EB-2009-0096

IN THE MATTER OF the *Ontario Energy Board Act, 1998*;

AND IN THE MATTER OF a review of an application filed by Hydro One Networks Inc. for an order approving just and reasonable rates and other charges for electricity distribution for 2010 and 2011.

ARGUMENT OF THE ELECTRICAL CONTRACTORS ASSOCIATION OF ONTARIO (ECAO)

Introduction.

"...regulation, if applied with flexibility and sensitivity to market forces, can actually spur private sector innovation and investment in the energy sector."

(Then) Senator Barack Obama
The Audacity of Hope, Thoughts on Reclaiming the American Dream, page 200
Vintage Books, 2008

1. ECAO is a not-for-profit corporation established to represent electrical contractors across Ontario. ECAO's 850 member contractors provide a broad range of electrical services in the institutional, commercial, industrial, residential and electrical utility construction and maintenance marketplace.

2. The Hearing Panel in this case indicated through establishment of issue 9.5 that it would consider the Board's role with regard to the approval of electricity distributor Green Energy Plans, and criteria to apply when determining whether to approve such plans.

3. ECAO has considered Hydro One Distribution's Green Energy Plan from the perspective of its members, who are both impacted by, and can impact, implementation of that plan.

4. In this Argument ECAO both endorses and expresses concern with Hydro One's Green Energy Plan.

5. ECAO endorses Hydro One's Green Energy Plan in the sense that the plan recognizes the contribution that ECAO's members, Ontario's qualified electrical contractors, can make in executing, in a prudent and cost effective fashion, on the green energy vision underpinning Ontario's electricity policy. Hydro One has appropriately considered the resources for plan execution provided by Ontario's electrical contracting industry at large, and has incorporated the involvement of that industry in its Green Energy Plan.

6. At the same time, ECAO is concerned about the inclusion in Hydro One's Green Energy Plan of a set of ill defined distribution "expansion" feeders to connect new renewable generation. Approval of capital investments within the Green Energy Plan has the impact, among others, of removing such investments from the opportunity for, and cost and efficiency discipline of, private sector engineering and construction work oversight. In ECAO's view, the imprecision with which Hydro One has put forward its request for approval of such capital expenditures prejudices not only the direct economic interests of ECAO's members, but also the economic interests of Ontario's electricity ratepayers at large.

7. ECAO recommends that the Board:

   (a) Consider, in evaluating Green Energy Plans, the extent to which external skilled resources have been considered and, as appropriate, engaged, in execution of those plans.

   (b) Proceed with caution in considering the distribution system "expansion" facilities expenditures proposed by Hydro One for approval in its current Green Energy Plan, and ultimately require a more precise definition of Green Energy Plan eligible distribution system expansion investments.

The benefits of engaging skilled external resources.

8. Hydro One plans to engage $30 million worth of external contracting services in execution of its Green Energy Plan during the test years 2010 and 2011.[1]

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[1] Exhibit H/T11/S1, page 2, part d.

9. Hydro One's witnesses acknowledged in examination that prudent external contracting yields a number of benefits to Hydro One and its ratepayers, including:

(a) **Facilitating timely implementation of the plan.** Timely green energy facilitation is now an express component of the Board's statutory objectives for electricity regulation.[2] Such timely facilitation is reflected in the early (June, 2009) release by the Board of its green energy plan guidelines, which themselves contemplate immediate actions by distributors in pursuit of Green Energy Plans[3], and advance funding by way of a rate adder to allow for early action[4]. Hydro One's witnesses expressed their firm view that timely implementation of green generation connection and smart grid programs is a priority for the government and others engaged in Ontario's energy sector.[5] Hydro One's green energy plan related evidence indicates that: i) there is a lot of work to do in implementation of the plan; ii) the company currently faces a general constraint in the availability of skilled labour; and iii) this constraint is anticipated to persist.[6] In this context, Hydro One relies on contracting out of skilled electrical work to execute its work plans, and anticipates continuing to do so in execution of its Green Energy Plan.[7]

