

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 2010-2011

Submissions of the Society of Energy Professionals

1. The following are the Society of Energy Professionals' ("Society") submissions on the issues reviewed in the matter of Hydro One Networks Inc.'s ("Hydro One" or the "Company") 2010-2011 Distribution Rate Application (EB-2009-0096).

OVERVIEW AND GENERAL COMMENTS

2. The Society supports the rate increases sought by Hydro One in this application. The Society submits that, viewed as a whole, the application strikes a responsible balance between the desire to control the costs borne by ratepayers and the need to ensure a safe and reliable electricity distribution system for the future.
3. In ruling on Hydro One's application, the Board must give effect, *inter alia*, to its objective "to promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Government of Ontario, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities." The Society submits that the rate increases sought by Hydro One are prudent, reasonable, and justified in order to ensure that the Company is able to meet the objectives set out in the *Green Energy Act*.
4. For the reasons set out below, the Society disagrees with the claim made by Board staff in their submission that Hydro One's compensation costs are "excessive". The Society strongly disagrees with the Board staff's submission that the Board ought to disallow recovery of \$9 million dollars of compensation costs in this application. Not only is such a reduction unsupported by a fair assessment of the evidence in this proceeding, it would have significant adverse consequences on the Company's ability to function in the future. First, such a reduction would severely compromise Hydro One's ability to meet the expanded work plan it is statutorily required to carry out pursuant to the *Green Energy Act*. Second, such a reduction would significantly impede the efforts made by Hydro One and the Society

to repair their relationship following the damage caused by the 2005 labour dispute. As submitted below, the improvements in this relationship translates into efficiencies, increased productivity, and overall greater value for money for the government shareholder of Hydro One, and ultimately for ratepayers.

5. As a final point, the reduction proposed by Board staff would amount to the type of micro-management that Board staff itself ostensibly agrees would be inappropriate. For all these reasons and those set out in more detail below, the Society submits that the Board should not accede to Board staff's proposed reduction as such a reduction would be unreasonable based on the evidence adduced in this proceeding.
6. The Society focuses its submissions below on Issue 3.5 relating to human resources related costs, but also makes brief submissions in relation to the cost of capital issue raised in the course of this proceeding.

ISSUES

3.5 Are the 2010/2011 Human Resources related costs (wages, salaries, benefits, incentive payments, labour productivity and pension costs), including employee levels, appropriate? Has Hydro One demonstrated improvements in efficiency and value for dollar associated with its compensation costs?

7. The Society submits that Hydro One's human resource related costs are appropriate and amply supported by the evidence adduced in this proceeding.
8. Hydro One's human resource costs should be considered reasonable in particular against the background of the following contextual factors:
 - (1) The competitive pressures faced by Hydro One in attracting and retaining skilled staff.
 - (2) The benefits derived from a healthy collective bargaining relationship between Hydro One and its unions.
 - (3) The Company's use of internal staff vs. contractors

Competitive Pressure in Attracting and Retaining Staff

9. The Society submits that Hydro One's compensation costs must be considered in the context of the worldwide competition for skilled engineers.

10. The Board has heard much evidence in these proceedings about the difficulties that Hydro One faces in attracting and retaining skilled labour, including protection and control engineers represented by the Society. This competition, combined with the significant rate of retirements and the expansion of Hydro One's work program all require Hydro One to offer a competitive compensation package to its employees.

Transcript, Day 8 – Cross-examination of Mr. McDonell,
December 18, 2009, pp. 64-65

Confidential submission to Hydro 1 Board pp. 6, 16-17, 27
Confidential Budget Power Point pp. 20-22
Hydro 1 2008 Annual Report, Exhibit A-10-1, p. 34
Work Execution Strategy, Exhibit A-14-8, p. 3
Comparison of Wages and Salaries, Exhibit C2-3-1, p. 5

11. The Board heard evidence that, by December 31, 2011, approximately 1400 Hydro One staff are eligible for an undiscounted retirement and that this trend is expected to continue through the next decade. This same demographic is being faced by the companies against which Hydro One is being benchmarked. According to the evidence, Hydro One not only risks losing out on new candidates, but it is also vulnerable to losing experienced staff to companies that provide more attractive compensation packages. Therefore, contrary to the submissions of Board staff, the rate of retirements is a significant component of Hydro One's attrition rate for at least two reasons. First, as noted in cross-examination, in many cases employees have taken early retirement in order to accept contract work elsewhere. Second, retiring employees must be replaced and, in order to do so, Hydro One must pay competitive rates or face losing out to its direct competitors for labour such as OPG and Bruce Power.

