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090259

March 20, 2009

**ELECTRONICALLY & BY SAME DAY COURIER**

Ms. Kirsten Walli, Board Secretary  
**Ontario Energy Board**  
2300 Yonge Street, Suite 2701  
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: OEB File No. EB-2008-0272  
Hydro One Networks Transmission Rates Case**

The following constitutes the closing submission of the Society of Energy Professionals in the above-noted matter.

*Society of Energy Professionals*

The Society represents approximately 1100 professional engineers, scientists, and other professional, administrative and supervisory employees at Hydro One.

Society members have professional careers inextricably linked to Hydro One. They are engaged in every aspect of the affairs of Hydro One. Their collective and individual sense of professional pride and accomplishment is intimately tied to the success of their employer in serving the public.

Acting as their bargaining agent however, the Society is in a position of independence which permits the expression of disagreement with Hydro One on any issue. Society members have particular expertise on virtually any subject which could be raised in proceedings such as this one.

In the years to come the Society expects to participate more fully in Board hearings than it has done in the past. It is the present intention of the Society to do so in a measured selective manner which it hopes will bring value to the Board and, through the Board, to the public.

The Society does not regard itself as a single interest intervener-- whether or not in any individual case its participation is focussed.

#### *the instant application*

The Society supports the rate increases sought in the application for the reasons provided by Hydro One.

Viewing the application as a whole, the Society concludes that the application strikes a nuanced balance between immediate ratepayer cost concerns and Hydro One's obligations to plan for the future. While one may contest individual details on particular charts, tables, or graphs there is no doubt that the application is a considered thoughtful product which has followed extraordinarily extensive stakeholder participation. Every aspect of the application has been subjected to review from many perspectives.

In general, the Society does not believe that the public interest would be served by delaying projects which will provide transmission to new electricity sources or which will maintain existing services. While counsel for Hydro One has not presented this case with this focus, there can be no doubt that now is the right time to repair and build infrastructure in Ontario. The implications of the green energy initiative will be assessed and integrated in future planning. But this does not mean that a credible business plan should not go forward at this time.

#### *collective bargaining issues*

Having said that, the Society does wish to make a few submissions concerning aspects of the compensation and collective agreement issues which have been identified.

In so doing, these submissions are made by labour counsel who have represented the Society for twenty five years from the beginning of the Society's formal collective bargaining with Ontario Hydro.

In his closing submission Mr. Rogers made the following comments found at page 14 of the March 6 transcript at line 9:

Now during the course of the hearing, the applicant was asked whether it considered the Board to be bound by the collective agreements which it has entered with the unions...I stated that, in my opinion, the Board was not bound by contracts entered into by utilities over which you have regulatory control. And I do believe that is a sound proposition in law. You are not bound by those contracts. However, in my respectful submission, the Board does not have jurisdiction to refuse to allow a company to recover costs which it incurred to provide service to its ratepayers unless the Board is satisfied that there is compelling evidence to show that the company acted imprudently in entering those contracts.

The Society agrees in part with this submission but our disagreement makes a distinction which the Society believes is important and one which should be respected in any Board case.

in our respectful submission, there is no question whatsoever that Hydro One, the Society, the Board and anyone else is bound by collective agreements lawfully entered by an employer and trade union bargaining agents pursuant to labour legislation such as the *Labour Relations Act*. That is the foundation of our system of labour law and has been for decades.

However, for purpose of OEB proceedings, that is not the real question. The real question is the one which is implicit in Mr. Rogers' ultimate submission on this point. The Society submits that the appropriate question is: "does the Board have the jurisdiction to refuse to allow a company to recover costs it incurred after entering into contracts, including collective agreements?"

The Society submits that the answer to that question is yes. Yes, the Board does have the jurisdiction to disallow recovery of such costs. The Board has this jurisdiction regardless of whether or not collective agreements are binding.

But OEB proceedings are grounded. This is not a theoretical exercise. The important practical legal question is: when should the Board exercise its discretion to disallow such recovery?

In this respect the Society agrees with Hydro One and suggests that Mr. Rogers' proposed standard is acceptable. Whether or not the Board has discretion to review any contract of any kind, the Society agrees that the Board should not refuse to allow a company to recover costs which it has incurred unless the Board were to be satisfied that there is compelling evidence to show that a company has acted imprudently in entering those contracts.