(b) **Providing cost effective Green Energy Plan execution.**[8]

(c) **Encouraging knowledge transfer and skills training.** Hydro One's evidence is that prudent engagement of external skilled labour facilitates development and transfer of skills and knowledge, enabling Hydro One to rely on external skilled labour and to ensure that its internal labour resources stay current on work tools and processes. [9]

(d) **Maintaining the availability of much needed skilled electrical sector human resources.** Continued productive engagement will allow Ontario's electrical contractors to retain and maintain capacity to respond to Ontario's green energy infrastructure requirements.[10]

(e) **Leveraging ratepayer investment in ongoing development of green energy.** Hydro One's witnesses recognized that prudent engagement of the private sector

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[2] *Ontario Energy Board Act, 1998,* section 1(1)5.
[3] G-2009-0087 Guidelines, page 2, paragraphs 1 and 3.
[4] G-2009-0087 Guidelines, page 8.
[5] Transcript Volume 2, page 71, lines 2 through 8.
[6] Ex. A/14/8, pages 1 through 3; Transcript Volume 8, page 74, line 17 through page 75, line 16; Hydro One Argument at Transcript Volume 11, page 30, lines 1 and 2.
[7] Transcript Volume 5, page 147, line 15 through page 148, line 27.
[8] Ex. A/T14/S8, page 3, lines 18 and 19; Transcript Volume 2, page 80 line 19 through page 81, line 11; Transcript Volume 5, page 153, line 23 through page 155, line 14; Transcript Volume 8, page 84, lines 5 through 9.
[9] Transcript Volume 2, page 77, lines 6 through page 78, line 6; Transcript Volume 5, page 151, line 22 through page 152, line 13 and page 155, lines 15 through 23; Ex. A/T14/S8, page 5, lines 9 through 16.
[10] Transcript Volume 5, page 151, line 22 through page 153, line 22.

in support of the work required to execute Hydro One's Green Energy Plan will support investment by the private electrical contracting sector in green energy related skills training, tools and equipment, and response capability.[11]

10. Hydro One's witnesses testified that they believe that ECAO's members, Ontario's skilled electrical contractors, are ready, willing and able to contribute to execution of the province's green energy policy, that the industry can continue to grow into a role as participants in execution of this policy, and that Hydro One is counting on them to do so.[12]

11. ECAO agrees.

12. ECAO accepts that the prudence of contracting out is best assessed on a case by case basis. In general, however, the evidence as outlined above indicates that prudent contracting out of Green Energy Plan execution work can result in a host of financial, timing and capacity building benefits for Ontario electricity ratepayers.

13. **ECAO thus respectfully submits that in providing its guidance on Hydro One's Green Energy Plan, and on the Board's approach to electricity distributor Green Energy Plans in general, the Board should expressly acknowledge the consideration given by Hydro One to prudent contracting out of portions of its Green Energy Plan execution strategy, and the benefits to be thereby gained.**

14. Such guidance from the Board would also be valuable to Ontario's distributors in proactive management of collective bargaining parameters and responsibilities[13] to allow for flexibility to pursue cost effective and timely Green Energy Plan execution.[14]

The impacts of Green Energy Plan approval on system expansion investments.

15. The Board has recently amended its *Distribution System Code* (*DSC*) in response to passage of the *Green Energy and Green Economy Act,* 2009, to update the regulatory

[11] Transcript Volume 2, page 78 line 27 through page 79, line 5 and page 79, line 21 through page 80, line 10; Transcript Volume 5, page 156, lines 22 through 25; Transcript Volume 8, page 76, lines 2 through 7.
[12] Transcript Volume 5, page 158, lines 15 and 16.
[13] Hydro One Final Argument, Transcript Volume 11, page 32, lines 10 through 14.
[14] Transcript Volume 8, page 83, line 14 through 84, line 9.

