Synopsis of Board Decision
Transmission System Code Review: Phase 1 (RP-2002-0120)
Changes to the Policy Framework

INTRODUCTION

The Transmission System Code ("the Code") sets out the electricity transmitters' obligations with respect to its customers. It includes a Connection Agreement which covers the technical and commercial responsibilities of transmitters and their customers. The Code also addresses the transmitters' standards for operating, managing and expanding their transmission system.

The purpose of this document is to provide a brief synopsis of the salient aspects of the Decision in an accessible format. It is intended to provide an overview of the Decision and to place aspects of it in an appropriate context. For the specific findings and the reasoning supporting those findings, recourse must always be made to the Decision itself and all matters of interpretation are dependent on the words of the Decision proper and not this synopsis.

The Board had received numerous expressions of concern from various stakeholders regarding the interpretation and application of the Code, particularly as it relates to connection facilities. This included applications for changes to the Code from some parties. The Board then decided that the Code, in its current form, was not sustainable and a broader review was needed. There was too much that was left open to interpretation and, therefore, the Code needed to be tightened-up to enhance the level of regulatory certainty for participants in the Ontario electricity market.

On June 14, 2002, the Board published a Notice of Proceeding, on its own motion, indicating its intent to undertake this review of the Code. The Notice requested that interested parties provide a description of their concerns.

The Board reviewed the submissions and subsequently determined that it would be best to divide the proceeding into two phases; Phase 1 dealing with *policy* issues and Phase 2 addressing *implementation* issues as well as issues arising out of the applications filed.

On August 30, 2002, the Board then issued a number of focused questions associated with the six policy issues discussed below to solicit further stakeholder input.

In order to further facilitate the process, the Board issued a set of principles and 41 preliminary propositions for the Phase 1 issues on April 14, 2003. The intent was to achieve a more focused discussion of the issues and provide a vision of where the Board wanted to take the Code.

A Settlement Conference was also held on September 9 - 16, 2003 to seek consensus, where possible, and develop workable alternatives for the Board's consideration. This involved seven specific issues including a definition of embedded generation and determining the remaining value of a transmission asset.

The Board's Decision addresses the following Phase 1 policy issues: (1) Available Capacity; (2) Transmission System Bypass; (3) Cost Responsibility; (4) Contestability; (5) Economic Evaluation; and (6) Contractual Issues.

The following provides an overview of the more significant findings of the Board in the Decision. Please see the body of the Decision for a full discussion of all the Board's findings and analysis as well as comments of the parties involved. This is organized under the six overlying policy issues mentioned above.

POLICY ISSUES

Providing clarification about some of the terms used in this appendix may assist in better understanding this document.

- References to "customer" throughout this appendix means a customer directly connected to the transmission system and includes electricity consumers, generators and distributors (i.e., not a customer of a distributor).

- The term "load" essentially means a customer's level of electricity demand (e.g., new load means a customer's additional demand above their current level).

- There are different types of transmission assets. Transmission "network" assets benefit all Ontario electricity consumers while "connection" assets are only used by a specific customer or group of customers. An analogy that may provide a better understanding is the network assets are similar to the highways we all drive our vehicles on, while connection assets are like the connecting roads

only certain drivers use to get to the highway. The Code focuses primarily on connection (i.e., transformation and line) assets.

1. Available Capacity

Available capacity is basically the remaining amount of capacity on a transmission connection asset that is not required to meet the expected needs of the current customer(s). For a more precise definition, please see the body of the Decision.

Facilitating Competition in the Transmission Connections Market

The Board decided that there was a need to treat *line* and *transformation* connection facilities differently in terms of the following.

Transformation Connections

The Board took the view that a transmitter should not have an automatic right to assign available capacity to service *new* customer load where it involves transformation connection facilities.[1] Accordingly, a customer opting to build its own such facilities to meet new load does not constitute duplication or bypass in specific circumstances. This allows for greater competition which should lead to more economic efficiency on the part of the transmitter without resulting in any uncompensated stranding of connection assets. It also enhances customer choice. However, this will only apply where that new load has not been specifically part of a customer's forecast of its needs included in a contract signed by both parties. Transmitters build the connection assets based on the individual customer forecasts and customers must be held accountable.

