

<b>Newmarket-Tay Power Distribution Ltd.</b>	<b>Number:</b> NT POWER COS-180-00
<b>Conditions of Service</b>	<b>Issue Date:</b> July, 2007
<b>Dispute Resolution</b>	<b>Next Review Date:</b> February, 2015

## 1. Preamble

As provided in Section 23 of Newmarket-Tay Power Distribution Ltd.'s Distribution Licence and the *Ontario Energy Board's Distribution System Code*, Newmarket-Tay Power Distribution Ltd. (NT POWER) is required to establish administrative procedures for resolving disputes by *Consumers, Generators, and Applicants* (the "Party") regarding *distribution services* provided under the terms of the Licence.

## 2. Exclusivity

Except where this policy states otherwise, the dispute resolution procedures set forth in this *Conditions of Service* document shall apply to all disputes arising between NT POWER and the "Party" and shall be the only means for resolving any such disputes.

## 3. Policy

- 3.1 All complaints or disputes received shall be referred to the relevant Manager for resolution on an informal basis within seven business days.
- 3.2 The resolution shall be documented and signed by the Manager.
- 3.3 Disputes not resolved in Section 3.1 shall be subject to the Dispute Negotiation described in Section 4.
- 3.4 The *OEB* shall be requested to assist in disputes not resolved in Section 4, in the manner described in section 5.
- 3.5 In the event intervention by the *OEB* has been unsuccessful in resolving the dispute within any parameters established by the *OEB*, either the Party or NT POWER may submit the dispute to binding arbitration and resolution in accordance with the arbitration procedures set out in Section 6.

#### **4. Dispute Negotiation**

- 4.1 Any dispute between NT POWER and the Party regarding *distribution services* provided under the terms of NT POWER's Licence shall be referred to a designated representative chosen by NT POWER and to a designated representative chosen by the Party for resolution on an informal basis.
- 4.2 The representatives designated in 4.1 shall attempt in good faith to resolve the dispute within thirty business days of the date when the dispute was referred to them. The Party and NT POWER may extend such period by agreement in writing.
- 4.3 Any resolution of the dispute by the designated representatives shall be in writing and shall be executed by an authorized signing officer of NT POWER and the Party. The resolution shall bind NT POWER and the Party and their respective successors and assigns, and shall not, except for either the Party or NT POWER's subsequent failure to abide by the resolution, from then on be subject to arbitration or challenge in any court or other tribunal.
- 4.4 If the Party or NT POWER refuses to honour the designated representative's resolution as executed, the other may immediately commence arbitration under these *Conditions of Service* to enforce the resolution, or may bring summary application to a court of competent jurisdiction to enforce the resolution.

#### **5. Referral of Unresolved Disputes**

If the designated representatives cannot resolve the dispute within the time period set out in Section 4.2, either the Party or NT POWER may submit the dispute to the *OEB* for direction on resolution. In the event intervention by the *OEB* cannot resolve the dispute within any parameters established by the *OEB*, it shall be subject to binding arbitration and resolution in accordance with the arbitration procedures set out in Section 6.

#### **6. External Arbitration Procedures**

- 6.0.1 All arbitrations under this Agreement shall be conducted in accordance with the Arbitration Act, 1991, S.O. 1991, c.17 (the "Arbitration Act") as amended from time to time, except as modified herein.
- 6.0.2 The arbitrator(s) shall have exclusive authority to hear and decide any dispute between the Party and NT POWER that is subject to arbitration under this *Conditions of Service*.

6.0.3 The arbitration must take place either in the Regional Municipality of York or the City of Toronto.

6.1 Appointment of Arbitrator

6.1.1 The Party or NT POWER shall submit any arbitration begun under this section to a single neutral arbitrator.

6.1.2 In choosing an arbitrator, the Party and NT POWER shall negotiate in good faith.

6.1.3 If the Party and NT POWER cannot agree upon a single arbitrator within fifteen business days after referring the dispute to arbitration, each one shall within five more business days choose one individual who shall sit on a three-member arbitration panel.

6.1.4 The two arbitrators chosen by the Parties shall within twenty business days, in good faith, choose a third arbitrator, who shall chair the arbitration panel.

6.1.5 Neither the Party nor NT POWER may at any time during the arbitration revoke its choice of arbitrator, unless the other consents in writing.

6.1.6 If the Party and NT POWER do not choose the two arbitrators within the five day time period set out in Section 6.1.3, either, or both, may apply to the court to appoint a single arbitrator.

6.1.7 The individual(s) chosen as the arbitrator(s) shall be qualified by education and experience to decide the matter. The arbitrator(s) shall be at arm's length from the Party or NT POWER to the arbitration and shall not be members of the audit or legal firm or firms who advise them to the arbitration, nor shall the arbitrator(s) be otherwise regularly retained by any of them to the arbitration.