There are obvious public policy reasons for this caution. The Board does not purport to operate utilities. The Board does not sit as a Monday morning quarterback concerning any particular set of negotiations relating to any commercial contract— let alone as the judge of the outcome of collective bargaining an area. Collective bargaining is an extraordinarily fluid complex process with many variables, many pressures, and many objectives. It is subject to a separate expert regulatory and statutory regime.

Which of course is *not* to say that egregious circumstances relating to any commercial or labour contract of any kind might not draw attention— should those circumstances be sufficient to engage the parallel regulatory authority of this Board. Our only concern about Mr. Rogers' formulation of an appropriate test for OEB intervention is whether or not he has set the bar too low for such a review.

#### *compensation issues*

The foregoing submission was made primarily for the record as, with all due respect to any other point of view, the Society submits that no serious issue has been raised about either the Society or the PWU collective agreements in this proceeding.

To the extent that interveners have questioned the validity of the compensation studies, the Society suggests that Hydro One has acknowledged their limitations and provided a complete explanation for any deficiencies which, ultimately, do not affect the principal conclusions therein. To the extent that any of the Society wage rates are on the plus side they are justified by productivity premiums as the reports conclude.

The Society does however wish to bring another perspective to this discussion and suggests that Hydro One has acted entirely prudently in its collective bargaining with the Society.

The Society collective agreement was entered effective as of April 1, 2008 and will expire on March 31, 2013. (not 2011 as Mr. Rogers stated in error in argument)

That collective agreement was entered voluntarily by both parties and was the first collective agreement following the one which ended the lengthy strike in 2005, the first strike in the history of the Society. Mr. Rogers identified gains made by Hydro One in 2005 but it should not be forgotten that those gains came at great cost to the employer and its employees and did grave damage to morale and labour relations at Hydro One. The current collective agreement was reached in a new more constructive environment and with a new executive group at Hydro One. The Society suggests that this collective agreement, now with the benefit of some hindsight, can be fairly described as prudent from any employer point of view. Terms and conditions of employment for an important segment of Hydro One employees have been stabilized and placed on a firm footing for a significant period in turbulent times.

All of the objective evidence points in this direction. The pre-filed evidence concerning the demographics of both Society and PWU represented employees is located in various places in the record including Ex C1 Tab 3 Schedule 1 page 1. A staggering 31% of the current population at Hydro One will be eligible for an undiscounted retirement by Dec. 31, 2010.

In the same exhibit, Hydro One has described the increased competition in the labour marketplace which is expected for people with the high level of skills which it requires. Hydro One has described the difficulty it has already experienced in attracting more experienced external candidates into highly rated technical, engineering and management positions. At page 6, Hydro One has explained that these pressures will put upward pressure on compensation as highly skilled professionals inevitably pursue more highly paid employment. None of this evidence has been contradicted.

When one looks at the wage rates that Hydro One has secured to 2013 from the Society, it is arguable that Hydro One has not only been prudent but that it may have done too good a job. Modest normative increases on tight wage rates leave those wage rates at modest levels. The future will tell us whether or not the Hydro One/ Society rates turn out to be sufficient to provide the professional labour supply which this employer will require in the years ahead— given the demographics and the challenges facing the industry.

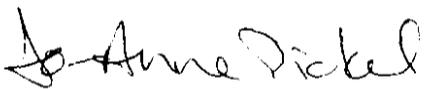
But, with respect, whatever the next four years will show, one cannot seriously challenge the proposition that Hydro One has acted prudently when it entered its collective agreement with the Society. Society rates have been settled for the entire review period.

The Society submits, to the extent that any comment on this subject is deemed necessary by the Board, that you should conclude that the evidence shows that Hydro One has acted prudently in collective bargaining with the Society to the plain advantage of Hydro One, its professional employees, and the public.

All of which is respectfully submitted,

Yours very truly,

**CAVALLUZZO HAYES SHILTON  
McINTYRE & CORNISH LLP**



*JH*  
James Hayes  
JH:sn