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By electronic filing and by e-mail

February 10, 2010

Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
27th floor
Toronto, ON M4P 1E4

Dear Ms Walli,

Hydro One Networks Inc. ("Hydro One")
Motion to Review
Board File No.: EB-2010-0003
Our File No.: 339583-000027

This letter contains the submissions of Canadian Manufacturers & Exporters ("CME") in the above-noted proceeding.

Yours very truly,

Peter C.P. Thompson, Q.C.

PCT\slc
enclosure

c. Hydro One
Interested Parties EB-2008-0272
Paul Clipsham (CME)

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IN THE MATTER OF Section 78 of the *Ontario Energy Board Act 1998*, S.O. 1998, c.15, (Schedule B);

AND IN THE MATTER OF a review of an application filed by Hydro One Networks Inc. under Section 78 of the *Ontario Energy Board Act, 1998*, seeking changes to the Uniform Provincial Transmission Rates;

AND IN THE MATTER OF Rules 42, 44.01 and 45.01 of the Ontario Energy Board's *Rules of Practice and Procedure*.

FACTUM OF CANADIAN MANUFACTURERS & EXPORTERS (“CME”)

Introduction

1. Hydro One Networks Inc. ("Hydro One") seeks a review and variance of one paragraph of the Board's EB-2008-0272 December 16, 2009 Decision with Reasons (the "December 16 Decision") directing it to use equity return and short-term debt values set out in a November 5, 2009 Board letter to Hydro One in the derivation of Hydro One's 2010 revenue requirement.
2. For reasons that follow, Hydro One's Motion lacks merit.

Facts

3. The transmission rates of Hydro One were determined for the multi-year 2009 and 2010 test period in the Board's EB-2008-0272 Decision with Reasons dated May 28, 2009 (the "May 28 Decision"). For the purposes of determining its transmission rates for 2010, Hydro One is in the same position as other utilities that are currently operating in the midst of a multi-year Incentive Regulation Mechanism ("IRM") for determining 2010 rates.
4. In the EB-2008-0272 proceedings, Hydro One proposed and the Board agreed that its 2010 rates should be based on an application of the then prevailing Board policy on Cost of Capital to cost parameters for 2010 set using the September 2009 Consensus Forecast and September Bank of Canada data. In its May 28 Decision, at page 52, the Board stated:

"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."

5. The Board's Cost of Capital consultative was initiated on March 16, 2009,¹ more than two (2) months before the May 28 Decision. The May 28 Decision did leave open a particular part of the application pertaining to four (4) projects the Board did not approve in May. However, there is nothing in it giving Hydro One the right to seek a change to its 2010 rates on the basis of the outcome of the Cost of Capital Consultative.

6. On September 4, 2009, Hydro One filed evidence to support its request that two (2) of the four (4) projects the Board had not approved in May 2009 now be approved. Approval for these two (2) projects would increase Hydro One's 2010 revenue requirement by about \$7.1M. The filing of written submissions pertaining to issues related to the approval of these two (2) projects concluded on November 2, 2009.²

7. The letter contemplated by the May 28 Decision, notifying Hydro One of the Board's determination of its 2010 cost of capital parameters, issued on November 5, 2009.³

8. By November 5, 2009, Board Members were considering their response to the issues raised in the Cost of Capital consultative.

9. On December 11, 2009, the Board issued its Cost of Capital Report (the "Report"). The Report indicates that, for utilities operating under the auspices of previously approved multi-year test periods, the Report's application will be considered in the next cost of service application brought by such utilities.⁴

10. The next cost of service application by Hydro One for Board approval of its transmission rates will be for the 2011 and 2012 test period.

11. The Report also indicates that its application is not automatic. Parties questioning the applicability of the Report to a particular utility can test the applicant's evidence and/or lead their own evidence pertaining to the matter in that utility's next cost of service rate case.⁵ The first case in which the applicability of the Report to a determination of Hydro One's transmission

¹ See Board's March 16, 2009 letter to all interested Stakeholders in EB-2009-0084.

² See Notice of Motion Attachment 4 at page 2.

³ See Notice of Motion Attachment 2.

⁴ See Notice of Motion Attachment 3, pages (iii) and 61.

⁵ See Notice of Motion Attachment 3, page 13.

rates can be contested on its merits is in Hydro One's, yet to be filed, transmission application for the 2011 and 2012 test period.

12. On December 16, 2009, and some five (5) days after the Board released the Report, the Board rendered its Decision approving the two (2) projects upon which Hydro One had filed additional evidence in September 2009. As a result, the Board increased Hydro One's revenue requirement for 2010 by about \$7.1M. In its December 16 Decision, the Board reiterated that Hydro One's 2010 transmission rates shall be finalized in accordance with its May 28 Decision and its November 5, 2009 letter determining Hydro One's Return on Equity and cost of short-term debt for 2010. In this connection, the Board stated as follows:

*"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." (emphasis added)*⁶

13. Hydro One failed to comply with the Board's clear directive in the December 16 Decision by filing, on December 21, 2009, a draft exhibit that did not reflect the cost of capital parameter values determined by the Board in its letter of November 5, 2009. Instead, Hydro One provided a draft exhibit reflecting cost of capital values that it derived from the Report.