If a customer chooses to build its own new transformation facilities, they may also be used to supply the customer's *existing* load if the customer adequately compensates the transmitter for the loss of that customer's load. How the amount of compensation will be determined is discussed below.

An issue arises if a *distributor* transfers *existing* load from the transmitter's transformation facilities. For example, if a distributor similarly compensated the transmitter as discussed above, unlike an end-use

[1] The method to be used to distinguish between a customer's *new and existing* load is fully explained in the accompanying Decision. It is referred to as the Capacity Assigned to a Customer (CATC) which is established by a customer's forecast of their needs.

customer (e.g., industrial) of the transmitter, this compensation could come at the expense of the distributor's captive customers (e.g., residential). In such cases, there will always be a prudence review by the Board which could result in some or all of the investment being disallowed in distribution rates paid by consumers. The onus will be on the distributor to make a business case to the Board that a new transformation facility was, in fact, necessary and that it was more cost-effective to build it than to use the transmitter's existing facilities.

The Board's decision above on transformation facilities may seem somewhat revolutionary. The Board acknowledges the concerns that were raised by transmitters regarding the potential implications. As a result, it is important to put this decision into perspective. First, new load is not a concern because the transmitter's existing connection assets will typically be paid for through the rates paid by existing customers. And where this may not be the case because a customer chooses to transfer their existing load to its own new transformation facilities, that customer will always be required to adequately compensate the transmitter. In addition, a transmitter's regulated revenues generally come from three types of assets — network as well as transformation and line connection. Based on Hydro One's last rate order, the common network accounts for over half of their revenue requirement which is not affected by this decision. Since line connection revenues are not affected either, this leaves only about one quarter of total transmission assets that are transformation connection. Moreover, many transformation facilities are not affected by this decision since they are already owned by customers. Given the above, this is viewed by the Board to be evolutionary as opposed to revolutionary.[2]

Line Connections

Customers will also be permitted to construct their own new line connection facilities where available capacity is not adequate on the transmitter's existing facility to meet the customer's needs. This will not be considered bypass.

In contrast to the decision above on transformation assets, if there is sufficient capacity available on the transmitter's line connection asset, a customer will not be permitted to build another new facility. It would be considered unauthorized bypass.

The Board is concerned that not first utilizing unused existing line capacity would likely result in parallel

---

[2] This issue associated with line and transformation connection facilities was also addressed in the Transmission System Bypass section of the Decision.

transmission lines across the province. Each of which would require its own additional right-of-way and have potential unnecessary environmental implications. Therefore, the potential would increase for unnecessary duplication leaving some assets stranded, with Ontario consumers continuing to pay for the transmitter's under-utilized assets.

Line and Transformation Connections: Overloaded Facilities

If a customer chooses to build its own *line or transformation* connection facilities to serve new load, those new facilities may also be used to serve *existing* load without compensating the transmitter only if the existing transmitter's facility is *overloaded*. Overloading any facility reduces the economic efficiency of the transmission system and should be avoided. However, only the overload portion will be transferable to the new customer's facility without compensating the transmitter.

The underlying rationale for the decisions above to facilitate greater competition in the transmission connections market is the Board's interest in providing reasonable opportunities for new approaches to system change, as long as existing customers and the transmitters are not unduly prejudiced. By allowing customers a new range of options and introducing increased diversity in the development of new transmission connection assets within the system, the Board expects to see overall optimization.

Determining the Amount of Compensation

In addition to determining when the customer must compensate the transmitter, the Board also needed to decide on the most appropriate method for determining the amount of *compensation*. The Board considered a number of options and decided to base it on the *Net Book Value (NBV)* of the asset plus an adjustment for salvage and removal costs, which includes environmental remediation. This approach was chosen because it is the most objective and it is consistent with the Board's approach for determining the rate base of a transmitter. NBV is also the method used in Ontario to determine the appropriate compensation when a natural gas utility sells an asset. Therefore, the NBV approach to compensation will be used for any bypass authorized by the Code.

