation to annual reporting on load changes.

2. *Symmetry Between Customer Obligations and Transmitter Obligations*

The Board acknowledges that, in certain instances, a transmitter may have difficulty meeting its obligations under the Revised Code in the absence of corresponding or supporting customer obligations. The Board is therefore proposing amendments to both versions of Appendix 1 of the Revised Code to address this issue. These include proposed amendments to section 24.1 and Schedule I of both versions of Appendix 1. The Board is also proposing amendments to Schedule J of the load version of Appendix 1 to clarify or strengthen a load customer's obligations in relation to its load forecasts, and to require load customers to give the transmitter notice of their intention to bypass transmission facilities.

3. *Incorporation of Additional Provisions from RP-1999-0057/EB-2002-0501*

In the original version of the Revised Code, the Board incorporated a number of provisions arising out of the decision of the Board in proceeding RP-1999-0057/EB-2002-0501, with the effect of extending the application of these provisions to all customers. The Board is now proposing to amend the Revised Code to incorporate additional provisions arising out of that proceeding which relate to the technical provisions of the Revised Code. These include proposed amendments to Schedule A of the generator version of Appendix 1 and to Schedules F and G of both versions of Appendix 1. In addition, section 20.5.4 of the load version of Appendix 1 has been amended for consistency with the same section of the generator version of Appendix 1.

4. *Other*

The Board is proposing other amendments to the Revised Code to address gaps, inadequacies or issues identified in the comments received on the original Revised Code. These include amendments that:

- require a customer to demonstrate to the reasonable satisfaction of the transmitter that a reduction in load has resulted from renewable embedded generation, energy conservation, energy efficiency or load management activities. This is necessary in order to provide some objective basis upon which the transmitter can treat such reductions in load in the manner required by the Revised Code (sections 4.2.3, 6.5.10 and 11.2.3 and section J.2.4 of Schedule J of the load version of Appendix 1);
- clarify that facilities are required to meet not only the performance standards set out in Appendix 2 of the Revised Code but also the technical requirements of the Revised Code, recognizing that this has the effect of deeming facilities that were procured or ordered prior to May 1, 2002 to be compliant with both the basic general performance standards set out in Appendix 2 of the Revised Code and the other technical requirements of the Revised Code (sections 4.3.2, 4.6.1 and 4.6.2 and section 24.2 of both versions of Appendix 1);
- require a party that is responsible for the need to reschedule testing, commissioning or inspection activities to pay the reasonable costs incurred by the other party in relation to the rescheduling. The intent of this provision is to minimize the likelihood of disputes arising between the parties in relation to the scheduling of activities that a transmitter may attend at or participate in (sections 4.3.4 and 6.1.14 and sections 24.4, 24.6 and 28.2.2 of both versions of Appendix 1);
- require a transmitter to include timelines in its connection procedures (section 6.1.4);
- refine the rules relating to available capacity to minimize the ability of a customer to manipulate its load for assigned capacity purposes and to reduce a transmitter's obligations in relation to notice of expansion studies and the reconfiguration of load so that these obligations are more commercially reasonable (sections 6.2.2 and 6.2.15);
- refine the rules relating to cost responsibility for new and modified connections. In addition to clarifying the parameters of an economic evaluation, it is proposed to require a transmitter to give notice of its intention to apply to the Board for direction in relation to capital contributions for network facilities. It is also proposed to clarify that a transmitter may retain all or a part of a security deposit where the customer fails to connect its facilities to new or modified connection facilities constructed for that customer and to provide

additional flexibility in relation to the allocation of costs where the need for a new or modified facility is triggered by more than one customer (sections 6.3.1, 6.3.2, 6.3.5, 6.3.11, 6.3.14 and 6.3.15);

- limit the circumstances in which a transmitter is required to carry out a customer impact assessment to situations where a system impact assessment is required or where the transmitter determines that the connection may have an impact on existing customers connected to the applicable facility (section 6.4.3);
- provide a transmitter with additional flexibility in determining the financial risk associated with a proposed connection (section 6.5.2 and Appendix 4);
- refine the rules relating to contestability to clarify that design work is uncontestable if the connection facilities will be transferred to the transmitter and to stipulate that a customer that chooses to carry out contestable work must carry out all of that work (section 6.6.2);
- require a transmitter to give notice of a customer's decision to bypass the transmitter's facilities to all relevant connected customers (sections 6.7.11 and 11.2.2);
- grandfather existing agreements between neighbouring Ontario transmitters for a period of five years (section 6.8.2);
- clarify the role of the Board in relation to the resolution of connection-related disputes (section 12.1.4);
- reflect the commercial realities of project financing of customer facilities (sections 6.2, 19.4, 21.3 and Schedule C of both versions of Appendix 1);
- allow the parties additional flexibility in arranging work on facilities (sections 27.10.5 to 27.10.8 of both versions of Appendix 1);
- require that the parties bear their own costs and expenses associated with switching activities, noting that the approach that is now being proposed represents a departure from the treatment of this issue as set out in the Board's Phase One Decision (section 27.6.3 of both versions of Appendix 1); and
- make provision for additional options in relation to settlement for transmission service charges and the presentment of information (Schedules B and D of both versions of Appendix 1 and Schedule J of the load version of Appendix 1).