14. By letter dated December 22, 2009, the Board responded to Hydro One's defiance of its directive by reiterating that the values it determined in its November 5, 2009 letter are to be used. The Board stated as follows:

"The Board's letter of November 5, 2009, set out the Board's determination of Hydro One Transmission's return on equity and short-term debt rate for 2010. This approach was confirmed in the Board's Decision of December 16, 2009.

Hydro One has provided a draft Uniform Transmission Rate Order and supporting materials that are based on Cost of Capital parameters which do not apply in this case. The Board expects Hydro One to provide a revised set of draft documents as soon as possible."

15. On January 5, 2010, Hydro One complied with the Board's December 22, 2009 letter and, concurrently, filed a Motion for Review and Variance of that part of the Board's December 16, 2009 Decision that mandated the use of the values set out in its November 5,

⁶ See Notice of Motion Attachment 4, page 12.

2009 letter. In its Motion for Review and Variance, Hydro One contends that there are grounds that raise a question as to the correctness of that part of the December 16 Decision that stems from the determination made in the May 28 Decision that the Board would issue a letter to Hydro One determining the cost of capital values to be used in the derivation of its 2010 transmission revenue requirement.

Argument

16. In the May 28 Decision, the Board unequivocally determined that Hydro One's transmission cost of capital for 2010 would be based on the Board's cost of capital policy that prevailed when that decision was rendered and values for equity and debt that the Board would subsequently determine on the basis of September data. This determination was in accordance with the relief Hydro One requested for the multi-year 2009 and 2010 test period upon which it based its application.

17. The facts that confirm that the Board unequivocally intended that the cost of capital recoverable by Hydro One in its 2010 transmission rates be based on the adjustment formula that existed when the May 28 Decision was rendered and September 2009 data include the following:

- (a) The initiation of the Cost of Capital Consultative on March 16, 2009, and before the May 28 Decision;
- (b) The specific determination, in the May 28 Decision, that the then prevailing cost of capital policy and September values would be used by the Board to determine the cost of equity and debt capital recoverable in Hydro One's 2010 transmission rates;
- (c) The issuance of the November 5, 2009 letter determining those values and mandating that Hydro One use them in determining its 2010 transmission rates at a time when the Board's Report was under deliberation;
- (d) The issuance of the Report on December 11, 2009, a date before the December 16 Decision;

- (e) The contents of the Report indicating that utilities operating under the auspices of partially completed multi-year test periods will have matters pertaining to the applicability of the Report to them determined in their next cost of service application; and
- (f) The December 16 Decision mandating that Hydro One use the values the Board determined on November 5, 2009, when calculating its 2010 transmission revenue requirement.

18. The December 16 Decision adheres to the determinations made in the May 28 Decision and the November 5, 2009 letter. There is no identifiable error in the December 16 Decision and no reasons to doubt its correctness.

19. The 2010 year is the second year of Hydro One's multi-year test period the Board approved in the May 28 Decision. Having regard to the transition provisions set out in the Report, the first case in which the applicability of the Report to a determination of Hydro One's transmission rates is to be considered is in Hydro One's next cost of service application for transmission rates which will be for the 2011 and 2012 test period. A Motion for Review is not the "cost of service application" envisaged by the Report.

20. The December 16 Decision treats Hydro One in the same manner as other utilities that are currently operating in the midst of a multi-year IRM. The December 16 Decision is entirely compatible with the Report and, in and of itself, corroborates the intent of the Report to defer considerations pertaining to its applicability to utilities operating under the auspices of previously approved multi-year test periods to the next cost of service application brought by such utilities.

21. There has been no change in circumstances, either before or after December 16, 2009, that operates to call into question the correctness of the December 16 Decision reiterating Hydro One's obligation to abide by the May 28 Decision and the November 5, 2009 determination of the equity and short-term debt rates to be used in the derivation of its 2010 transmission revenue requirement.

22. Because Hydro One is in the second year of a multi-year test period, it cannot derive any transmission revenue requirement benefit from the Report until questions pertaining to the applicability of the Report to Hydro One have been considered and decided in Hydro One's next transmission cost of service application. Hydro One's contention that the "true costs" of equity

rationale, adopted by the Board in the Report, applies to a determination of its transmission revenue requirement is a matter in dispute. In accordance with the transition provisions of the Report, that dispute is a matter to be determined on the basis of evidence to be filed and tested in Hydro One's next transmission cost of service application and not in a Motion to Review the December 16 Decision.

Conclusion and Relief Requested

23. For these reasons, we submit that the Motion to Review and Vary the December 16 Decision cannot succeed. The threshold test has not been satisfied.

24. CME requests that it be awarded 100% of its reasonably incurred costs in connection with participating in this Motion.

ALL OF WHICH is respectfully submitted this 10th day of February, 2010

A handwritten signature in black ink, appearing to read "Peter C.P. Thompson", with a long horizontal flourish extending to the right.

Peter C.P. Thompson, Q.C.
Counsel for CME