A Need For Greater Transparency / Avoiding Unnecessary Administrative Burden

Concerns were raised that there was a lack of transparency and, therefore, a transmitter could provide its affiliated distributor with preferential treatment in terms of allocating capacity that is available for use. Accordingly, the Board decided that the process for managing available capacity needed to be more

transparent. As such, going forward, any request for an allocation of available capacity will trigger a requirement that the transmitter notify all customers connected to the affected facility. A reasonable period will then be provided for those parties to submit competing applications. The available capacity will, in turn, be divided fairly among those applicants that have adequately demonstrated a need.

The Board initially proposed a requirement for transmitters to maintain publicly available information, regarding the available capacity, for all connected customers at all times to maximize transparency. However, the Board has now concluded that this would impose a significant unnecessary administrative burden on transmitters, with the costs exceeding the benefits. As such, transmitter's will only be required to promptly provide such information to all affected customers primarily at the time of a proposed system expansion of a connection facility. This information will need to be provided taking into account reasonable customer confidentiality concerns.

2. *Transmission System Bypass*

A Comprehensive Definition of Embedded Generation — Enhancing Regulatory Certainty

Whether generation is embedded, in relation to a customer, affects how the customer is to be charged by the transmitter for transmission services. In order to provide some context of what embedded generation means, it is often self-generation and tends to be removed from the transmission system. The illustration in Figure 1 is one example with the transmission system represented by the larger towers on the light background and the embedded generator located within the distribution system to the right.

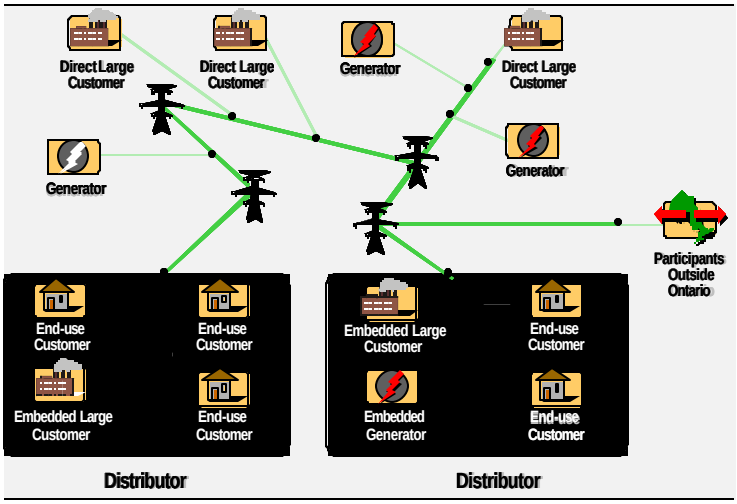

Figure 1

The issue of what qualifies as embedded generation was initially addressed by the Board in an earlier Decision (RP-1999-0044) and, more recently, in two subsequent proceedings that dealt with complaints of two customers. Each asserted that the transmitter was failing to recognize certain generators as embedded and was, therefore, billing the customers improperly. In both cases, the Board concluded that the generation was embedded. These

disputes arose, in part, because the current definition of embedded generation lacked the necessary specificity.

Given the above, the Decision looks at the issue more broadly to determine under what specific circumstances generation will be considered embedded and, in doing so, consolidates the Board's findings on embedded generation in the three Decision's noted above. The Board believes that a more refined and comprehensive definition of embedded generation will provide greater regulatory certainty which should facilitate investment in desired new supply in Ontario's electricity market.

The Board's approach in arriving at the following is driven by the objectives of the *Ontario Energy Board (OEB) Act, 1998* and takes into account that transmission issues are part of a larger picture. This includes the fact that Ontario is currently facing a tight electricity supply situation and has had to rely on expensive sources, including imports, from time to time to meet peak demand.

There are four combinations of generation and load — new and existing — to be considered in deciding what qualifies as embedded generation. The Board addressed the first two combinations together in the Decision, since they both involve new generation and can be dealt with the same way.

New Generation

New generation will be considered embedded in relation to either *existing or new* load subject to satisfying certain criteria.

The following is a summary of the specific circumstances that will not affect whether it qualifies as embedded generation.

