



ONTARIO ENERGY BOARD

FILE NO.: EB-2010-0002

VOLUME: Motion Hearing

DATE: July 20, 2010

BEFORE: Paul Sommerville Presiding Member

Ken Quesnelle Member

THE ONTARIO ENERGY BOARD

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.

Hearing held at 2300 Yonge Street,
25th Floor, Toronto, Ontario,
on Tuesday, July 20th, 2010,
commencing at 9:30 a.m.

MOTION HEARING

BEFORE :

PAUL SOMMERVILLE Presiding Member

KEN QUESNELLE Member

A P P E A R A N C E S

JENNIFER LEA MAUREEN HELT	Board Counsel
HAROLD THIESSEN	Board Staff
DONALD ROGERS ALLAN COWAN	Hydro One Networks Inc.
DAVID CROCKER	Association of Major Power Consumers (AMPCO)
RICHARD LANNI	Independent Electricity Service Operator (IESO)
MICHAEL BUONAGURO	Vulnerable Energy Consumers Coalition (VECC)
DAVID MacINTOSH	Energy Probe Research Foundation

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Description

Page No.

NO UNDERTAKINGS WERE FILED IN THIS PROCEEDING

1 Tuesday, July 20, 2010

2 --- On commencing at 9:30 a.m.

3 MR. SOMMERVILLE: Please be seated. Thank you. Good
4 morning, everyone.

5 The Board is sitting today to hear a motion in Board
6 case EB-2010-0002, which is a transmission rates case
7 brought by Hydro One Networks Incorporated.

8 The motion has been filed by Hydro One, and it seeks,
9 inter alia, to sever an issue described in the materials as
10 the "H 5" proposal from this rates proceeding to have it
11 considered in a generic process.

12 The process leading up to this hearing is provided for
13 in P.O. No. 1. I want to give notice to parties present
14 and those listening in that the Board will also provide its
15 decision with respect to the issues list at the conclusion
16 of today's proceeding orally.

17 Joining me on the Panel is Mr. Ken Quesnelle. And can
18 I have appearances, please?

19 **APPEARANCES**

20 MR. ROGERS: Yes. Good morning, Mr. Sommerville, Mr.
21 Quesnelle. My name is Donald Rogers, and I represent the
22 applicant. With me today is Mr. Allan Cowan, who is the
23 director of major applications with Hydro One.

24 MR. CROCKER: Good morning. My name is David Crocker,
25 and I represent AMPCO. We will be opposing the
26 application.

27 MR. SOMMERVILLE: Thank you.

28 MR. LANNI: Good morning. Richard Lanni, counsel with

1 the IESO, and we are here as a friend to the Board.

2 MR. SOMMERVILLE: Thank you.

3 MR. BUONAGURO: Michael Buonaguro, counsel for VECC.

4 MS. HELT: Jennifer Lea appearing for Board Staff. My
5 co-counsel Maureen Helt will be speaking to the motion
6 today, and joining us is our senior case manager, Harold
7 Thiessen.

8 MR. SOMMERVILLE: Thank you. Are there any
9 preliminary matters?

10 **PRELIMINARY MATTERS:**

11 MS. HELT: Yes, Mr. Chair. Just to advise you that
12 Bob Warren called yesterday and indicated that he will not
13 be able to appear today.

14 We have also received a letter from CME, Peter
15 Thompson, indicating that he will not be appearing today,
16 either.

17 MR. SOMMERVILLE: Thank you.

18 Is there anything else?

19 Without further ado, it would be my intention, Mr.
20 Rogers, to have you obviously start. It is your motion,
21 and then to have anyone who is in support of the motion to
22 go next.

23 I would expect that would be you, Mr. Buonaguro.

24 Mr. Lanni, is it your intention to make submissions
25 today?

26 MR. LANNI: Only around the issue of implementation,
27 should the Board feel there are any questions.

28 MR. SOMMERVILLE: Fair enough. Thank you.

1 Does Board Staff intend to make submissions?

2 MS. HELT: Board Staff may be making submissions,
3 depending on what the other parties put forward before the
4 Board. If there are any issues that remain outstanding
5 that Board Staff are of the view that are important to
6 complete the record, Board Staff will be perhaps making
7 submissions at that point.