6.2 Written Statement of Dispute and Response

6.2.1 Within twenty business days after the individual arbitrator or arbitration panel are named; the Party shall submit to the arbitrator(s) a written statement. The statement shall set out:

6.2.1.1 The nature of the dispute and the Party's position,

6.2.1.2 The names of the Party's main contacts for the arbitration process along with their addresses, phone numbers and fax numbers,

- 6.2.1.3 The grounds for that relief,
- 6.2.1.4 The proposed resolution or relief sought,
- 6.2.1.5 The names of any third parties with material knowledge or information relevant to the dispute, and
- 6.2.1.6 Any documents that the Party wishes the arbitrator(s) to consider.

6.2.2 NT POWER shall have twenty business days to respond to the filing, setting forth its position and the information that it deems relevant.

### 6.3 Discovery of Facts

6.3.1 There shall be no documentary discovery or discovery of facts taken, sought, or otherwise instituted by any means except as approved by the arbitrator(s).

6.3.2 The arbitrator(s) shall provide a time schedule for any such discovery.

6.3.3 The arbitrator(s) may at any time retain non-party technical experts to advise and assist them during the arbitration. The advice of these experts shall be made known to the Party and NT POWER.

### 6.4 Confidentiality of Documents

All meetings and hearings shall be in private unless the Party and NT POWER agree otherwise. The Party or NT POWER, providing any document or other information in the arbitration that would not otherwise be available to the other may, in good faith designate it as confidential, provided that they shall first submit to the arbitrator(s) an agreed upon written statement of procedures for handling and protecting material designated as confidential, which the arbitrator(s) may accept or modify as they may deem appropriate. If the Party and NT POWER cannot agree upon confidentiality procedures, the arbitrator(s) shall decide them as appropriate.

### 6.5 Procedural Rules

6.5.1 The arbitrator(s) may adopt any procedural rules that they, at their sole discretion, deem appropriate to conducting the arbitration and facilitating the resolution of the dispute.

6.5.2 No procedural rule adopted by the arbitrator(s) shall extend the time period set forth in Section 6.6.1; but the arbitrator(s) shall render a final disposition of the dispute within that period, which may not be extended or reduced unless the Party and NT POWER consent in writing.

6.5.3 Refusal by either to comply with an order of the arbitrator(s) adopting or modifying any procedural rule shall constitute, in the sole discretion of the arbitrator(s), grounds for default and a finding in favour of the other.

## 6.6 Decision Requirements

6.6.1 The arbitrator(s) shall finally decide any dispute submitted for arbitration under this *Conditions of Service* document no later than thirty days from the completion of the hearing.

6.6.2 Unless the Party or NT POWER agree otherwise in writing, the final decision of the arbitrator(s) shall set forth in writing their findings of fact and any conclusions of law and be based on the evidence before them, the applicable laws of Ontario and Canada, the *Market Rules*, the licences and Codes issued by the *OEB*, any agreements entered into between the Party and NT POWER, and any relevant decisions of courts, agencies, or earlier arbitrations under this *Conditions of Service* document.

6.6.3 A copy of the decision, with any confidential information expunged, shall be made available to the public.

## 6.7 Finality of Decisions

6.7.1 The decision shall be final and binding on the Party and NT POWER and shall not be subject to appeal or judicial review on any grounds whatsoever.

6.7.2 Notwithstanding anything else in this subsection, if either fails to act in accordance with the decision of the arbitrator(s), the other may then seek enforcement of the decision in any court of competent jurisdiction.

## 6.8 Arbitration Act

6.8.1 Nothing in this *Conditions of Service* document shall be construed as affecting any rights available to the Party or NT POWER under section 3 of the Arbitration Act.

6.8.2 If and so far as any provision of Section 6 is adjudged or otherwise deemed invalid by a court of competent jurisdiction, the provisions of the Arbitration Act shall apply.

6.9 Costs

6.9.1 The arbitrator(s) shall award costs for an arbitration as if it had been a proceeding in Ontario Superior Court, and the arbitrator(s) shall therefore, in awarding or denying costs to a Party, follow the provisions on costs set out in the Ontario Courts of Justice Act, R.S.O. 1990, c. C.43 and the Ontario Rules of Civil Procedure, including without limitation the provisions in those rules concerning settlement offers and case law applicable in Ontario. Costs of the arbitrator(s) and the out of pocket costs of the arbitration shall be shared by the Party and NT POWER on an equal basis.

6.9.2 If the Party or NT POWER fails to comply with the decision of the arbitrator(s) and the other afterwards seeks relief under section 6.7.2, the one seeking the relief shall be entitled to receive from the other its costs of seeking the relief from the other (including its reasonable legal costs) once a court of competent jurisdiction has issued a final, non-appealable order in its favour.

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