Any new generation that is connected on the customer side of the connection between a customer and the transmitter will be considered embedded and, therefore, not bypass regardless of: (1) whether the customer load is new or existing; (2) who owns the generation; (3) where the generation is located; (4) what voltage the generation is connected at; (5) what commercial arrangements the generator enters into; and (6) the size of the generation capacity and the number of generating units.[3]

---

[3] The date to distinguish between *new and existing* generation is the date that this Decision is published on the Board's web site; i.e., any generation which went into operation on or after this date will be considered to be new. This does not affect any decisions of the Board made in RP-1999-0044; i.e., October 31, 1998 will continue to be used for the application of rates.

There is one circumstance, however, that involves new embedded generation where the transmitter will need to be compensated. That is where an existing customer disconnects from the transmitter's connection assets to take service from a new and, in effect, a duplicative connection facility owned by a party other than the transmitter. This would result in the transmitter's connection assets becoming stranded. More important, due to the disconnection, the transmitter would not be compensated for this stranding through gross load billing as the Board envisioned in RP-1999-0044. Accordingly, the customer will be required to compensate the transmitter based on the respective net book value (NBV) of these facilities because this is clearly a case of bypass.

The Board recognizes that the transmitter may lose revenue from existing load when it is supplied by new generation that qualifies as embedded. However, this will be reduced or even offset by the overall growth in demand that will continue to be served by the transmitter. The Board also recognizes that this may lead to some increase in the transmission costs borne by ratepayers. Again, this should be more than offset by the expected reduction in energy costs for all consumers resulting from the entry of new generation to meet Ontario's growing peak electricity demand.

In addition, embedded generation is predominantly cogeneration which tends to be a more energy efficient and cost-effective form of generation. Embedded generation is also likely to enhance reliability, reduce the need to invest in the expansion of the transmission network, decrease the amount of wasted energy due to transmission line losses and can reduce inefficiencies associated with transmission congestion. A reduction in congestion means high cost generation does not need to be used as often when lower cost supply is available, thus, reducing overall energy costs for all Ontario consumers.

To the extent that all Ontario consumers will benefit from lower energy costs and enhanced reliability, it is appropriate for them to bear any potential additional transmission costs.

Existing Generation

The Board then addressed the last two combinations which both involve existing generation.

Existing generation can become embedded in relation to an *existing* customer by reconfiguring existing transmission system connections. Similarly, *new* customers could be connected so that existing generation can be embedded in relation to that new customer. Neither combination will be considered embedded generation.

Reconfiguration may result in some benefits for the specific generator and customer involved but there is no apparent benefit to Ontario electricity consumers, as a whole, primarily because no new generation has been added to Ontario's electricity market. At the same time, such reconfigurations create additional costs for Ontario consumers due to the stranding of the transmitter's assets. Accordingly, these reconfigurations amount to uneconomic bypass of the transmitter's facilities since there are costs but no benefits for Ontario consumers in general and the electricity market as a whole.

Fair Rate Treatment for Embedded Generation

Remaining Consistent with RP-1999-0044 Principles

In order to ensure consistent rate treatment, customers with new embedded generation, as defined above, will be subject to the rate treatment established in RP-1999-0044. That is *net* load billing for *network* charges and *gross* load billing for *connection* charges. Where it does not qualify as embedded generation, gross load billing will apply for both charges.

Given the above, net load billing will apply for both network and connection charges for *small scale* embedded generation for administrative reasons (i.e., metering & billing). The threshold will continue to be 1 MW or less per unit for conventional generation sources.

Eliminating Barriers to Embedded Renewable Energy

For renewable embedded generation, the threshold for full net loading billing will be increased to 2 MW per unit. This recognizes the technological advances associated with renewable sources, especially new wind projects which are all now primarily between 1 MW and 2 MW. This increase also reflects a societal interest in increasing the proportion of renewable generation in the overall supply mix in Ontario.

There was a request to increase this qualifying limit to 20 MW. However, the Board rejected this proposal as being excessive.