treatment of costs of investments required to connect new renewable generation to Ontario's distribution systems. Under the amended code, any investment for connecting qualifying generation that is approved as part of an approved distributor Green Energy Plan is paid for entirely by ratepayers, either local ratepayers or all provincial ratepayers. On the other hand, the costs of investments to expand distribution systems to accommodate new generation connections but which are not part of an approved Green Energy Plan are shared between ratepayers (up to $90,000 per MW of connected capacity) and generators.[15]

16. In instances where a generator is required to make a capital contribution to the facilities constructed to connect their generation, the *DSC* provides that certain of the connection work becomes subject to alternative bid.[16] Under the alternative bid provisions of the *DSC*, the generator can choose to contract with, and pay, the distributor to build the connection facilities, or alternatively can choose to manage construction of the connection facilities on its own (to the design specifications set by the distributor), through engagement of a qualified third party electrical contractor.

17. ECAO submits that the objective of the alternative bid provisions of the *DSC* is to provide customers (including generators) who must make a capital contribution towards the expansion of the distribution system the option of reducing the amount of the contribution or the timing for completion of the expansion facilities required through the sourcing of less expensive or more timely construction work. The customer's option to choose construction through alternative bid should be made available whenever reasonably possible. (Attached to this Argument is a copy of a letter from the Board's then Chief Compliance Officer to Hydro One on an unrelated matter, but which includes language reflecting that OEB Staff share ECAO's views in this respect.)

[15] *DSC* Section 3.2.5A; Transcript Volume 2, page 94, line 19 through page 95.
[16] *DSC*, section 3.2.14.

18. As part of its Green Energy Plan, Hydro One seeks approval for the construction of 6 "dedicated feeders" from a new enabling transmission station.[17] The costs for such construction are budgeted at $34.7 million.[18]

19. Hydro One has not identified any specific feeders for construction, nor has Hydro One proposed any criteria for determining that such expansion facilities should be considered under a Green Energy Plan as opposed to being executed under the (new) standard *DSC* capital contribution rules.

20. In particular, Hydro One's witnesses indicated that they have not formulated any criteria in respect of the number of megawatts, the size of connecting generators, or the number of connecting generators that would be required to justify such a Green Energy Plan expansion facility.[19]

21. The testimony of Hydro One's witnesses on this issue indicates an attempt to identify expenditures in order to respond to the legislative mandate to expand distribution systems to connect qualifying generators. However Hydro One has done no analysis of the need to facilitate construction of the particular type of expansion facilities put forward in its Green Energy Plan, nor of the most prudent way to do so. There is no indication that these facilities would not otherwise be constructed under the new standard *DSC* provisions for such expansions. There is no evidence that this investment by Hydro One is required for, or even facilitative of, any particular qualifying generation connection

22. Hydro One has not discharged its onus to demonstrate the need for, and cost effectiveness of, the proposed $37 million distribution expansion investment.

23. ECAO submits that such onus is particularly relevant given that the ratepayer effect of approval by this Hearing Panel of inclusion of this $34.7 million of work in an approved

[17] Exhibit A/14/2, page 16, lines 17 and 23 *et seq*.
[18] Transcript Volume 2, page 100, lines 8 and 9.
[19] Transcript Volume 2, page 98, line 7 through page 103, line 3.

Hydro One Green Energy Plan would be to shift $13.2 million of cost responsibility for this work from generators to ratepayers.[20]

24. From ECAO's perspective, the implications of approval by this Hearing Panel of Hydro One's Green Energy Plan system expansion proposal is to shift millions of dollars of system expansion work from the private sector to Hydro One employees.

25. On the other hand, considering the objectives of the alternative bid provisions of the *DSC* as noted above, approval by this Hearing Panel of Hydro One's Green Energy Plan system expansion proposal could result in <u>higher</u> overall distribution system expansion costs and <u>less</u> timely generator connection.

26. ECAO acknowledges that the Ontario government's green energy policy, as reflected in the *Green Energy and Green Economy Act, 2009* and various other government policy directives and statements, clearly contemplates socialization of certain green energy enabling costs.