8 MR. SOMMERVILLE: Okay. But I do want to give Mr.
9 Crocker a fair opportunity to address any of those
10 submissions that are in support of the motion, so if we can
11 keep that in mind.

12 Mr. Rogers, if Board Staff were to come in after with
13 some comments, I would feel inclined to give Mr. Crocker an
14 opportunity to address those.

15 MR. ROGERS: Yes, I quite agree.

16 MR. SOMMERVILLE: So with that being said, Mr. Rogers,
17 would you like to proceed?

18 **SUBMISSIONS BY MR. ROGERS:**

19 MR. ROGERS: Yes, sir, thank you. I will try to be
20 very brief.

21 MR. SOMMERVILLE: Thank you.

22 MR. ROGERS: You have read the material that we have
23 provided to you, and I can enlarge upon it a little bit.

24 This application is designed to deal with a practical
25 problem that we all have arising out of the High 5 proposal
26 put forward by AMPCO in the last case.

27 As the Board knows, the Board was very interested in
28 the AMPCO proposal in the last transmission case and

1 directed my client to come forward at its next application,
2 this one, with a further analysis of AMPCO's proposal and a
3 suitable proposal for implementation for the Board's
4 consideration, in the event that you determined in this
5 case that it was a good idea to implement the High 5
6 proposal or some variation of that.

7 My client has complied with your direction and has
8 commissioned a study, which is now filed with the Board,
9 which examined the proposal and looked at the impacts and
10 the shifts and the cost consequences to various parties.

11 My client has also looked into the question of
12 implementation, and I am very glad my friend Mr. Lanni is
13 here this morning to help us with the IESO's evidence or
14 IESO's reaction to the proposals, in terms of practical
15 implementation issues.

16 It is my client's proposal to the Board that the
17 consideration of the High 5 proposal be hived off into a
18 separate proceeding, a generic proceeding. The reason for
19 that is that it is a generic issue which affects more than
20 just my client and its customers. It affects all
21 transmission -- transmitters in the province and
22 transmission customers in the province, and whatever
23 happens with it ultimately will have to be translated into
24 uniform transmission rates, which will take another
25 proceeding to implement in any event.

26 So it is our suggestion or proposal the issue be dealt
27 with in a parallel generic hearing, although it need not be
28 parallel, but a generic hearing, nonetheless, which is

1 hived off from this case.

2 There are several reasons why we propose this. Let me
3 be perfectly frank with you, Mr. Sommerville and Mr.
4 Quesnelle. My client, from a financial perspective, of
5 course, is indifferent to what charge determinant you find
6 to be fair for its customers.

7 It has made a proposal which it believes is fair, but
8 if you feel otherwise, it has no financial consequence for
9 it, presumably.

10 Its primary concern as the transmitter in this
11 province is to have adequate resources to maintain its
12 system and provide the quality of service that its
13 customers require.

14 It has put forward an application for a new revenue
15 requirement. My client's primary concern is that the
16 revenue requirement which you determine to be appropriate
17 for 2011 be recovered in rates beginning January 1, 2011.

18 It appears that it will be impractical, in fact
19 impossible, even if you determine that the so-called High 5
20 proposal is appropriate. It is simply impossible - and I
21 think that the IESO will verify this - for that to be
22 implemented by January 1, 2011.

23 Moreover, there are important issues that need to be
24 looked into dealing with that proposal. The study that has
25 been filed in this case by the Power Advisory Group does
26 point out that there are shifts of costs, according to the
27 study at least, to other customer groups.

28 There are implications to this proposal which really

1 must be carefully considered, I would submit, before this
2 proposal or a variation of it is implemented.

3 So as a practical matter, it is our suggestion that
4 the issue be hived off into a generic proceeding so that
5 all transmitters could take part in it and all transmission
6 customers across the province could be a part of it. That
7 would allow for a proper interrogatory process, perhaps
8 filing of evidence from other parties. Maybe AMPCO would
9 like to file some evidence dealing with it. I don't know.
10 But that could be considered carefully without undo haste.