For the purposes of the revised Code, the Board decided to adopt the definition for renewable energy that the Ministry of Energy used in its recently released Request for Qualifications (RFQ) for 300 MW of new renewable capacity. Consequently, the definition is: *a "Renewable Generating Facility" refers to a facility that generates electricity from the following sources: wind, solar, Biomass, Bio-oil, Bio-gas, landfill gas, or water*. Other definitions were proposed but the Board felt it would be prudent not to have

competing definitions of renewable energy in the Ontario electricity market.

New Embedded Generation — Not Considered Bypass

Any new embedded generation projects that are consistent with Board's criteria discussed above will not be considered system bypass. One of the reasons for initiating this proceeding was that a transmitter was including a "no bypass" provision in the contracts that customers were required to sign before they began receiving transmission service. Many customers, including generators, objected but had no option other than to sign the contract. Going forward, transmitters will not be permitted to do anything that would discourage the development of new embedded generation in this manner.

Where provisions in existing agreements between a transmitter and customer prevent or discourage the development of new embedded generation, such as treating it as bypass, these provisions will not be enforceable by the transmitter. And if there is a dispute, the revised Code will no longer permit the transmitter to place the related construction work on hold until there is a resolution. This has been causing needless delays to projects including new generation and will not be allowed to continue.

Prudent Replacement of Existing Transmission Facilities

Some assets will require replacement before they have been fully depreciated, while others will still be useful even though they are fully depreciated. Connection facilities, therefore, can only be replaced by a transmitter if they have reached the end of their useful life, regardless if they have been fully depreciated. To do otherwise would not be prudent.

Replacement will be at no cost directly to any individual customer since such assets will be included in the transmitter's rate base. The requirement to replace connection facilities that are at the end of their useful life includes an obligation for the transmitter to ensure those facilities are properly repaired and maintained, on an ongoing basis, so that they perform at the required technical standards and level of reliability.

Customers will be able to construct their own new facilities, at their own cost, to replace the transmitter's assets that have reached the end of their useful life if the transmitter's connection assets have been fully depreciated. This is not bypass since the transmitter's assets have been fully paid for. Consistent with determining compensation above, the determination of whether the connection facilities have become fully depreciated will be based on their net book value (NBV).

Prohibiting Measures that Discourage Energy Efficiency and Conservation

Reductions in demand due to energy efficiency, conservation and load management will not be considered system bypass, under any circumstances. This includes the installation of renewable energy technologies such as solar panels that reduce a customer's overall demand on the system. The promotion of energy efficiency and conservation is one of the objectives of the *OEB Act* and is particularly important at a time when Ontario faces a tight supply of electricity. There appears to be consensus that the Ontario electricity market requires increased demand response and conservation measures by consumers, and many initiatives are underway to facilitate achievement of that goal. It is particularly important to ensure that the Code not permit any barriers or disincentives that stand in the way of such initiatives.

Practices or measures that discourage these initiatives, such as a transmitter imposing a minimum payment obligation to cover present loads, will be prohibited. Allowing a minimum payment obligation would require a customer to pay the same minimum amount even if, for example, they were able to cut their demand in half. This would constitute a penalty for conserving energy which is inconsistent with the Government's goal to create a "culture of conservation" in Ontario and would simply not make sense.

Where such measures are in existing agreements, they will be unenforceable by the transmitter and changing those agreements to be consistent with the revised Code will not require the consent of both parties. It will be a matter of compliance by transmitters.