Corporate Staff, Exhibit C1-3-1, p. 1

Transcript, Day 8 – Cross-examination of Mr. McDonell, December 18,
2009, p. 66

12. The Society also notes that contrary to the submissions of Board staff, it does not necessarily follow that because certain low-skilled classifications may be paid more than the market median, that competitive compensation packages are not required to recruit and retain highly-skilled staff. One proposition does not inevitably follow from the other. For the reasons set out above, Hydro One does face significant pressures to pay competitive wages to highly skilled staff such as those represented by the Society. Nothing in the evidence relating to the payment of certain low-skilled classifications detracts from this conclusion which is amply supported by the evidence in this proceeding.

13. In such a competitive climate, the Society submits that Hydro One's compensation costs are prudent and reasonable. Hydro One's work product would stand to suffer if the Company did not provide a competitive compensation package to its staff.

Benefits of a Healthy Collective Bargaining Relationship

14. The Society submits that the improved collective bargaining relationship between Hydro One and its unions in recent years translates into efficiencies, increased productivity, and overall greater value for money for the government shareholder of Hydro One, and ultimately for ratepayers.
15. The relationship between Hydro One and the Society has improved significantly since 2005. The Board has heard evidence in this proceeding of the serious negative impact that followed the aggressive agenda that Hydro One pursued in bargaining a renewal collective agreement in 2004-2005. According to the evidence, Hydro One felt compelled to pursue this aggressive stance in part due to pressure from the Board to reduce labour costs.

Transcript, Day 8 – Cross-examination of Mr. McDonell, December 18, 2009, p. 60, lines 2-11

16. Hydro One's uncompromising stance in bargaining led to a lengthy 15 week strike on the part of Society members. This strike was resolved at the insistence of the government shareholder. Of significance also is the fact that the new collective agreement (including compensation levels within it) was not the product of the parties' own negotiations, but that it was instead arrived at through a mediation/arbitration process conducted by third party experts in the field of labour relations.

Transcript, Day 8 – Cross-examination of Mr. McDonell, December 18, 2009, pp. 60-63.

Compensation, Wages, Benefits, Exhibit C1-3-2, pp. 4-5

17. The labour relations damage done by the 2005 strike has gradually been repaired since 2005. At the encouragement of the government shareholder, the parties engaged in early negotiations for a renewal agreement in 2007. The evidence before the Board was that the parties were able to resolve issues in a way that was advantageous to both of them. The wage increases in the new agreement were set at modest levels: i.e. 3% for the first two years and 2.5% in the last two years.

Transcript, Day 8 – Cross-examination of Mr. McDonell,
December 18, 2009, pp. 62-64

18. Based on this evidence, the Society submits that the improved collective bargaining relationship between Hydro One and the Society after 2005 has led to a more productive relationship and efficiencies in Hydro One's use of labour. It has permitted the parties to avoid further acrimonious work stoppages and to even negotiate an early renewal with changes that are advantageous to both parties and that ultimately will enhance the Company's productivity. These improvements would be significantly undermined by any refusal to permit Hydro One to recover its full compensation costs in this proceeding.
19. The collective agreement between Hydro One and the Society is governed by the *Labour Relations Act*. It is binding on both parties until its term expires in 2013. The Society recognizes that the Board has the power to refuse to allow a company to recover labour costs arising from a binding collective agreement. However, the Society submits that the Board should only exercise this power in exceptional circumstances. The Society submits that in assessing the reasonableness of Hydro One's labour costs, the Board should treat the compensation levels negotiated by the parties as *prima facie* reasonable. Absent compelling evidence that the Company acted imprudently in entering into a collective agreement, the Board should treat the bargain reached by the parties as a reasonable result given applicable market forces, the demand for labour, and the need to carry out Hydro One's expanding work program.
20. There are obvious public policy reasons for this caution. The Board should not purport to operate or micromanage utilities. The Board has recognized expertise in setting rates for electricity and gas in Ontario. However, the Society respectfully submits that it is not the Board's role to substitute its judgment for that of Hydro One concerning any particular set of negotiations relating to any commercial contract. This is especially the case for collective agreements, as these agreements often represent an intricate balance of trade-offs relating to different terms and conditions of employment. Collective bargaining is an extraordinarily complex process with many

