



By electronic filing and by e-mail

February 26, 2010

Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
27th floor
Toronto, ON M4P 1E4

Dear Ms Walli,

Hydro One Networks Inc.

Deferral Accounts

Board File No.: EB-2009-0416

Our File No.: 339583-000063

Please find enclosed the Submissions of our client, Canadian Manufacturers & Exporters ("CME").

Please contact me if you require any further information.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Peter Thompson', is written over a horizontal line.

Peter C.P. Thompson, Q.C.

\slc
enclosure

c. Susan Frank (Hydro One)
Don Rogers (Rogers Partners)
Intervenors EB-2008-0272
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IN THE MATTER OF the *Ontario Energy Board Act 1998*, S.O. 1998, c.15, Schedule B;

AND IN THE MATTER OF a motion by Hydro One Networks Inc. in regard to a decision on Transmission Rates for 2010 and for the addition of Projects to a Deferral Account previously authorized in proceeding EB-2008-0272.

**SUBMISSIONS ON BEHALF OF
CANADIAN MANUFACTURERS & EXPORTERS ("CME")**

A. Introduction & Overview

1. These submissions are made on behalf of Canadian Manufacturers & Exporters ("CME") in response to the Motion by Hydro One Networks Inc. ("Hydro One") to enlarge the scope of the project-specific preliminary planning and development costs deferral account the Board established in its May 28, 2009 Decision with Reasons in EB-2008-0272 (the "Decision") pertaining to Hydro One's transmission revenue requirement and rates for the 2009 and 2010 test years.
2. CME's mandate in these and other proceedings before the Board in which it participates is to advocate the interests of its 1,400 member companies in Ontario in their capacity as consumers of electricity. CME appreciates the dilemma Hydro One faces when its shareholder, the Government of Ontario, imposes costly project-specific planning burdens that were not previously reflected in the utility's business plans. That said, the question the regulator must determine is the extent to which these additional cost burdens are ultimately the responsibility of utility ratepayers or its shareholders who, in Hydro One's case, are ultimately Ontario taxpayers. This question should be resolved in a manner that is compatible with well established regulatory principles.

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3. The broadened deferral account parameters Hydro One is proposing in this application to amend, made in the midst of a test period for which rates have already been set, is, in substance, an expense pass-through mechanism. Such a mechanism should not apply to project-specific planning and development costs. Project-specific planning and development costs should eventually be capitalized and recoverable from ratepayers when the specific projects to which they relate become items of rate base because of an objective demonstration that the specific projects are likely to be economically feasible and useful. Hydro One's expense pass-through proposal is incompatible with well established regulatory principles pertaining to costs related to specific capital projects to be undertaken in the future and with the parameters of the planning and developments costs deferral account the Board established in the Decision.
4. As a matter of principle, the current parameters of the deferral account should not be enlarged as Hydro One requests because:
- (a) Forecastable planning and development costs associated with specific capital projects qualify for deferral account treatment because their eventual recovery from ratepayers is linked to matters pertaining to ratepayer responsibility for the project costs;
 - (b) Forecastable planning costs, unrelated to the development of specific projects but to the different ways of achieving objectives, should not be recorded in a deferral account. These costs should form part of a utility's annual Operating and Maintenance ("O&M") expenses budget;
 - (c) Amounts recorded in the existing deferral account are not recoverable from ratepayers in successive cost of service applications and regardless of the economic feasibility or usefulness of the projects to which the costs relate. The existing deferral account is not intended to operate as if it were an expenses add-on account, whereby project-specific planning expenses with respect to future capital projects are recorded in a deferral account and then recovered from ratepayers a year or two later in successive cost of service applications and regardless of matters pertaining to ratepayer responsibility for the capital costs of the specific project;
 - (d) A party seeking to change the parameters of relief granted in a contested case should have a heavy evidentiary burden to discharge;

- (e) The relief Hydro One seeks for 2010 should be denied because the evidence Hydro One has provided is insufficient to justify any change to the parameters of the deferral account for the 2010 test year. A substantial portion of the protection that the current parameters of the deferral account provides for 2010 is yet to be utilized. Moreover, Hydro One has not established, in evidence, the amount of any additional preliminary planning costs for 2010 that falls outside the ambit of the existing account; and
- (f) The relief Hydro One seeks for 2011 and beyond should be adjourned and considered in Hydro One's soon to be filed 2011 and 2012 transmission revenue requirement and rates application. This will allow questions pertaining to the intended operation of the existing deferral account to be fully scrutinized and determined before its ambit is broadened.