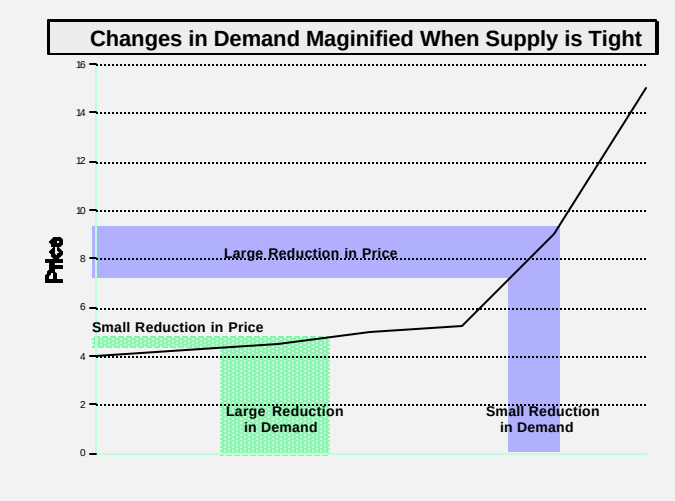

Figure 2

Again, this decision takes into account the broader electricity market. A reduction in electricity demand is equally beneficial as an increase in supply. For example, when high demand stretches the system close to its limits, electricity prices rise sharply (see Figure 2). Ontario has repeatedly been required to import expensive electricity to keep the lights on during such times of high demand. A relatively small increase in demand at such times can cause prices to double or worse. Conversely, a relatively modest reduction in demand, due to the measures discussed above, can hold prices in check and foster price stability for the benefit of all Ontario consumers.

3. Cost Responsibility

Facilitating Necessary Transmission Planning and System Efficiency

It is important for a transmitter to be notified, as early as possible, of any reductions in a customer's demand resulting from installing embedded generation or implementing energy efficiency, conservation, or demand management programs. These are all initiatives that would require planning by a customer. Therefore, it would not be onerous for a customer to notify a transmitter in advance of implementation. Transmitters need such information for their own transmission planning and prudent investment purposes as well as to operate Ontario's transmission system efficiently and effectively.

All Parties to Pay Their Fair Share — No More, No Less

Customers who require new or upgraded connection facilities to meet their needs will bear the associated costs, to the extent that the cost is not recovered in the transmitter's rates. If more than one customer requires or benefits from enhancements, all of those customers associated with that connection facility will equitably share the cost of the enhancements.

Customers should not, however, be required to bear the cost of facilities that were already planned by the transmitter. In order to ensure that this does not happen, a transmitter will be required to provide new and existing customers with any pertinent existing transmission plans, upon request, dealing with system expansion. Such plans are expected to be developed by transmitters to address growing demand, sustainability, system reliability and integrity. These plans will also be essential to determine whether a particular connection project is truly triggered by the needs of a specific customer.

Generators will also be held responsible for the costs associated with connection facilities that they cause. There is no reason to consider this to be a deterrent to new generation, as was suggested, because this is an example of a standard cost of doing business for all new generators within and outside of Ontario. In other words, all customers of the transmitter need to pay their fair share.

Given the above, if a transmitter adds more capacity than the customer requested, in anticipation of future growth in demand, the transmitter will not be permitted to charge that customer for the additional costs.[4] Permitting such a requirement could inhibit the development of new generation. Customers should pay only

[4] This issue was also addressed in the Economic Evaluation section of the Decision.

the costs that they cause and for the transmission capacity they benefit from.

Renewable Energy — Eliminating Barriers (Not Providing Hidden Subsidies)

The Board considered a provision which would have obligated the transmitter to finance the capital contribution for new connection assets of a new renewable energy project, with the carrying charges applied to the outstanding balance. However, the Board decided against this provision for a number of reasons.

Imposing such a requirement could result in transferring significant financial risks to Ontario ratepayers. It would also likely divert scarce resources of the transmitter that are needed to maintain and operate the transmission system efficiently, which could put reliability and safety at risk. In addition, this could hinder the development of a more competitive connections market as the Board has envisioned for some time. Most important, providing financial incentives, for any form of generation, should not be accomplished through a "technical" code in a non-transparent manner (i.e., hidden in transmission rates). Government programs are a more appropriate vehicle for providing such financial incentives in a more transparent manner. Instead of providing what may be viewed as subsidy to facilitate new renewable energy, the Board decided to focus on eliminating barriers throughout the Code which is within its mandate.

Customer Accountability

The transmission system is dynamic in nature and a customer will be expected to understand that they may have to upgrade their own equipment to adjust to a changing and growing transmission system. As a result, all customers will be held responsible for upgrading their own equipment to the minimum new baseline performance requirements established by the transmitter. This is necessary to ensure Ontario's transmission system operates as efficiently and effectively as possible.