11 Meanwhile, we would proceed with this case to
12 determine the appropriate revenue requirement for 2011.
13 And, once again, it is our proposal, and we ask the Board
14 to -- what we will be asking the Board to do is to, once
15 you agree on -- or once you have determined what the
16 appropriate revenue requirement is for 2011, to allow the
17 company to recover that revenue requirement beginning
18 January 1, 2011, based upon the status quo in terms of the
19 charge determinant, because it is impractical to find a
20 substitute in the short time available to us.

21 There are good reasons, I submit, why this makes
22 sense, apart from the practical problems.

23 I will just say that the IESO, my understanding is -
24 and it is in our evidence now - that the IESO feels it
25 needs at least four months to implement the result of a
26 change in charge determinant. So if your decision came
27 down early in January, as we hope would be the case, then
28 it would be at least four months from that time by which

1 they could implement it.

2 I will ask -- my friend Mr. Lanni can enlarge upon
3 that if you like.

4 So it would be impossible to put this proposal in
5 place January 1, 2011.

6 My client will be -- under the present proposal, the
7 idea is that it is a two-year rate determination. My
8 client will be back to rebase for 2012 to take into account
9 the then-cost of capital formula, and so on. And it is our
10 suggestion and proposal that if a change is to be made to
11 the charge determinant, that it be implemented effective
12 January 1, 2012.

13 My client's primary concern, as I say, is that the
14 revenue requirement be determined by the Board and that it
15 be allowed to recover it, that revenue requirement, in
16 rates beginning January 2011, because it needs the capital
17 and it needs the funding to provide the transmission system
18 that it is obligated to maintain.

19 It is concerned about having, if we do make a change,
20 that we do this in a way that is efficient for all
21 concerned, and we believe that that efficiency criterion
22 will be best met by implementing whatever change you think
23 appropriate in 2012, if indeed any change is thought to be
24 appropriate. By deferring it until 2012, you will enable a
25 careful review of the proposals and its implications for
26 all customers in the province. You will also provide some
27 time for customers, industrial customers in particular, to
28 understand what is coming and to have time to modify their

1 consumption behaviour in 2012, to take account of the
2 change and to move their consumption pattern -- which is
3 what I understand is one of the major motivators of the
4 AMPCO proposal -- off-peak.

5 Finally, our proposal, we submit, would enable
6 consideration of the important step of modifying the retail
7 transmission service rates, so that large customers who are
8 served by municipalities will not be placed at a
9 disadvantage because their rates would be based on a
10 different criterion than those served directly through the
11 transmission system.

12 So those are the reasons for the proposal. And I
13 believe that those are the submissions I would like to make
14 to support it. Thank you.

15 MR. SOMMERVILLE: Thank you. Any questions, Mr.
16 Quesnelle?

17 MR. QUESNELLE: Just on that last one, Mr. Rogers, you
18 mentioned it would allow time for consideration of the
19 retail transmission service. Are you suggesting that that
20 would then become part of the scope of the generic hearing?
21 Or that it would go through the generic hearing on the
22 basis of the AMPCO proposal and that would be phase 2?

23 MR. ROGERS: I think it would be the expectation, Mr.
24 Quesnelle, that it would be part of the generic proceeding.
25 I think that was within the contemplation of my client,
26 because the municipal utilities, we believe, would be
27 integrally involved in that proceeding, and that would be a
28 very, we think, good time to consider those issues.

1 MR. QUESNELLE: So if the Board were to decide to not
2 grant the motion and the issue as it is described now
3 remained within the body of this rate case, are you
4 suggesting a rescoping of that issue?

5 MR. ROGERS: I think we believe that would be
6 problematic, so the answer to your question is "no" but
7 some process would have to be in place to deal with that
8 issue. But we don't believe it would be -- it would be
9 appropriate for this case because all of these parties are
10 not -- all the affected parties are not actively
11 intervening in our case and are not aware that that would
12 be dealt with in this case.