variables, many pressures, and many objectives overseen by its own expert regulatory and statutory regime.

21. As a result, the Society submits that the Board should treat the compensation levels set in the collective agreement between Hydro One and the Society as *prima facie* reasonable. The Society submits that no compelling evidence has been advanced to demonstrate that Hydro One acted imprudently in negotiating these compensation levels and therefore Hydro One should be permitted to recover its full labour costs as set out in the application.

Hydro One's Use of Internal Staff vs. Contractors

22. Finally, Hydro One provided evidence that it uses a mix of internal staff and contractors in carrying out its work program. Contractors are often used because internal staff is not available. The Board heard evidence that, in Hydro One's view, the cost of using external contractors is roughly equal to or higher than using internal staff. It also heard evidence that cost is only one factor considered by Hydro One in determining upon the mix of labour used to carry out work. The evidence disclosed that Hydro One believes cost-efficiencies may be realized on occasion if external contractors are used judiciously.

Transcript, Day 5 – Cross-examination of Mr. Gee, December 15, 2009, pp. 40-41 and 154

23. While the Society would submit that the cost of using contractors exceeds the cost of internal staff, it does agree that Hydro One must be judicious in its use of contractors and that cost is only one factor in deciding upon whether to use internal staff or external contractors. Due to the myriad contextual factors that must be taken into account in determining the appropriate mix of labour, the Society submits that the Board should resist any suggestion that it should substitute its judgment for that of Hydro One by delineating criteria for the use of external contractors. The Society respectfully submits that it is not the Board's role to impose its judgment for that of Hydro One in respect of staffing. Like the delicate balance achieved in collective bargaining, staffing is a polycentric exercise involving a multitude of factors best weighed by the Company itself. As with deals struck through collective bargaining, the Board should retain jurisdiction only to ensure that Hydro One's plan is prudent and reasonable given all applicable circumstances.

Cost of Capital

24. The Society submits that the Board's recently determined cost of capital policy should apply to this proceeding. The policy was the subject of an extensive stakeholder consultation. On December 15, 2009, the Board ruled that the policy was sufficiently robust to apply across the board to all electricity LDCs. However, the Board held that it was open to parties to argue that the policy should not apply in certain circumstances. The Society submits that there are no compelling reasons not to apply the policy to this application.

Conclusion

25. When one looks at the wage rates that Hydro One has secured until 2013 from the Society, it is arguable that Hydro One has not only been prudent but that it may have done too good a job. Modest normative increases on tight wage rates leave those wage rates at modest levels. Only the future will tell whether or not the Hydro One/ Society rates turn out to be sufficient to provide the professional labour supply which this employer will require in the years ahead, given its labour force demographics and the challenges facing the industry.
26. Regardless of what the next four years bring, the Society submits that Hydro One has acted prudently when it entered into its collective agreement with the Society. The Society submits that, to the extent that any comment on this subject is deemed necessary by the Board, it should conclude that the evidence adduced in this proceeding demonstrates that Hydro One has acted prudently in collective bargaining with the Society to the benefit of Hydro One, its professional employees, and the public at large.
27. For all the above reasons, the Society respectfully submits that Hydro One's proposed 2010-2011 revenue requirement is prudent, reasonable and carefully justified. Accordingly, it should be approved by the Board.

All of which is respectfully submitted this 5th day of February, 2010.