



EB-2007-0050

ORAL DECISION

Made on May 8, 2008

The issue being considered by the Board is whether the document entitled "Land Acquisitions Compensation Principles", dated April 2008, should be allowed into evidence. Mr. Ross seeks to file this document as an aid to cross-examination, and Hydro One objected.

In deciding this matter, the Board feels that it will be helpful to the parties to use this opportunity to give guidance regarding the appropriate scope of cross-examination.

Section 97 of the OEB Act says, and I quote:

"In an application under section 90, 91, or 92, leave to construct shall not be granted until the applicant satisfies the Board that it has offered or will offer to each owner of land affected by the approved route or location an agreement in a form approved by the Board."

Hydro One has filed eight forms in its pre-filed materials. These forms of agreements set out the rights and obligations of the parties. They do not set out specific compensation amounts, nor do they set out how compensation will be determined.

This is consistent with the Board's practice and its jurisdiction under section 92 of the OEB Act, in that the Board has no role in setting compensation in what is intended to be a negotiated process.

If agreement is not reached through negotiation, it will be determined through an expropriation process, which will be the subject of a separate proceeding of the Board. In that case, the Board also does not determine compensation amounts.

Therefore, the following lines of enquiry are not within the scope of this proceeding: Specific compensation; principles that are applied to determine compensation; the process through which those principles were developed; the application of those principles in determining compensation; and the reasonableness of compensation offers. The Board will not allow cross-examination on any of these areas.

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However, as parties have pointed out, under section 96.2, in considering this application, the Board will consider the interests of consumers with respect to price. It is relevant to consider the costs of the project, including total land acquisition costs.

Therefore, the Board will allow questions pertaining to the overall land acquisition costs, as they will be impacted by Hydro One's approach to compensation. Our interest here is the impact on the overall economics of the project.

Further, under issue 5.2, the Board agrees that it is within scope for parties to ask questions regarding the status and the process of Hydro One's land acquisition activities.

While the Board believes that much of the document in question is irrelevant to the proceeding, with the restrictions we have outlined, we will allow the document into evidence.