

Ontario Energy Board
P.O. Box 2319
27th. Floor
2300 Yonge Street
Toronto ON M4P 1E4
Telephone: 416- 481-1967
Facsimile: 416- 440-7656
Toll free: 1-888-632-6273

Commission de l'énergie de l'Ontario
C.P. 2319
27e étage
2300, rue Yonge
Toronto ON M4P 1E4
Téléphone; 416- 481-1967
Télécopieur: 416- 440-7656
Numéro sans frais: 1-888-632-6273



BY E-MAIL

February 4, 2010

Board Secretary
Ontario Energy Board
2300 Yonge Street, Ste. 2701
Toronto ON M4P 1E4

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

**Re: Board Staff Submission
Notice of Motion by Hydro One Networks Inc. for Review and Variance of
the Decision of the Ontario Energy Board dated December 16, 2009 -
Board File No. EB-2010-0003**

Please find attached the Board staff submission, with respect to the above proceeding.

Please forward to Hydro One Networks Inc. and all intervenors in this proceeding.

Yours truly,

Original Signed by

Edik Zwarenstein
Project Advisor



ONTARIO ENERGY BOARD

STAFF SUBMISSION

**NOTICE OF MOTION BY HYDRO ONE NETWORKS INC.
FOR REVIEW AND VARIANCE OF A DECISION OF THE
ONTARIO ENERGY BOARD DATED DECEMBER 16, 2009**

EB-2010-0003

February 4, 2010

Introduction

Ontario Energy Board staff is not taking a position on either the threshold question under section 45.01 of the Board's Rules of Practice and Procedure, or on the merits of the motion filed by Hydro One. Board staff, in this submission, provides a chronological list of documents issued by the Board in this matter, highlighting excerpts that appear to staff to be relevant.

Board decision of May 28, 2009 EB-2008-0272

On May 28, 2009, the Board released its decision on Hydro One's application for approval of a revenue requirement for 2009 and 2010, and other matters relating to the setting of transmission rates. In the decision, the Board declined to approve for inclusion in the revenue requirement the costs relating to four capital projects proposed by the applicant. However, the Board did provide Hydro One with the opportunity to provide additional evidence on those projects. The reasons of the Board, found at page 48 of the decision, may be of relevance to this motion. The Board said:

"The Board will not approve these four projects at this time because of the evidence [sic] has not been sufficient. The only evidence provided was a letter of recommendation from the OPA which the Board has already explained is not sufficient. No supporting evidence or analysis was provided.

...

The Board will keep this part of the proceeding open and will provide Hydro One with the opportunity to provide additional evidence on these projects for purposes of setting 2010 rates. .. If necessary, the Board will declare the 2010 rates interim at the appropriate time in order that the rate impacts of these projects can be included in the event the Board approves the projects."

It appears that the delay in closing the record was due to the Board providing additional opportunities for Hydro One to prove its case regarding the four projects.

Regarding cost of capital for the 2010 revenue requirement, the Board found at page 52 of the decision:

“For 2010, the Board agrees with Hydro One that September 2009 data should be used to update the cost of capital parameters. The 2010 year is a separate test year in Hydro One’s application; it is not part of an IRM period. It is therefore appropriate to update the cost of short-term debt and return on equity. The Board will issue a letter to Hydro One setting out Hydro One’s 2010 cost of capital parameters in due course. The Board expects that this will be treated as a mechanistic update.”

It appears that at the time of the May 28, 2009 decision, the Board anticipated any update to the cost of capital would be mechanistic and based only on updated financial data.

Board order of June 30, 2009

The Board issued an order on June 30, 2009 approving certain exhibits containing calculations deriving Hydro One’s revenue requirement, transmission charge determinants, and resulting transmission rates for 2009 and 2010 based on the May 28, 2009 decision. Exhibit 1.4 of that order set out the capital structure and return on capital details. Note 3 to that exhibit read:

“The cost of capital parameters & impacts used for 2010 are illustrative. Hydro One will submit a 2010 rate order to the OEB reflecting the cost of capital parameters issued by the Board once the September 2009 consensus forecast becomes available. At that point we will apply these up-to-date cost of capital parameters.”