27. ECAO respectfully submits, however, that such policy should not result in *carte blanche* distributor spending permissions. Approval by this Board of utility expenditures, including Green Energy Plan expenditures, still requires findings of need and prudency. Within the scope of mandated green energy expenditures, this Board is still expected, and obligated, to assert economic discipline and ensure efficient execution.

28. **ECAO thus respectfully submits that the Board should <u>exclude</u> the proposed "express" distribution feeders from any Green Energy Plan approval at this time. The Board should direct Hydro One to bring forward a further application, with additional particulars of the proposed expansion facilities when they are available, and with proposed criteria for approving such facilities for inclusion in an electricity distributor Green Energy Plan.**

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[20] Transcript Volume 2, page 100, lines 7 through 10 and page 102, lines 6 through 8. Hydro One is assuming a cost of $145,000 per MW for these expansion facilities, which is $55,000 per MW above the $90,000 per MW generator contribution required in the *DSC*, multiplied by the 240 MW of expansion facility connection capacity (40 MW for each of the 6 proposed feeders), equals $13.2 million.

29. ECAO notes that application of the Board's rate adder for early Green Energy Plan implementation is another mechanism by which to provide, in the interim, for early expenditures that Hydro One considers to be necessary and prudent. Hydro One has acknowledged in its final argument that application of the rate adder would be an acceptable way for the Board to proceed.[21]

Costs.

30. ECAO submits that it has participated responsibly in this proceeding, focusing in its interrogatories, its examinations and this argument on the one issue of the role of the Board in, and the appropriate criteria for, approval of Hydro One's Green Energy Plan.

31. ECAO hopes that its participation has been of assistance to the Board in its deliberations on this issue, and requests that it be awarded 100% of its reasonably incurred costs for such participation in accord with the Board's *Costs Guidelines*.

ALL OF WHICH IS RESPECTFULLY SUBMITTED by:
MACLEOD DIXON, LLP, per:

Ian A. Mondrow
Counsel to ECAO
February 5th, 2010

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[21] Hydro One Final Argument, Transcript Volume 11, page 22, lines 15 through 20.

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May 9, 2009

Sent by email (oded.hubert@hydroone.com)

Board File: CO-2008-0075

Mr. Oded Hubert
Regulatory Affairs
Hydro One Networks Inc.
483 Bay Street
Toronto, ON
M5G 2P5

Dear Mr. Hubert:

Re: <u>Hydro One Practices re "Uncontestable" Generation Connection Work</u>

I am writing in regards to concerns that have been raised by the Electrical Contractors Association of Ontario ("ECAO") relating to Hydro One Networks Inc's. ("Hydro One") policies on the construction of new connection assets for generators. The ECAO has alleged that Hydro One's policies are non-compliant with the provisions in the Distribution System Code ("DSC") related to the contestability of work.

Hydro One's policies state that the following work is uncontestable:

(a) new overhead electricity distribution lines to be constructed within 5 meters of the centerline of existing overhead distribution circuits; and
(b) new underground distribution services to be constructed within 1.5 meters of existing underground primary circuits,

As well, the ECAO disputes Hydro One's policy that the preliminary planning, design and engineering specifications for any assets to be constructed on a road allowance within Hydro One's service area is uncontestable.

Lastly, the ECAO has raised concerns regarding Hydro One's policy that Hydro One will assume ownership of electrical lines constructed on a road allowance in its service area or require an electrical line constructed on private property be transferred to Hydro One in certain circumstances.

Each of these issues will be dealt with below.

Uncontestable Construction

Section 3.2.15(b) of the DSC states that "work involving existing distributor assets" is uncontestable. The ECAO has argued that this section limits non-contestability to only that work which physically involves the assets. Hydro One argues that the provision allows a distributor to make work around the area of those assets uncontestable.

The objective of the contestability provisions in the DSC is to provide customers, who must make a capital contribution towards the expansion of the distribution system, the option of reducing the amount of the contribution through the sourcing of less expensive construction work. While the contestability provisions are also meant to protect the existing distribution system, the customer's option to choose construction through alternative bid is intended to be available whenever reasonably possible. Therefore, it is the view of the Compliance Office that section 3.2.15(b) of the DSC should be interpreted to mean that non-contestable work is restricted to that work which involves physical contact with existing distributor assets.