B. Background

- 5. The preliminary planning and development cost deferral account the Board authorized in the Decision pertaining to Hydro One's 2009 and 2010 test years relates to the advancement of eighteen (18) transmission-related projects identified by the Ontario Power Authority ("OPA") in its Integrated Power System Plan ("IPSP"), and for the proposed Darlington B Generating Station. In the EB-2008-0272 proceedings, Hydro One estimated that the total preliminary planning costs associated with these projects at \$47.9M, of which \$19.2M would be incurred during the 2009 and 2010 test years. Attachment 1 to Hydro One's response to CME Interrogatory No. 1 shows that Hydro One planned to spend \$8M in 2009 and \$11.2M in 2010 on these eighteen (18) projects.
- 6. In letters to the Board dated December 3 and December 15, 2009, Hydro One asked the Board to expand the scope of this deferral account to cover preliminary planning costs associated with a further fourteen (14) long term projects. These projects form part of a list of transmission projects included in the September 21, 2009 letter Hydro One received from the then Minister of Energy on behalf of Hydro One's owner, the Ontario Government. The Board decided to treat Hydro One's letter requests as an application to expand the scope of the preliminary planning costs deferral account it established in the Decision.

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7. Accordingly, what the Board is faced with in this proceeding is a request made by Hydro One, in the midst of a two (2) year bridge test period, for which rates have already been set, to enlarge the parameters of an existing deferral account for the remainder of the bridge test period and for future years. Hydro One's Motion to amend is, in substance, a motion to vary a decision made in a contested case. Yet, in bringing its Motion, Hydro One has not complied with the rigorous requirements of the Board's rules pertaining to a motion to vary. These rules impose a heavy evidentiary burden on a party seeking to vary the parameters of relief granted in a contested case.¹
 8. Hydro One initially estimated the total preliminary planning and development costs associated with the fourteen (14) projects at \$167.7M for the years 2010 to 2014 inclusive. Hydro One's response to Board Staff Interrogatory No. 2 indicates that its current estimate for the preliminary planning costs associated with these projects is \$125.5M between 2010 and 2014 inclusive. Hydro One does not explain why its initial estimates materially changed between December 2009 and February 2010.
 9. Hydro One advises that there is some overlap between the total preliminary cost estimate of \$47.9M made in the EB-2008-0272 proceeding and the \$125.5M of estimated cost of the projects that form the subject matter of this proceeding. The degree of overlap is not quantified. Accordingly, for the purposes of this proceeding, what we know is that the total estimated planning costs for all of the projects that Hydro One now wishes to include within the ambit of the existing deferral account is something less than \$173.4M. How much less is unknown.
 10. Hydro One's response to CME Interrogatory No. 1 (g) indicates that the amount recorded to date in the existing deferral account is a relatively small amount of about \$1.9M. Accordingly, of the \$19.2M that Hydro One estimated would likely be recorded in

¹ See Rules 42 to 45 of the Board's *Rules of Practice and Procedure*.

this deferral account in the years 2009 and 2010, there currently remains about \$17.3M of "headroom". In its Interrogatory No. 1 (c) and (d), CME asks Hydro One to provide a breakdown of estimated preliminary planning and development costs for each project for each of the years 2009 to 2014. Hydro One declined to provide annual information by project with respect to the fourteen (14) projects for which it is now seeking additional deferral account coverage.

11. The information contained in the Table provided in Hydro One's response to Board Staff Interrogatory No. 2.1 and the response to Board Staff Interrogatory No. 2.2 indicates that project numbers 1, 2, 3, 4 and 12, being five (5) of the fourteen (14) projects Hydro One wishes to add to the existing deferral account, contemplate planning and development work in 2010. However, projects 1, 2 and 3 are covered by the existing deferral account. Despite being asked, Hydro One provides no evidence to show the amount it proposes to spend on projects 4 and 12 in 2010. Hydro One has declined to provide evidence showing the amount of spending it plans in 2010 that relates to the additional fourteen (14) projects that prompted this application. Hydro One's evidence indicates that it currently expects to record \$32.7M in 2010 in the amended deferral account it requests.² However, there is no evidence showing whether any of this amount relates to projects 4 and 12 in the Table aforesaid that currently lie outside the ambit of the existing deferral account.
12. Deferral account treatment of the estimated additional amount of \$125.5M is not being proposed because the amounts are difficult to forecast. The amounts are presented on the basis that they can be forecast and they are forecast over a five (5) year planning horizon ending in 2014. Under Hydro One's proposal, these forecastable expenses, related to specific capital projects, are not contingent on a subsequent determination of

² See Hydro One's Response to Board Staff Interrogatory No. 5 (5).

ratepayer responsibility for the capital costs of the projects to which the project-specific planning costs relate. Hydro One proposes to clear the amounts it seeks permission to record in its proposed enlarged deferral account in successive rate cases³ and without any consideration of matters pertaining to the economic feasibility of the specific projects to which the costs relate.