4. Contestability

Enhancing Customer Choice & Increasing Competition

Work on new connection facilities will be contestable, regardless of whether a capital contribution is required from the customer, to facilitate competition. A customer requiring new facilities to connect to the transmission system will have two options. The customer can either design, construct, pay for and own the new facilities or have them owned by the transmitter. If the latter, a customer may choose to accept the

transmitter's cost of constructing the new facilities or contract with any qualified contractor. Regardless of which option is chosen, transmitters will retain the right to work on their own existing facilities as they will be most familiar with those facilities. This is important to ensure the efficient operations and safety of the Ontario transmission system.

The Board prefers that responsive customer service and accountability be brought about through market forces rather than other methods such as resorting to fines or penalties. The Board's approach also provides business opportunities for private and innovative companies across Ontario. It also gives the customer other options if the transmitter does not provide good customer service. The Board originally had a vision of developing a more competitive connections market in 1999, as part of the Board's RP-1999-0044 Decision. These changes should further facilitate realizing that vision.

5. Economic Evaluation

Protecting Existing Ontario Consumers

An economic evaluation provides the mechanism for determining any recovery shortfall and ensuring that all connection related costs are recovered from a connecting customer, either through rates or a capital contribution. Therefore, it is needed to protect transmitters and their existing ratepayers from potentially subsidizing specific connecting customers. Again, all customers will pay their fair share and an economic evaluation is the tool that will be used to make sure this happens.

Beneficiaries to Pay Network Costs

In RP-1999-0044, the Board established the principle that network costs incurred, in establishing new or enhanced connections (for customers or to connect new generation), should be borne by all ratepayers since all Ontario consumers benefit from the common network. Therefore, in most cases, network costs will be excluded from determining the cost of a proposed connection.

There may, however, be exceptional situations. For example, major network system work, due to a particular customer's proposed connection, can sometimes have limited value to the overall network system. Under these circumstances, the Board decided that it would not be appropriate for all Ontario consumers to bear such costs since they do not benefit.[5]

[5] Allocation of Network costs was also addressed under Cost Responsibility in the Decision.

Customers to Pay for Only the Transmission Services they Use — No More, No Less

As discussed above, the revised Code will prohibit minimum payment obligations being imposed by the transmitter for existing facilities; i.e., customers should only pay for the services they use — no more, no less. There will also be a true-up process for new customer connection facilities. If it shows that a customer's actual requirements are below those that were forecast and, therefore, has not generated sufficient revenues for the transmitter, the customer will make a payment to make up the shortfall. If the opposite occurs, the amount of excess revenue will be paid out to the customer when the last true-up calculation is carried out.

To eliminate another barrier for energy efficiency, conservation, demand management, renewable energy activities and relatively small embedded generation projects — 1 MW or less for conventional generation and 2 MW or less for renewable energy — the customer's initial load forecast will be adjusted downwards to reflect such measures and the associated reductions in demand on the transmission system. If the forecast was not adjusted downwards, it would be equivalent to penalizing these desirable measures which would conflict with the Government's goal to create a "culture of conservation" in Ontario. This provision is also consistent with the final objective in the *OEB Act* which is "to facilitate energy efficiency and the use of cleaner, more environmentally benign energy sources in a manner consistent with the policies of the Government of Ontario". The Ontario electricity market needs such measures to improve the balance between supply and demand and, therefore, all unnecessary obstacles will be eliminated by the Board within the context of this Code and its mandate.

In addition, customer's economic evaluations will not include *sunk* costs or *historic* revenues which has sometimes been the practice in the past. Only *projected* costs and revenues for the supply of new customer load will be included since only they are relevant to a new connection project. Customers should simply not be paying the transmitter for costs (i.e., sunk) that were, for example, incurred before they even became a customer.

6. Contractual Issues

Projects, Especially New Generation, will No Longer be Unnecessarily Delayed

The transmitter will continue with all construction work, according to the agreed upon project schedule, and will not be permitted to stop or delay the work pending the outcome of any dispute resolution process.

This is very important, especially where it involves new generation. As a result, the addition of needed new supply to the Ontario electricity market will no longer be delayed simply because of a dispute.