Hydro One has raised concerns regarding the effect that alternative bid construction in close proximity of existing assets may have on the continued safe and efficient operation of Hydro One's distribution system. However, in our view, Hydro One cannot use this argument to make work around existing distribution assets uncontestable. Hydro One can implement policies and procedures to protect its distribution system through provisions in the DSC (e.g., section 3.2.16), good utility practice, or any other legislative or regulatory requirements (e.g., the *Occupational Health and Safety Act*, regulations made under that Act, or ESA standards). In fact, we understand from your correspondence that there have been occasions in the past where Hydro One has made successful arrangements with private contractors so that the existing distribution system was protected at the same time that alternative bid construction was being completed around those assets. There appears to be no reason to believe that such arrangements could not be made in the future.

In order to be compliant with the DSC, Hydro One must allow for the use of alternative bid construction in all cases that do not require physical contact with the existing distribution system.

Planning and Design

Section 3.2.15(a) of the Distribution System Code ("DSC") states that "the preliminary planning, design and engineering specifications of the work required for the distribution system expansion and connection" is uncontestable.

Hydro One has stated its view that the planning and design of assets that will be owned by Hydro One is uncontestable. The ECAO has argued that planning and design of the system from the generator side of the connection point through to the generation facility should be contestable.

The DSC has established that all preliminary planning and design of system expansions is uncontestable. Also, based on section 3.2.15(b) of the DSC, any planning and re-design of existing distribution assets would be uncontestable. However, the DSC that suggests that the planning and design of the part of an expansion that will be built through alternative bid but ultimately owned by the distributor is contestable. Therefore, it is the view of the Compliance Office that in order to be compliant with the DSC a distributor must allow customers to complete planning and design work through alternative bid, regardless of who will ultimately own the assets.

Ownership

The ECAO has raised a concern over Hydro One's position that Hydro One will assume ownership of all electrical lines constructed on a road allowance in its service area, unless Hydro One determines that it has no foreseeable use for such assets. Hydro One has argued that licensed distributors are the only entities with the statutory right to occupy the road allowance. It is Hydro One's view that it would be inefficient to allow load or generator customers to elect to build and own lines on the road allowance without the local distributor having the right of first refusal to own the lines directly.

The right to occupy a road allowance set out in section 41 of the *Electricity Act, 1998* simply refers to distributors and does not specifically mention licensed distributors; therefore, the *Electricity Act 1998* does not appear to restrict non-licensed distributors (e.g., generators who own and operate a system to distribute electricity) from being able to locate the system on a road allowance.

We also do not find that there is any authority under the DSC that gives Hydro One the right to require customers to transfer the ownership of any assets, whether built on a road allowance or not, to the distributor. The concept that customers may continue to own facilities that have been built through alternative bid was previously stated by the Board when the expansion provisions of the DSC were revised in 2006. Specifically, the March 2006 Notice of Proposed Amendments stated:

> *"It is possible for customers to retain ownership of customer-built facilities, and the Code cannot be used to force customers to transfer their facilities to the distributor."*

There is no issue with a distributor offering to take ownership of customer-built assets from a customer who is willing to turn over such assets to the distributor. In fact, the DSC includes a mechanism to determine a transfer price. However, the DSC does nto provide a distributor with the authority to impose policies that require a customer to sell alternatively built assets to the distributor.

Please provide me with your response to this letter, which shall include Hydro One's plan to implement policies that are compliant with the provisions of the DSC as explained in this letter, by May 29, 2009.

Please do not hesitate to contact me at 416-440-7682 or Paul Gasparatto at 416-440-7724, should you have any questions or wish to discuss this matter further.

Sincerely,

Brian Hewson
Chief Compliance Officer
Compliance Office

c.c: Ian Mondrow, Macleod Dixon