



**EB-2010-0003**

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

**AND IN THE MATTER OF** an application by Hydro One Networks Inc. for an Order 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*.

**BEFORE:** Paul Sommerville  
Presiding Member

Cynthia Chaplin  
Vice Chair

## **DECISION AND ORDER**

The Board received a Notice of Motion dated January 5, 2010 from Hydro One Networks Inc. ("Hydro One") for a motion to review aspects of the Board's December 16, 2009 decision in the EB-2008-0272 proceeding, which established Hydro One's transmission revenue requirement for 2009 and 2010. Procedural Order No. 1 for the motion was issued on January 15, 2010 recognizing the parties of record in the EB-2008-0272 proceedings as intervenors in this proceeding, declaring the transmission rates interim, and establishing the procedure for the hearing of the motion. Procedural Orders No. 2 and 3 subsequently changed the date for the oral hearing. The hearing took place on March 26, 2010 at the Board's offices.

## DECISION

This motion seeks a review and variance of one paragraph of the Board's EB- 2008-0272 December 16, 2009 Decision with Reasons directing Hydro One Networks Inc. ("Hydro One") to use equity return and short-term debt values set out in a November 5, 2009 letter to Hydro One in the derivation of Hydro One's 2010 transmission revenue requirement.

If successful, the variance sought by Hydro One would increase the return on equity to be used in deriving its 2010 transmission revenue requirement from 8.39% to 9.75%, and would also increase the short-term debt rate to be used by Hydro One from 0.55% to 1.93%. These values flow from the Board's revised cost of capital methodology (EB-2009-0084), which was published on December 11, 2009, five days prior to the issuance of the December decision that is the subject of this Motion to Vary. The change sought by Hydro One would have the effect of increasing its revenue requirement for 2010 by approximately \$64 million, resulting in an increase in rates charged to its customers compared to the rates reflected in its rate order dated January 21, 2010.

For the reasons outlined below the Board finds that the motion fails the threshold question set out in Rule 45.01 of the Board's Rules of Practice and Procedure.

The Board's finding is predicated on the finding that the issue of cost of capital was definitively addressed and decided upon in the Board's decision in EB-2008-0272 issued on May 28, 2009. That decision addressed and resolved all of the outstanding issues in that proceeding with the exception of the inclusion in Hydro One's revenue requirement of the costs of four proposed construction projects.

It is worth quoting the specific finding made by the Board in its May 28, 2009 decision at page 48:

The Board will not approve these four projects at this time because [of] (sic) the evidence 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.

Later, on the same page of the May 28 decision the Board said:

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. [Emphasis added]

Still later on page 52 of the May 28 decision the Board found:

For 2010 the Board agrees with Hydro One that September 2009 data should be used to update the cost of capital parameters... 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. [Emphasis added]

By letter dated November 5, 2009 the Board set out the values for the return on equity and short-term debt for use in Hydro One's 2010 transmission revenue requirement. This letter was in perfect conformity with the decision made by the Board in its May 28, 2009 decision in that it explicitly adopted the mechanism established in 2006 for the determination of the cost of capital of electricity distributors.

Following the issuance of the November 5, 2009 letter, Hydro One did not challenge the values prescribed by the Board in that letter, nor did it challenge the Board's decision to use the September 2009 values, and the 2006 methodology to determine the cost of capital for 2010.

It is the Board's finding that the only substantive aspect of the EB-2008-0272 case that was left open by the panel was a consideration of the potential additional evidence to be filed by Hydro One in support of the four projects. The panel had definitively resolved the issue of how the cost of capital was to be determined for the purposes of the 2010 revenue requirement. All that remained in this regard after the May 28, 2009 decision was to update the parameters using September 2009 data. The Board expressed this to be a mechanistic process, indicating that it was a mere update of values, and did not contemplate a reconsideration in any degree of the underlying methodology.

The decision of December 16, 2009, which is the subject matter of this motion, did no more than accurately implement the decision that had been made by the Board on May 28, 2009. There was and is no error in the December decision. It would have been extraordinary and completely unsupported for the Board in its December decision to change a finding which had been definitively made in May. The advent of the Board's revised methodology, which predated the issuance of the December decision by five days, had and has no relevance to the determination of cost of capital for Hydro One's 2010 revenue requirement. That issue was decided in the May 28, 2009 decision.

Accordingly, insofar as the application before the Board in this motion seeks a variance in the December decision, it must fail. The Board finds that the motion raises no question as to the correctness of the decision the applicant seeks to vary.

However, the Board considers it worthwhile to provide some commentary with respect to implementation of the Board's revised methodology in the circumstances before us.

It is the Board's view that it is amply clear in the Board's report that the revised methodology is intended to be implemented in the context of a cost of service application. On page 61 of the report of the Board states:

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.

In this case, the 2010 cost of service application was, with the sole exception of the consideration of the four proposed construction projects mentioned above, decided fully six months before the Board's cost of capital report was issued. There is therefore no cost of service application to provide a context for the appropriate consideration of the revised cost of capital methodology. The implementation of that methodology is dependent on its consideration within a cost of service application which allows for a full and contemporaneous consideration of all the company's costs in setting just and reasonable rates. In this case that is not possible, unless the applicant decides to file a new cost of service application for 2010 rates. In the course of his remarks, counsel for Hydro One indicated that such an application was not being contemplated by his client.

The decision of December 16, 2009 is confirmed without variance. Parties wishing to make cost claims shall do so in accordance with the schedule set out below. In the

course of those submissions for costs parties are invited to address the question as to how the costs of this proceeding, that is this motion, should be allocated as between ratepayers and the shareholder of the utility. In responding to cost claims the applicant will have its opportunity to provide its views on the subject.

**THE BOARD THEREFORE ORDERS THAT:**

1. The decision of the Board dated December 16, 2009 will not be varied as requested in this motion.
2. The 2010 rates prescribed in the Board's rate order dated January 21, 2010 are confirmed as final and will be implemented by Hydro One.
3. Parties eligible for costs shall file with the Board and copy to the Hydro One their cost claims for this motion no later than Monday, April 19, 2010.
4. Hydro One must file with the Board and copy to the affected claimant any objections to cost claims no later than Monday, May 3, 2010.
5. Any party whose cost claim is the subject of an objection must file with the Board and copy to Hydro One any reply to the objection no later than May 10, 2010.
6. Filings to the Board must be made in the manner described in Procedural Order No. 1 in this proceeding.
7. Hydro One shall pay the Board's costs upon receipt of the Board's invoice.

**DATED** at Toronto April 5, 2010

ONTARIO ENERGY BOARD

*Original signed by*

Kirsten Walli  
Board Secretary