Protecting Consumers & the Financial Viability of the Transmitter

Transmitters will be permitted to require a reasonable security deposit from the connecting customer to cover all related construction costs. This is necessary to reduce the risk to the transmitter and its ratepayers. For example, a customer requesting the new connection could walk away from the project or go bankrupt after the transmitter has incurred the costs to build the facility for that customer. However, if all goes as planned, the transmitter will return the deposit (with interest) once that risk no longer exists.

Not permitting a transmitter to require a reasonable security deposit could result in all Ontario consumers bearing the costs of delinquent customers described above. This would not be fair.

Inappropriate Contract Provisions will Not be Enforceable by Transmitters

Any provisions in a contract that are inconsistent with the revised Code will be unenforceable by the transmitter.

The Board did not accept a position that this requirement should not apply to existing agreements. Once the Board has determined the appropriate regulatory regime, within the context of the Code, the transmitter must comply with that regulatory regime regardless of the status of the agreement with a customer. Otherwise, it would create a double standard based on an arbitrary distinction between existing and future customers. The regulatory environment needs to be consistent for all transmitters and customers. All transmitters simply must comply with the Code as a condition of their license.

Balancing Greater Transparency and Customer Confidentiality

Increasing transparency is very important. At the same time, the Board is of the view that the revised Code must contain provisions that balance the need for maintaining the confidentiality of information about a customer and the need for transmitters to provide information about the transmission system to all customers that may be seeking new or upgraded connections. These provisions will be incorporated, in the revised Code, as part of the next phase in this proceeding. The goal will be to find the right balance between these two competing objectives.

CONCLUSION

The Board is of the view that there has been more than an adequate opportunity for stakeholders to provide input, throughout this extensive consultation process, which has included six opportunities for parties to provide written submissions. In total, there have been over 130 submissions and many of those were each filed by more than one party. There was also an extensive Settlement Conference that lasted five full days. The Board would like to thank the stakeholders involved for the significant contribution they each made to this process. The stakeholder input has assisted the Board in shaping and refining its policy vision.

In arriving at its Decision on the policy issues associated with forthcoming changes to the Code, the Board has strived to take a balanced approach on all fronts. The basis for many of the changes takes into account that transmission issues cannot be properly addressed in isolation. Instead, they are part of a larger picture which includes the fact that Ontario needs more generation and energy conservation to improve the balance between supply and demand. This more strategic approach is needed to arrive at more informed decisions. At the same time, the Board has taken a great deal of care to ensure the integrity of the Ontario transmission system is maintained and overall system optimization is facilitated.

The changes should ensure that the transmitter's monopoly position will not restrain competition in areas where greater competition is beneficial and should also facilitate the ability of parties to effect efficiencies in their use of electricity without facing punitive measures or disincentives. Barriers that currently discourage new generation, energy efficiency, conservation, load management and the use of renewable energy sources will also be removed.

The Board wants to reiterate that any provisions in any contract that are inconsistent with the revised Code will be unenforceable by the transmitter, especially where the customer was forced to sign the contract under duress. Moreover, no projects, especially those involving new generation, will be held-up any longer due to disputes involving the transmitter.

At the same time, the Board's Decision should also ensure that unnecessary transmission asset duplication will be avoided and that all transmission customers, including generators, will be held responsible for paying their fair share of the costs that they cause and benefit from. The financial viability of the transmitter, as well as all operational, safety and reliability requirements of the transmission system, continued to be a high priority for the Board throughout this process. This is especially important in light of the August 2003 blackout.

The Board has also attempted to arrive at the right balance between the need for greater transparency, minimizing the administrative burden placed on transmitters and taking into account customer confidentiality concerns.

In summary, the Board is confident that the Decision, which completes the first phase of this proceeding, will result in providing all participants in the Ontario electricity market, including transmitters, with greater regulatory certainty and predictability — a prerequisite to attracting investors to the Ontario market. While the Board's changes will make the Code more prescriptive, the Board has also maintained a great deal of room for negotiation amongst the parties. The Board is confident that the revised Code will enhance the regulatory environment in which these negotiations are to take place.

In the next phase of this proceeding, the Board will produce a draft Code incorporating the policy decisions reflected in the Phase 1 Decision. All interested parties will have an opportunity to make submissions on the draft Code before the Board produces a final document.