Board letter of November 5, 2009

On November 5, 2009, in accordance with its May 28, 2009 decision, the Board sent a letter to Hydro One indicating that it had determined the values for return on equity and the deemed short term debt rate for use in the transmission revenue requirement application. The values of 8.39% for return of equity and 0.55% for short-term debt were based on September 2009 financial data. The Board stated:

“These values will be used in the Board’s decision regarding approval of rates for Hydro One Network Inc.’s transmission rate application, assuming a January 1, 2010 effective date.”

In setting the values, the Board explicitly relied on the methodologies contained in the *Report of the Board on Cost of Capital and 2nd Generation Incentive Regulation for Ontario’s Electricity Distributors*. At the time of the November 5, 2009 letter, that report contained the Board’s most recent policy on the determination of cost of capital.

Board report of December 11, 2009 EB-2009-0084

The Board released its *Report of the Board on the Cost of Capital for Ontario’s Regulated Utilities* on December 11, 2009. As noted by Hydro One in its submission on this motion, the Board discussed implementation of the new policy, and at page 61 of the report said:

“The policy set out in Chapter 4 of this report will come into effect for the setting of rates, beginning in 2010, by way of a cost of service application.”

The Board also referred to implementation timing in its recital of the steps in the process that culminated in the report. The report, at page 8, states that in its letter of June 18, 2009, the Board “indicated that any changes to the policy made as a result of this [cost of capital] review would apply to the setting of rates for the 2010 rate year”.

At page 13 of the report, the Board discussed the effect of the policy in the report on the determination of rates:

“The final “product” of this process, of course, is a Board policy. This was not a hearing process, and does not – indeed cannot – set rates. The Board’s refreshed cost of capital policies will be considered through rate hearings for the individual utilities, at which it is possible that specific evidence may be proffered and tested before the Board. Board panels assigned to those cases will look to the report for guidance in how the cost of capital should be determined. Board panels considering individual rate applications, however, are not bound by the Board’s policy, and where justified by specific circumstances, may choose not to apply the policy (or a part of the policy).”

Board decision of December 16, 2009 (EB-2008-0272)

In its decision of December 16, 2009, the Board approved two capital projects for which Hydro One had presented evidence. The applicant had chosen not to bring further evidence on the other two projects referred to in the May 28, 2009 decision. The Board indicated at page 11 of the decision that Hydro One's 2010 revenue requirement would be increased by 7.1 million to take account of the two approved projects. In section "6.1 Implementation", at page 12 of the decision, the Board said:

"In accordance with its May 28, 2009 Decision, the Board issued a letter to Hydro One on November 5, 2009 setting out the Board's determination of Hydro One's return on equity and cost of short-term debt for 2010. The return on equity was set at 8.39% and the short-term debt rate was set at 0.55%. These values shall be used in the derivation of Hydro One's revenue requirement."

No mention was made in the decision of the December 11, 2009 Report of the Board on cost of capital. No argument had been made on the cost of capital parameters in the submissions considered in the December 16, 2009 decision, as the record for submissions had closed on November 2, 2009,

Board letter of December 22, 2009

Hydro One filed draft exhibits showing the revenue requirements arising from the Board's decisions and calculations of the uniform transmission rate and its components. In those exhibits, Hydro One recalculated the cost of capital values based on the Board's December 11, 2009 report. The Board in its letter of December 22, 2009 required Hydro One to submit revised exhibits using the cost of capital parameters values contained in the Board's letter of November 5, 2009. Hydro One complied, filing revised exhibits on January 5, 2010, but indicated that the company would file a notice of motion seeking to vary the Board's decision of December 16, 2009.

Board order of January 21, 2010

On January 21, 2010, the Board issued an order approving the revised exhibits containing calculations deriving Hydro One's revenue requirement, transmission charge determinants, and resulting transmission rates for 2010.

ALL OF WHICH IS RESPECTFULLY SUBMITTED