



BY EMAIL and RESS

Mark Rubenstein
mark@shepherdrubenstein.com
Dir. 647-483-0113

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
M4P 1E4

October 16, 2018
Our File: EB20180270

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2018-0270 – Hydro One/OPDC MAAD Application – SEC Notice of Motion

We are counsel to the School Energy Coalition (“SEC”). Enclosed, please find SEC’s Notice of Motion.

Yours very truly,
Shepherd Rubenstein P.C.

Original signed by

Mark Rubenstein

cc: Wayne McNally, SEC (by email)
Applicants and interested parties (by email)

ONTARIO ENERGY BOARD

IN THE MATTER OF an application made by Hydro One Inc. for leave to purchase all of the issued and outstanding shares of Orillia Power Distribution Corporation, made pursuant to section 86(2)(b) of the *Ontario Energy Board Act, 1998*.

AND IN THE MATTER OF an application made by Orillia Power Distribution Corporation seeking to include a rate rider in the current Board-approved rate schedules of Orillia Power Distribution Corporation to give effect to a 1% reduction relative to their Base Distribution Delivery Rates (exclusive of rate riders), made pursuant to section 78 of the *Ontario Energy Board Act, 1998*.

AND IN THE MATTER OF an application made by Orillia Power Distribution Corporation for leave to transfer its distribution system to Hydro One Networks Inc., made pursuant to section 86(1)(a) of the *Ontario Energy Board Act, 1998*.

AND IN THE MATTER OF an application made by Orillia Power Distribution Corporation seeking cancellation of its distribution licence, made pursuant to section 77(5) of the *Ontario Energy Board Act, 1998*.

AND IN THE MATTER OF an application made by Hydro One Networks Inc. seeking an order to amend its distribution licence, made pursuant to section 74 of the *Ontario Energy Board Act, 1998*, to serve the customers of the former Orillia Power Distribution Corporation.

AND IN THE MATTER OF an application made by Orillia Power Distribution Corporation for leave to transfer its rate order to Hydro One Networks Inc., made pursuant to section 18 of the *Ontario Energy Board Act, 1998*.

AND IN THE MATTER OF an application made by Hydro One Networks Inc., seeking an order to amend the Specific Service Charges in Orillia Power Distribution Corporation's transferred rate order made pursuant to section 78 of the *Ontario Energy Board Act*.

NOTICE OF MOTION

The School Energy Coalition ("SEC") will make a motion to the Ontario Energy Board ("the Board") at its offices at 2300 Yonge Street, Toronto, on a date and at a time to be fixed by the Board.

PROPOSED METHOD OF HEARING

SEC has no preference in the method of hearing this motion.

THE MOTION IS FOR:

1. An order dismissing the application filed by Hydro One Inc. and Hydro One Networks Inc. (collectively “Hydro One”), and Orillia Power Distribution Corporation (“OPDC”) (collectively the “Applicants”), filed on September 26, 2018 under Board docket EB-2018-0270 (“Second MAADs Application”); and
2. Such further and other relief as SEC may request and the Board may grant.

THE GROUNDS FOR THE MOTION ARE:

Original MAADs Application

1. On September 27, 2016, Hydro One filed an application with the Board, seeking approval under Section 86(2)(b) of the *Ontario Energy Board Act, 1998* (“*OEB Act*”)¹ to purchase all of the shares of OPDC. As part of the share purchase, Hydro One and OPDC requested Board approval for a various types of related relief. The Board assigned this application Board file No. EB-2016-0276 (“the Original MAADs Application”).
2. SEC was granted intervenor status in the Original MAADs Application and participated fully throughout.
3. On July 27, 2017, after receiving and considering submissions from the parties on whether to grant the requested relief, the Board determined that it did not have sufficient evidence to do so, and in a procedural order decided to place the proceeding in abeyance until Hydro One Networks Inc.’s 2018-2022 rates application (EB-2017-0049) had been completed (the “Abeyance Decision”).²
4. The Applicants filed motions to review the Abeyance Decision, and the Board assigned the motions docket number EB-2017-0320. By decision dated January 4, 2018, the Board granted the

¹ *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched. B

² *Procedural Order* No. 6 (EB-2016-0276), July 27 2017, p.5

motions to review and remitted the matter back to the panel hearing the Original MAADs Application to proceed with a determination of the applications.³

5. The panel hearing the Original MAADs Application provided the Applicants with an opportunity to file further evidence and submissions relating to specific issues on which the Board had expressed concerns.⁴
6. After considering further material filed by the Applicants, the Board issued its final decision on April 12, 2018, denying the Original MAADs Application (the “Original MAADs Decision”).⁵ The Board determined that the Applicants had not met their onus, and that it was “not satisfied that the no harm test had been met.”⁶ The Board found that “Hydro One has not demonstrated that it is reasonable to expect that the underlying cost structures to serve the customers of Orillia Power will be no higher than they otherwise would have been, nor that they will underpin future rates paid by these customers.”⁷