13. Hydro One's responses to information requests in this proceeding reveal that it is not seeking enlarged deferral account relief because the recovery of costs to be recorded in the deferral account is contingent upon a subsequent demonstration that the projects to which they relate are economically feasible and will be used and useful. In its responses to CME Interrogatory No. 1 (i) and (p), Hydro One indicates that it proposes to seek recovery in successive cost of service applications of the amounts recorded in the deferral account and without any demonstration of the economic feasibility or usefulness of the projects to which the costs recorded in the deferral account relate. This information reveals that the enlarged deferral account Hydro One seeks is, in essence, a request for a deferral account that permits uncanceled project-specific planning costs to be recovered in successive rate cases as if they were deferred operating expenses.
14. In authorizing the establishment of the existing deferral account in EB-2008-0272, the Board stated in the Decision:

There is no prejudice to those stakeholders arguing against the proposed account since the matter does not end with the establishment of a deferral account. Stakeholders will have the opportunity to scrutinize the prudence of any costs in the account. As the Board has articulated in numerous documents, the recording of costs in a Board-authorized deferral account is not a guarantee for recovery. The risk for the utility does not dissipate, at least not with respect to this account. Board authority to establish the proposed account would simply constitute recognition by the Board that there are legitimate reasons for this matter to be reviewed at a later time on more concrete information and evidence. (emphasis added)

³ See Hydro One's Response to CME Interrogatory No. 1 (i).

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15. The Decision does not say that amounts recorded in existing deferral account are to be de-linked from the specific projects to which they relate. The Decision does not say that ratepayers are responsible for paying project-specific planning costs, even if the projects to which they relate turn out to be neither economically feasible, nor useful. The Decision does not say that the deferral account is to operate as an expenses add-on account to be cleared in successive rates cases, as Hydro One suggests in its Interrogatory Responses in this proceeding.
 16. Our interpretation of the Decision differs from that of Hydro One. We interpret the Decision to mean that all matters relevant to a determination of the recoverability from ratepayers of amounts recorded therein will be considered and determined at a later time. In our view, the rationale for according deferral account treatment to forecastable costs related to the performance of project-specific planning is that the eventual recoverability of the costs is linked to uncertainties associated with the recoverability of such costs from ratepayers. Project-specific planning and development costs are recorded in a deferral account so that they can be capitalized and recovered from ratepayers, later, when the specific project capital costs are determined to be legitimate rate base items. If the project to which the project-specific planning costs relate turns out to be neither economically feasible, nor useful, then the costs recorded in the deferral account should not be recoverable from ratepayers. In such circumstances, the costs are a shareholder risk and responsibility.
 17. We readily accept that forecastable planning and development costs, not linked to specific project planning but to the identification of the best options to follow to achieve particular objectives, should be recoverable from ratepayers. However, these types of forecastable option analysis planning costs should be included in test period operating expenses budgets that are presented for Board approval. If a utility fails to budget such

costs for a test year in which rates have already been set, then it should not be permitted to, in effect, re-open the Board approved operating expenses allowance by seeking permission to record additional costs in an existing deferral account. That said, neither the costs that Hydro One is currently authorized to record in the existing deferral account, nor the additional costs that Hydro One seeks to record therein are of this type. They are project-specific planning and development costs.

18. The regulatory paradigm the Board has consistently applied for many years calls for ratepayers to be responsible for costs related to specific projects for which there has been a *prima facie* demonstration of economic feasibility and usefulness. Project-specific planning and development costs related to projects that turn out to be neither economically feasible, nor useful, rest with the shareholder.
19. The evidence in this proceeding indicates that the broadened deferral account Hydro One is proposing is not intended to operate in this manner. Rather, Hydro One proposes that the deferral account operate to permit recording of project-specific planning expenses incurred in one test period in a deferral account and recovering them in the subsequent test period, regardless of the status of the particular project to which they relate. The Board should not enlarge the existing deferral account for such a purpose.
20. To be clear, we wish to emphasize that we are not trying to prevent Hydro One from recording additional project-specific amounts in a deferral account. We are trying to assure that the project-specific costs recorded in the account remain linked to the specific projects to which they relate to be capitalized and recoverable from ratepayers if and when the project capital costs are determined to be recoverable from ratepayers. We accept that Hydro One should be able to add project-specific costs the government effectively forces on them to a deferral account for later capitalization and recovery when

the capital costs of the specific project to which they relate are allowed into rate base because the Board determines the project to be used and useful. Our concern is that Hydro One not be allowed to record such project-specific planning costs in a deferral account that gets cleared to ratepayers every two (2) years as uncapitalized costs and regardless of the status of the particular project to which the costs relate.