Anticipated Costs and Benefits

The purpose of the Revised Code remains the same under the amended proposal described in this Notice of Amended Proposal as it was under the original proposal issued on December 17, 2004. The principal purpose of the Revised Code therefore remains that of reflecting the Board's Phase One Decision.

The amendments now proposed by the Board are expected to provide additional certainty and clarity for transmitters and their customers in relation to the rules that will govern their relationship on a going-forward basis; to create enhanced symmetry in the rights and obligations of the parties; and to better reflect certain commercial and practical realities.

Thus, the amendments now proposed by the Board are anticipated to contribute in a positive way towards achieving the objectives of the Revised Code. As noted in the Board's December 17, 2004 Notice of Proposal, those objectives are:

- greater clarity and transparency in the relationship between transmitters and their customers;
- a uniform and consistent approach to customer processes;
- minimizing disincentives for new generation and energy conservation;
- greater accountability for transmitters and customers;
- a fairer allocation of costs; and
- improved transparency in relation to the exchange of information.

The Board believes that the following description of anticipated costs set out in the Board's December 17, 2004 Notice of Proposal remains applicable when considering the Revised Code in association with the amendments that are now being proposed:

In clarifying and rationalizing the relationship between transmitters and their customers, the Revised Code includes new methods by which the financial and other obligations of the parties will be defined. In some instances, use of these methods may increase the costs incurred by, or decrease the revenues available to, transmitters. For example, the provisions of the Revised Code relating to bypass may have this effect. In other circumstances, customers may face higher costs or extended obligations. The Board anticipates, however, that ratepayers will achieve

an overall benefit from lower energy costs and more effective and efficient transmission systems. The Board also anticipates that parties will benefit from the clarifications that have been included in the Revised Code, which will allow parties to have a clearer understanding of their respective rights and obligations.

The Board remains of the view that the Revised Code, including the amendments proposed under this Notice of Amended Proposal, reflects an appropriate balancing of the interests of transmitters in relation to the management, operation and reliability of their transmission systems and the interests of customers in relation to the efficient use of electricity and of transmitter-owned resources. The Board also remains of the view that the anticipated benefits of the Revised Code outweigh any costs that might be incurred or borne.

Coming into Force

The Board is now proposing that the Revised Code come into effect on the date on which the Revised Code is published in the *Ontario Gazette*.

Invitation to Comment

All interested parties are invited to make written representations on the Board's amended proposal. The Board asks that any person wishing to provide written representations on the Board's amended proposal **confine their comments** to the amendments identified in the attached comparison version of the amended proposed Revised Code.

Any person who wishes to make a written representation with respect to the Board's amended proposal must file ten paper copies of the representation, and an electronic copy in both Adobe Acrobat (PDF) and Word, with the Board Secretary by **4:30 pm on June 16, 2005**. Electronic copies may be submitted on diskette or by e-mail to boardsec@oeb.gov.on.ca. Your submission must quote file number **RP-2004-0220** and include your name, address, e-mail address and fax number.

The Board requests that the representation specifically reference the relevant sections of the amended proposed Revised Code.

Clean and comparison versions of the amended proposed Revised Code and all written representations received by the Board with respect to the amended proposed Revised Code will be available for public inspection on the Board's website at www.oeb.gov.on.ca and at the office of the Board during normal business hours.

If you have any questions regarding the Revised Code, please contact Gordon Ryckman by phone at (416) 440-8109 or toll free at 1-888-632-6273, or by e-mail at gordon.ryckman@oeb.gov.on.ca.

DATED at Toronto, June 2, 2005.

ONTARIO ENERGY BOARD

John Zych
Board Secretary

Attachments:

Amended Proposed Transmission System Code (clean version)

Amended Proposed Transmission System Code (comparison version showing changes against December 17, 2004 version)