Review Motion

7. On May 2, 2018, the Applicants filed further motions to review and vary, this time with respect to the Original MAADs Decision. Those Motions were assigned Board file EB-2018-0171 (“Second Review Proceeding”). Included with Hydro One’s Notice of Motion was an affidavit from Joanne Richardson (the “Richardson Affidavit”), containing information that Hydro One claimed was new and not available at the time the panel hearing the Original MAADs Application required further evidence and submissions after the matter was remitted back to it.⁸
8. SEC was deemed an intervenor in the Second Review Proceeding, and participated fully throughout.
9. After hearing submissions on the threshold question, the Board denied the motions to review pursuant to Rule 43.01 of the Board’s *Rules of Practice and Procedure*. In its decision (the “Second Review Decision”), the Board determined it need not hear the merits of the motions, as

³ *Decision and Order* (EB-2017-0320 - Hydro One/Orillia Power Motion to Review P.O. 6), January 4 2018, p.9

⁴ *Procedural Order No. 7* (EB-2016-0276), February 5, 2018, p.3

⁵ *Decision and Order* (EB-2016-0276 – Hydro One/Orillia Power), April 12 2018, p.20

⁶ *Ibid*

⁷ *Ibid*

⁸ *Decision and Order* (EB-2018-0171 - Hydro One /OPDC Motion to Review EB-2016-0276), August 23 2018, p.12

the Applicants had not shown an identifiable error in the Original MAADs Decision. After providing an analysis of each of the grounds raised, the Board concluded by stating:

The OEB finds that the grounds for the applicants' motions to review and vary the MAADs decision dated April 12, 2018 do not show an identifiable error in the decision as the findings were reasonable and correct concerning the issues that form the grounds for these motions. As a result, the motions fail to satisfy the threshold set out in Rule 43.01 for a review on the merits and are dismissed.⁹

10. The Board also found that the Richardson Affidavit consisted of information that could have been presented in the hearing of the Original MAADs Application and that it “does not present new facts that have arisen or facts that could not have been discovered by reasonable diligence”.¹⁰
11. Neither of the Applicants, collectively or individually, have appealed the Original MAADs Decision or the Second Review Decision to the Divisional Court pursuant to section 33 of the *OEB Act*. They have also not commenced a judicial review of the Original MAADs Decision or the Second Review Decision to the Divisional Court pursuant to section 2(1) of the *Judicial Review Procedure Act*.¹¹

Second MAADs Application

12. The Applicants filed the Second MAADs Application on September 26, 2018. The relief sought by the Applicants in the Second MAADs Application is identical to the relief requested in the Original MAADs Application brought by the same Applicants, which applications were considered and rejected by the Board in the Original MAADs Decision and further upheld in the Second Review Decision.
13. SEC has filed a Notice of Intervention applying to be an intervenor in this proceeding.¹²
14. The evidence filed in support of the Second MAADs Application is similar to that filed in the Original MAADs Application, and that contained in the Richardson Affidavit, which the Board determined in the Second Review Decision did not contain information that was new or that could not have been discovered with reasonable diligence.

⁹ *Ibid*

¹⁰ *Ibid*

¹¹ *Judicial Review Procedure Act*, R.S.O. 1990, s.2(1)

¹² See Notice of Intervention of the School Energy Coalition, filed with the Board on September 26, 2018 (RESS confirmation number #35930)

15. Bringing an application that seeks the exact same relief and requires a redetermination of the same issues that have already been determined by the Board is, as a matter of law, *res judicata*, vexatious, and an abuse of process.
16. Section 4.6(1) and 23(1) of the *Statutory Powers Procedure Act*.¹³
17. Section 19(1) of the *OEB Act*.
18. Rules 8 and 18 of the Board's *Rules of Practice and Procedure*, and
19. Such further grounds as counsel may advise and the Board may permit.

THE FOLLOWING DOCUMENTARY MATERIAL AND EVIDENCE WILL BE RELIED UPON AT THE HEARING OF THE MOTION:

1. The records in EB-2016-0276, EB-2017-0320, EB-2018-0171 and EB-2018-0270; and
2. Such further and other material as counsel may advise and the Board may permit.

October 16, 2018

**Shepherd Rubenstein
Professional Corporation**
2200 Yonge Street
Suite 1302
Toronto, Ontario M4S 2C6

Mark Rubenstein
mark@shepherdrubenstein.com
Jay Shepherd
jay@shepherdrubenstein.com

Tel: 416-483-3300
Fax: 416-483-3305

Counsel for the School Energy Coalition

¹³ *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22

TO: Ontario Energy Board
2300 Yonge Street, Suite 2701
Toronto, ON M4P 1E4

Kirsten Walli, Board Secretary
Tel: 416-481-1967
Fax: 416-440-7656

AND TO: Charles Keizer
Torys LLP
30th Floor, Box 270
79 Wellington St. W.
Toronto, Ontario
M5K 1N2
Telephone: (416) 865-7512
Fax: (416) 865-7380
ckeizer@torys.com

AND TO: Michael Engelberg
Assistant General Counsel
Hydro One Networks Inc.
483 Bay Street
Toronto, ON M5G 2P5
Tel: 416-345-6305
Fax: 416-345-6972
mengelberg@hydroone.com

Counsel for Hydro One Inc. and Hydro One Networks Inc.

AND TO: J. Mark Rodger
Borden Ladner Gervais LLP
Scotia Plaza
40 King St. W
Toronto, ON M5H 3Y4
Tel: 416-367-6190
Fax: 416-361-7088
mrodger@blg.com

Counsel for Orillia Power Distribution Corporation

AND TO: Intervenors of Record in EB-2018-0171