21. The evidence in this proceeding indicates that neither Hydro One, nor anyone else engaged in the coordinated planning among distributors and transmitters and the OPA that is essential to achieving the goals of the *Green Energy and Green Economy Act* (the "GEA") in a timely and cost-effective manner is conducting *prima facie* evaluations of the likely costs, impacts and economic feasibility of the projects contained in the Minister of Energy's task lists. No preliminary consideration has been given to the probable costs of these projects, the related displacement of lower cost electricity supply by high cost renewable generation resources, the prospective multi-year year-over-year total electricity price impacts and the ability of sectors of the Ontario economy to tolerate these impacts.⁴ This evidence indicates that those engaged in the coordinated planning exercise pertaining to these projects are proceeding without regard for their potential economic implications. There is no preliminary economic feasibility information available at this time about any of these projects. Hydro One has not evaluated economic feasibility or long term rate and electricity price impacts. The receipt of a task list from the Minister of Energy for Ontario does not relieve either Hydro One and the others engaged in the coordinated planning that is essential to achieving the goals of the *GEA* in a timely and cost-effective manner or the Board from objectively evaluating the economic feasibility and usefulness of the projects the Ministry contemplates.

⁴ See Hydro One's Responses to Interrogatory No. 1 (a), (b), (n) and (o).

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22. CME is very concerned that no one, engaged in the coordinated planning that is essential to achieving the goals of the *GEA* in a measured and disciplined manner and at a pace that does not cause material harm to the economy, is paying any attention to economic feasibility, including the likely "all in" price impact and the harm that could be caused if planning, including preliminary development plans, are not constrained within limits that the Ontario economy can tolerate.⁵
23. The manner in which Hydro One proposes to report in its Financial Statements the amounts it records in the deferral account it asks the Board to broaden is unclear. In Interrogatory No. 1 (p), CME asked Hydro One to indicate how amounts recorded in a deferral account, where future recovery is not guaranteed, will be recorded for Financial Statement purposes under International Financial Reporting Standards ("IFRS"). Hydro One's response, indicates that matters pertaining to economic feasibility have no relevance to a determination of prudence. This response prompts us to assume that Hydro One is relying on the establishment of the existing deferral account to remove costs recorded therein from current expenses for the purpose of Financial Statements reporting and to treat the amounts recorded as a regulatory asset. If we are mistaken in this assumption, then we request that Hydro One clarify the matter in its Reply Submissions.
24. The creation of a "tracking" account, with all matters pertaining to recoverability from ratepayers subject to complete scrutiny in the future, should not be construed as the creation, by the regulator, of a regulatory asset account. Prospects of future recovery

⁵ The Written Argument filed on behalf of CME in Hydro One's Application for distribution rates for 2010 and 2011 outlines why multi-year forecasts of total bill impacts, consisting of multi-year "all in" electricity price impacts, are critical to both the coordinated planning exercise that is essential to achieving the objectives of the *GEA* in a cost-effective manner, and to the Board's discharge of its statutory responsibility to protect consumers with respect to electricity prices. The evidence in this case, indicating that no one engaged in the essential coordinated planning activities is either preparing or considering these total bills/electricity price impacts, underscores the urgent need for the Board to require the entities over which it has considerable influence, namely, the OPA, Hydro One and other large electricity utilities, and the IESO, to provide the information that is needed to enable estimates of multi-year "all in" electricity price impacts to be prepared, published, and regularly monitored by the Board.

from ratepayers are considerably enhanced when Hydro One treats the establishment of a "tracking" account as authority for the removal of amounts from the current expenses and the creation of a regulatory asset for Financial Statements reporting.

25. There should be a *prima facie* demonstration of likely project costs, their impacts, and their economic feasibility and affordability before the Board permits a "tracking" account to be treated as a regulatory asset for Financial Statements reporting purposes. Without a *prima facie* demonstration of the economic feasibility of the projects to which the planning and development costs relate, including a *prima facie* demonstration of the "all in" electricity price impacts and the ability of the economy to absorb such impacts, project-specific planning and development costs recorded in a "tracking" account should not justify the creation of a regulatory asset for Financial Statement reporting purposes. The Board should determine in Hydro One's next transmission case whether the account it authorized in the Decision can reasonably be construed as a regulatory asset account.

