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SENT BY EMAIL

Toronto, November 7, 2007

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street, Suite 2700  
PO Box 2319  
Toronto, ON  
M4P 1E4

Dear Ms. Walli:

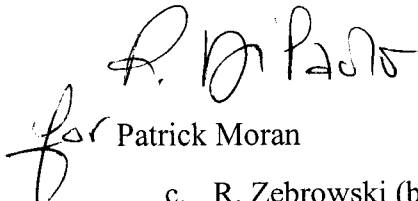
**RE: Hydro One Networks Inc.'s Connection Procedures  
Motion to Review and Vary (EB-2007-0797)**

We are counsel to the Electricity Distributors Association (the "EDA").

Further to the Board's Notice of Hearing and Procedural Order No. 1 issued on October 26, 2007, please find attached the EDA's summary of its submissions on the preliminary issues.

Yours very truly,

**Ogilvy Renault LLP**

  
for Patrick Moran

- c. R. Zebrowski (by email)
- M. Tucci (by email)
- All parties listed in Appendix B to Notice (by email)

**IN THE MATTER OF** the *Ontario Energy Board Act*, 1998, S.O. 1998, c.15 (Schedule B);

**AND IN THE MATTER OF** an application by Hydro One Networks Inc. for the review and approval of connection procedures;

**AND IN THE MATTER OF** an application by Great Lakes Power Limited for the review and approval of connection procedures;

**AND IN THE MATTER OF** Rules 42, 44.01 and 45.01 of the Board's *Rules of Practice and Procedure*.

**SUBMISSION RE PRELIMINARY ISSUES  
ELECTRICITY DISTRIBUTORS ASSOCIATION**

**A. The Motion**

1. Hydro One has filed a motion seeking a review and variance of the Board's connection procedures decision in EB-2006-189/EB-2006-0200, dated September 6, 2007.
2. In its motion, Hydro One seeks a ruling from the Board regarding the Board's interpretation of section 71 of the OEB Act and the Board's decision regarding capital contributions for connection facilities.

**B. The preliminary issues**

**(a) The Board should extend the time to file the motion**

3. The Board's rules of practice provide for a 20 day period in which a motion for review may be filed. Hydro One filed its motion 32 days after the date of the decision.
4. This is not an inordinate delay. The motion does not raise trivial issues. In fact, given the number of parties that have indicated their intention to participate in this proceeding, it is clear that the motion raises issues of importance.
5. Therefore, it is appropriate to extend the time for filing.

**(b) The threshold issue**

6. The Board is given broad jurisdiction under the *Statutory Powers Procedure Act* (SPPA) to "review all or part of its own decision or order, and may confirm, vary, suspend or cancel the decision or order."

SPPA, s. 21.2

7. This power is available to the Board, provided that the Board makes procedural rules governing the review process, which the Board has done.

SPPA, s. 21.2 and s. 25

8. The SPPA does not place any limits on this power and the Courts have been reluctant to read down this power, recognizing it as an important feature of regulatory tribunals. On the same basis, the Board should not be seeking to place limits on this power.

*Russell v. Shanahan*, 52 O.R. (3d) 9 (C.A.), (leave to appeal to the S.C.C. refused Feb. 16, 2001), at p. 16

9. The power to review is broader than the appeal that lies to Divisional Court and there is nothing in the review power to restrict the reviewing Panel from substituting its own opinion for that of the original Panel.

*supra*, at p. 17

10. The only threshold limits available to the Board are found in s. 4.6 of the SPPA, which gives the Board the authority to dispose of a proceeding without a hearing, if it is:

- (a) frivolous, vexatious or is commenced in bad faith;
- (b) relates to matters that are outside the jurisdiction of the tribunal; or
- (c) some aspect of the statutory requirements for bringing the proceeding has not been met.

11. The Board has previously determined that it cannot limit its substantive jurisdiction through its procedural rules:

While the Court of Appeal's decision in *Russell v. Toronto* dealt with motions to review under the *Ontario Municipal Board Act* rather than under the SPPA, the power granted to review decisions is effectively the same, so the principles

enunciated in the *Russell* decision are applicable to the Board. The Court of Appeal found that the OMB could not use its own policies and guidelines to restrict the scope of the power to review which was granted to it by statute. The Board therefore finds that it cannot use its Rules to limit the scope of the authority given to it by the SPPA.

The SPPA allows each tribunal to make its own Rules, so as to allow it to deal more effectively with the specific needs of its proceedings. The SPPA does not give the Board the authority to limit the substantive matters within the Board's purview.

...

In addition to Section 2 of the SPPA which provides for a liberal interpretation of the Act and the Rules, the Board's Rules include the following provisions as a guide to their interpretation.

1.03 The Board may dispense with, amend, vary or supplement, with or without a hearing, all or any part of any rule at any time, if it is satisfied that the circumstances of the proceeding so require, or it is in the public interest to do so.

2.01 These Rules shall be liberally construed in the public interest to secure the most just, expeditious and cost-effective determination of every proceeding before the Board.

2.02 Where procedures are not provided for in these Rules, the Board may do whatever is necessary and permitted by law to enable it to effectively and completely adjudicate on the matter before it.

As these provisions are of general application to all of the Board's Rules of Practice and Procedure, the Board finds that each of its individual rules should be read as if the above rules 1.03, 2.01 were part of them, except of course where restricted by the SPPA or another Act. Therefore, the Rules which "deal with the matter" of motions to review, i.e. Rules 42 to 45, should be read in conjunction with Rules 1.03 and 2.01. Similarly, the rules dealing with alternative dispute resolution, written hearings and so on include Rules 1.03 and 2.01.

EB-2006-0322/EB-2006-0338/EB-2006-0340  
Decision with Reasons, May 22, 2007, at p.

## 12. The Board went on to hold:

Therefore, the grounds must "raise a question as to the correctness of the order or decision". In the panel's view, the purpose of the threshold test is to determine whether the grounds raise such a question. This panel must also decide whether there is enough substance to the issues raised such that a review based on those issues could result in the Board deciding that the decision should be varied, cancelled or suspended.

supra at p. 18

13. The issue of whether there is "a question as to the correctness of the order or decision" goes beyond whether there was a simple error. The Board has made a decision in a narrow context that has implications beyond that context. Those implications were not matters that were before the Board to take into account.
14. However, now that some of those implications are emerging, as reflected in the correspondence filed with the Board in the aftermath of the Board's decision, it is appropriate for the Board to reconsider the conclusions it reached in its decision.
15. Furthermore, there is sufficient substance to the two issues to warrant further consideration by the Board. The interpretation given to section 71 of the OEB Act clearly has implications beyond the connection procedures that were being reviewed by the Board. The Board's reasons relating to capital contribution raises the possibility of inconsistency with the Board's approach in the 2006 EDR process. There are also implementation issues for distributors facing a required capital contribution that they may not be able to finance, which need to be considered by the Board.
16. The motion raises material issues that have not been considered by the Board. On that basis, it is appropriate to hear the motion on its merits.

**(c) Hydro One's request for a stay and for additional time to file amended connection procedures**

17. In the context of the issues raised on the motion, it is appropriate to grant the relief being sought by Hydro One in relation to those issues.

**C. Order Sought**

18. The EDA respectfully requests that the Board proceed and adjudicate the motion on its merits.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

November 7, 2007

Electricity Distributors Association  
By its Counsel

"P. Moran"

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Ogilvy Renault LLP  
per Patrick Moran