

**Hydro One Networks Inc.
Orillia Power Distribution Corporation**

**Application for approval to purchase all issued and outstanding shares of
Orillia Power Distribution Corporation**

**DECISION ON MOTION AND PROCEDURAL ORDER NO. 3
March 12, 2019**

Hydro One Networks Inc. filed an application on September 26, 2018, under section 86(2)(b) of the *Ontario Energy Board Act, 1998, S.O. 1998, c. 15, (Schedule B) (Act)*, requesting approval for Hydro One Inc. to purchase all of the shares of Orillia Power Distribution Corporation (Orillia Power). As part of the share purchase, Orillia Power and Hydro One Networks Inc. requested the OEB's approval for certain licence amendments and rate proposals.

On October 16, 2018, School Energy Coalition (SEC) filed a Notice of Motion for an order dismissing the application on the grounds that the application seeks "the exact same relief and requires a redetermination of the same issues that have already been determined by the Board and is, as a matter of law, *res judicata*, vexatious, and an abuse of power."¹

Through Procedural Order No. 1, issued on December 19, 2018, the OEB decided that it would hear SEC's motion. Procedural Order No. 1 also established the following schedule that provided intervenors the opportunity to file materials and evidence in relation to the motion.

- SEC was required to file with the OEB and deliver to all parties any additional material that it wished to rely on at the hearing of its motion, on or before January 7, 2019.

¹ SEC Notice of Motion, p. 5.

- Parties that supported the motion were required to file with the OEB and deliver to all other parties, any material that they wished to rely on at the hearing of the motion on or before January 11, 2019.
- Parties that opposed the motion were required to file with the OEB and deliver to all other parties, any material that they wished to rely on at the hearing of the motion on or before January 16, 2019.

The OEB issued Procedural Order No. 2 on February 20, 2018 requiring SEC to file its reply argument to party submissions on the motion on or before March 1, 2019.

Each of Energy Probe Research Foundation (Energy Probe), Vulnerable Energy Consumers Coalition (VECC), Consumers Council of Canada (CCC), and Mr. Frank Kehoe filed materials supporting SEC's motion.

Each of the Power Workers' Union (PWU), Orillia Power, and Hydro One Networks Inc. (Hydro One) filed materials opposing SEC's motion.

Decision on SEC Motion

SEC's motion is denied.

There is no question that there are many similarities between the original application and the current application. The OEB also accepts that the principle of *res judicata* can be applied to cases before administrative tribunals.

However, as all parties agree, *res judicata* is a discretionary power, and it should not be applied in cases where a tribunal is concerned that it may not be in the public interest to do so. Given the discretionary nature of the remedy, it is not clear that a true change in circumstances must be demonstrated in order for the new application to go forward. Hydro One has filed potentially important new evidence related to the post-deferral period. Although some of this evidence may have been filed with Hydro One's motion to review the Original Decision², that motion was dismissed at the threshold stage and the evidence was not examined in detail by the OEB. The OEB is not prepared to determine whether there is new evidence that will assist its consideration of the acquisition of Orillia Power by Hydro One Inc. without first testing the evidence. Only by hearing the new evidence can the OEB determine whether it merely restates the evidence already heard and decided by the OEB, or changes the application. Even if the evidence is

² Decision and Order on EB-2016-0276

substantially the same, the OEB retains the discretion to continue with the hearing, and under the current circumstances the OEB finds it appropriate to do so. The OEB will allow the evidence to be tested through the hearing process.

SEC submitted that it did a cursory review of the evidence and it does not respond to the concerns expressed by the OEB in the Original Decision. The OEB has determined that it will test that evidence before making a determination on its responsiveness to the OEB's concerns.

In denying the motion the OEB is not making a finding that Hydro One's new evidence is responsive to the concerns expressed in the previous decision. The value of Hydro One's evidence will be assessed through the hearing process in the ordinary manner.

It is necessary to make provision for the following matters related to this proceeding. The OEB may issue further procedural orders from time to time.

IT IS THEREFORE ORDERED THAT:

1. OEB staff and intervenors shall request any information and material from Orillia Power and Hydro One Networks Inc. that is in addition to the evidence already filed and that is relevant to the hearing by written interrogatories filed with the OEB and served on all parties by **March 25, 2019**.
2. Orillia Power and Hydro One Networks Inc. shall file with the OEB complete written responses to the interrogatories and serve them on all parties by **April 8, 2019**.

All filings to the OEB must quote the file number, **EB-2018-0270** and be made electronically in searchable/unrestricted PDF format through the OEB's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>. Two paper copies must also be filed at the OEB's address provided below. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <http://www.oeb.ca/Industry>. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a USB in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Andrew Bishop at Andrew.Bishop@oeb.ca, and OEB Counsel, Michael Millar at Michael.Millar@oeb.ca.

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DATED at Toronto March 12, 2019

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary