

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

AND IN THE MATTER OF an application filed by Hydro One Networks Inc. under section 78 of the *Ontario Energy Board Act*, 1998 for an Order or Orders approving or fixing just and reasonable rates and other charges for the transmission of electricity commencing January 1, 2011;

AND IN THE MATTER OF a motion by Hydro One Networks Inc. for an Order severing part of the within proceeding pursuant to the Rules of Practice and Procedure of the Ontario Energy Board.

**RESPONSE TO THE MOTION OF HYDRO ONE NETWORKS INC.
OF THE ASSOCIATION OF MAJOR POWER CONSUMERS
IN ONTARIO (“AMPCO”)**

INTRODUCTION

1. AMPCO opposes the motion of Hydro One Networks Inc. (“HON”) and requests that the Ontario Energy Board (the “Board”) dismiss it.

FACTS

2. In response to concerns expressed by its members and other HON customers that the current rate design is an impediment to demand management, is arbitrary, provides price signals to reduce demand when demand response has no value, and fails to provide sufficient price signals when demand response is immensely valuable, AMPCO intervened in EB-2008-0272 to present to the Board a rate design which promotes economic efficiency and cost effectiveness in the transmission and demand management of electricity.

3. The rate design proposed by AMPCO, which is based on critical peak pricing, was developed from successes in other jurisdictions of similar approaches.

4. AMPCO argued during EB-2008-0272 that the current rate design is inefficient because it limits the incentive to reduce demand during systems peaks and creates inappropriate incentives to reduce demand.

5. AMPCO believes and argued at EB-2008-0272 that its rate design will be more efficient than the current scheme because it provides a demonstrably effective incentive for customers to avoid the highest system peak, focuses demand reduction efforts when demand is most costly to serve and addresses the fact that more than one of the highest peaks may occur in a single month.

6. Further, AMPCO believes and argued in EB-2008-0272 that their rate design creates a real financial incentive for customers to reduce their demand during the five highest coincident peaks.

7. It was AMPCO's evidence that AMPCO member Gerdau AmeriSteel had experience in another jurisdiction with a transmission rate design which was based on five coincident system peaks and which offered sufficient incentive to change the way a large consumer does business.

8. It was also AMPCO's evidence during EB-2008-0272 that the rate design it proposed does not depend on load forecasting. Instead, it only requires a one year calculation of Network Charges based on data already collected by the IESO and on a Network Pool revenue requirement approved by the Board.

9. AMPCO argued, therefore, that HON would not be required to rely on its load forecasting which is traditionally underestimated and results in a higher Network Charge Rate than is necessary.

DECISION OF THE BOARD

10. On May 28, 2009 the Board provided its decision with reasons in EB-2008-0272. Included were the Board's directions to HON concerning the High 5 Proposal.

11. The Board found, "the AMPCO's proposal has merit. System peak is a significant cost driver in the electricity commodity market and also is of relevance for transmission system planning."

12. The Board also found, “the testimony of Mr. MacDonald of Gerdau AmeriSteel to be compelling evidence as to the expected reaction to such a rate design.”

13. As a result, the Board directed HON, “to come forward at its next application with:

1. further analysis of AMPCO’s proposal; and,
2. a suitable proposal for implementation for the Board’s consideration in the event the Board decides to change the charge determinant.”

ISSUES TO BE ARGUED BY AMPCO

14. It is submitted by AMPCO that the Motion of HON herein is, in essence, a motion brought pursuant to section 42.01 of the Rules of Practice and Procedure of the Board (the “Rules”) to vary part of a decision. HON must satisfy the conditions precedent of such a motion before the Board can grant it.

15. It is further submitted by AMPCO that the analysis of the rate design proposed by AMPCO and its implementation,

- (a) should not be severed from other matters to be considered in EB-2010-0002 to be reviewed and assessed in a separate generic proceeding; and further that,
- (b) HON’s current rate design should not be approved until the rate design proposed by AMPCO is considered by the Board in the context of the analysis the Board directed HON to bring forward as part of EB-2010-0002; and further that,
- (c) the Board should not approve transmission revenue requirements and rates for HON for 2010-2011 until the Board decides whether or not to require HON to change the charge determinant.

The Rules

16. Since the Motion of HON is to vary a decision of the Board, it can only be granted if the conditions precedent set out in section 44.01 of the Rules are satisfied. Section 44.01 states as follows:

“44.01 Every notice of a motion made under **Rule 42.01**, in addition to the requirements under **Rule 8.02**, shall:

- (a) set out the grounds for the motion that raise a question as to the correctness of the order or decision, which grounds may include:
 - (i) error in fact;
 - (ii) change in circumstances;
 - (iii) new facts that have arisen;
 - (iv) facts that were not previously placed in evidence in the proceeding and could not have been discovered by reasonable diligence at the time; and
- (b) if required, and subject to **Rule 42**, request a stay of the implementation of the order or decision or any party pending the determination of the motion.”

17. AMPCO submits that HON does not allege that the Board has made an error in fact; that there are changed circumstances which apply; that new facts have arisen; or, facts that were not previously placed in evidence to the proceeding and could not have been discovered by reasonable diligence at the time.

18. AMPCO submits that without such conditions precedent being alleged and established, there is no basis for the Board to vary its decision and grant the Motion of HON.

Other Transmitters

19. In paragraph 5 of its Notice of Motion HON suggests that because the rate design proposal by AMPCO, if accepted, would have impact on all transmitters a generic proceeding is more appropriate.

20. AMPCO submits that HON controls the vast majority of transmission facilities in Ontario. If the rate design proposed by AMPCO were adopted by the Board its impact on any other transmitters in Ontario would be marginal compared to the implications for HON. The discussion of AMPCO’s proposal would, in any event, be a distinct module of EB-2010-0002. All Ontario transmitters could participate in EB-2010-0002.

Implications for LDCs and Generators

21. HON suggests in paragraphs 6 and 7 of its Notice of Motion that the rate design proposed by AMPCO, if accepted, would likely have a large impact on LDCs and generators. AMPCO submits that this is not necessarily the case, but in any event those interested LDCs and generators could seek intervener status and participate in the distinct module of EB-2010-0002 in which the rate design proposed by AMPCO would be reviewed. One would expect that a discussion of its implementation might include consultation with LDCs, generators, and for that matter other transmitters.

Two Proceedings in Parallel

22. In paragraph 11 of its Notice of Motion HON suggests that the generic hearing and EB-2010-0002 could proceed in parallel. HON may have the resources for this; however, AMPCO does not have resources sufficient to allow it to participate in two proceedings of this kind if they were to take place in parallel. AMPCO is also involved in EB-2010-0008 which is proceeding concurrently with this matter.

HON Consultants

23. In paragraphs 14, 15, 16 and 17 HON describes its process of retaining consultants to comply with the direction of the Board in EB-2008-0272 to further analyse and discuss implementation of an alternative rate design.

24. It is noteworthy that even though the Board's decision with that direction was released May 23, 2009, HON did not engage in stakeholder consultation until November 16, 2009 and did not issue its RFP in compliance with the direction of the Board until December 10, 2009.

25. Power Advisory Group, which was ultimately retained by HON to conduct the study directed of it by the Board, was not retained until March 10, 2010; nevertheless, their report was made public on July 5, 2010.

26. AMPCO submits that HON took considerably more time than was necessary to issue its RFP and retain its consultants.

27. AMPCO submits that HON has avoided any serious consideration of the rate design proposed by AMPCO. This Motion is just another attempt to put off any real discussion of these issues.

AMPCO'S POSITION

28. AMPCO strongly submits that the motion of HON is, once again, an attempt by HON to avoid any real consideration of the rate design which has been proposed by AMPCO for quite some time. This proposal is extremely important to AMPCO and its members. AMPCO has invested significant time, effort and resources over a number of years in making its case to the Board, regarding the need for improvements in the rate design in Ontario. Its advantages have been enumerated earlier herein and in other forums by AMPCO.

29. The Board clearly directed HON to come forward with a suitable proposal for implementation at its next application. AMPCO submits that the timelines developed by HON devoted to implement the Board's direction show a disdain for the position taken by the Board and should not be permitted.

30. HON has consistently resisted any change to the present Network Charge Determinants in Ontario. There is a valid alternative to the present design; i.e., the rate design proposed by AMPCO based on critical peak pricing. A review is finally available for discussion. AMPCO submits that discussion should be part of EB-2010-0002.

31. AMPCO submits that HON should not be granted any opportunity to delay the further discussion of such alternative rate design as HON seeks in its Notice of Motion.

32. AMPCO respectfully requests, therefore, that the motion of HON be dismissed and the discussion of the rate design based on critical peak pricing be included in EB-2010-0002 as a separate module to allow for the implementation of the new rate design, if the Board so finds, for the 2011 test year.

33. In support of its submission, AMPCO relies on the decision of the Board in EB-2008-0272, the report of Power Advisory Group, the submissions of counsel and such further and other material as counsel suggests and the Board allows.

34. AMPCO requests an award of its reasonably incurred costs of participating in this proceeding.

ALL OF WHICH IS RESPECTFULLY submitted this 15th day of July, 2010.



David Crocker
DAVIS LLP
Counsel to AMPCO