C. Points of Argument

26. The deferral account the Board established in the Decision pertaining to the 2009 and 2010 test period does not guarantee that Hydro One will recover any planning and development costs associated with the specific projects the deferral account currently covers. We submit that the Decision allows all matters relevant to the recoverability of recorded amounts from ratepayers to be considered and determined at a later date. These matters include a failure by Hydro One to demonstrate each of the specific projects to which the recorded amounts relate is economically feasible and useful.
27. The evidence indicates that Hydro One regards the amounts recorded in the existing deferral account as being recoverable from ratepayers in successive cost of service applications and regardless of the economic feasibility or usefulness of the projects to which the preliminary planning and development costs relate. We submit that this

approach misinterprets the nature of the account the Board established in the Decision. We submit that the account is not intended to operate as an expenses "pass-through" account whereby expenses incurred in prior test years, related to specific capital projects, are recovered in successive cost of service applications without regard to all matters relevant to a determination of ratepayer responsibility for the capital costs of each specific project, including the economic feasibility and usefulness of each project. We submit that the existing deferral account was created to allow project-specific planning and development costs recorded therein to be capitalized and recoverable from ratepayers if and when the project capital costs are determined to be legitimate rate base items.

28. Forecastable costs related to planning and development activities associated with future capital projects qualify for deferral account treatment because their eventual recovery from ratepayers is linked to the uncertainties pertaining to the eventual recoverability of the capital project costs from ratepayers.
29. Deferral accounts should neither be created, nor broadened to permit forecastable expenses related to specific future capital projects to be recovered in successive cost of service applications without any regard to matters pertaining to ratepayer responsibility for project costs, including their likely economic feasibility and usefulness.
30. Having regard to the differences that exist pertaining to the nature of the account the Board established in the Decision, its parameters ought not to be broadened. Rather, all matters pertaining to the nature in which the existing account is intended to operate should be considered and determined in Hydro One's soon to be filed application for approval of its 2011 and 2012 revenue requirement and rates.

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31. There should be a heavy evidentiary burden on a party seeking, in which rates have already been set, to vary the parameters of a deferral account established in a contested case for a year.
32. In the absence of evidence establishing the currently budgeted amount of 2010 planning and development costs related to projects not now included within the ambit of the existing deferral account, the request for broadening the account for 2010 should not be granted. The only projects not covered by the existing deferral account and for which some 2010 spending is now forecast are project numbers 4 and 12 as shown in the Table Hydro One provides in response to Board Staff Interrogatory No. 2.1. Hydro One was asked but declined to provide the amount that is likely to be spent on each of these projects for 2010.⁶ In these circumstances, Hydro One fails to discharge the heavy burden of proof that applies on a motion to vary the parameters of relief granted in a contested case for a period in which rates have been set. The relief it requests for 2010 should not be granted. The relief Hydro One seeks for 2010 should be denied because the evidence provided is insufficient to justify any change for the 2010 test year.
33. If any relief is granted with respect to the ambit of the deferral account for 2010, then it should be accompanied by language that reiterates that recovery of any amounts recorded in the deferral account is not guaranteed; that the account is a tracking account only and, at this time, is not to be treated as a regulatory asset account. It should be emphasized that all issues relevant to the recoverability of costs recorded in the deferral account from ratepayers will be considered later. These points need to be emphasized because Hydro One's acknowledgement that "prudence" remains an issue is of little benefit to ratepayers. We submit that Hydro One's concept of "prudence" with respect to project-specific planning and development costs is inappropriate because it assumes

⁶ See Hydro One's Response to CME Interrogatory No. 1 (d)

that recoverability of such costs from ratepayers is not linked to a determination of ratepayer responsibility for capital costs related to the specific projects. The scope to be ascribed to the meaning of "prudence" in relation to project-specific planning and development costs is a matter in dispute that should be addressed in Hydro One's next transmission rate case.

34. Because of the questions that have arisen pertaining to the intended operation of the existing deferral account, all matters pertaining to the request to broaden the parameters of the existing account for the years 2011 and following should be adjourned to be considered and determined in Hydro One's soon to be filed 2011 and 2012 transmission revenue requirement and rates application. The adjournment of the relief requested for years 2011 and following causes no prejudice to Hydro One.

D. Costs

35. CME requests that it be awarded 100% of its reasonably incurred costs in connection with this matter.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of February, 2010.



Borden Ladner Gervais LLP
Counsel for CME