13 MR. QUESNELLE: Okay. Thank you.

14 MR. SOMMERVILLE: Just on that point, Mr. Rogers, the
15 question as to who is in this case and who might be
16 attracted to a generic proceeding, who do you see as
17 missing from this case?

18 MR. ROGERS: Well, that's a good question, because I
19 think the other -- at least I'm not sure if all of the
20 transmission companies had intervened, but -- all but one
21 have, as I understand it.

22 MR. SOMMERVILLE: Certainly Great Lakes Power --

23 MR. ROGERS: And of course the --

24 MR. SOMMERVILLE: Five Nations.

25 MR. ROGERS: Yes. So that they are in the case. Most
26 of them are in the case, but I submit that most of them
27 have not really -- are not alive to the implications of
28 this proposal for them and they have intervened, kind of as

1 they are wont to do, to have a ticket to the game, but
2 really are not engaged in what is involved for them. That
3 is, I think, the concern of my client.

4 **PROCEDURAL MATTERS:**

5 MR. SOMMERVILLE: Mr. MacIntosh, you were a late
6 arrival. Could you identify yourself for the record,
7 please?

8 MR. MACINTOSH: David MacIntosh, for Energy Probe.

9 MR. SOMMERVILLE: Mr. MacIntosh, as I read your
10 materials, I understand you to be roughly supportive of the
11 motion?

12 MR. MACINTOSH: Yes, sir.

13 MR. SOMMERVILLE: Would you like to make your
14 submissions at this stage?

15 MR. MACINTOSH: Well, our position was that this will
16 affect residential consumers, small commercial, and we
17 would expect that if this was a separate hearing that more
18 of the distributors would take part as well. That is the
19 reason that we supported Hydro One. Thank you, sir.

20 MR. SOMMERVILLE: Thank you. Mr. Buonaguro.

21 **SUBMISSIONS BY MR. BUONAGURO:**

22 MR. BUONAGURO: Thank you. Our submissions on this
23 were fairly brief, and were focussed more on what we felt
24 we needed in terms of an evidentiary record on this
25 particular issue and whether or not that would be -- that
26 level of evidence would be available either in this hearing
27 as part of this proceeding or whether it would be available
28 in a generic proceeding as proposed by Hydro One.

1 As you will have seen in our submissions, while we're
2 quite confident that the information that we would need on
3 the record to explore the issue of the High 5 proposal
4 would be available through the normal witness panels that
5 we expect to be before the Board in this proceeding, we
6 didn't have quite the same assurance with respect to any
7 kind of generic proceeding, because there may be a feeling
8 that the scope of that hearing might be more limited in
9 terms of exploring, for example, the cost drivers for
10 investment in a generation across -- sorry, cost drivers
11 for the capital plans, capital investments in the area of
12 transmission. And we were looking for some sort of
13 assurance from Hydro One, which maybe they can address in
14 reply, in terms of whether or not that kind of evidence
15 will be available in a generic proceeding.

16 I should say, to be fair to my friend from AMPCO, in
17 the original decision -- sorry, in the original proceeding
18 on this issue, it was VECC's position that the Board should
19 reject the High 5 proposal at that point, because of a
20 number of factors which, I think when you read the Power
21 Advisory report, you will see that on a number of things it
22 runs in parallel with what we were suggesting would be the
23 problems with the proposal.

24 So in terms of positioning in this proceeding, we are
25 probably quite happy with proceeding from the -- just on
26 the basis of the Power Advisory report and wouldn't be
27 putting in evidence ourselves. So that puts us in a very
28 different position from what -- to my friend from AMPCO

1 will be in, because we can rely largely on the company's
2 evidence to support our position.

3 The only thing that we are concerned about is this
4 additional evidence we may need to more -- to provide more
5 information on the record in terms of cost drivers and
6 things like that, which may not be fully in the report.

7 In terms of whether or not it should go in this
8 proceeding or another, specifically, again, we are sort of
9 neutral on that. We just want to make sure the evidence is
10 on the record. But I should point out the disparity
11 between -- I think it is useful to point out the disparity
12 between the High 5 proposal as it was submitted to the
13 Board in the 2008-0272 proceeding and what the Power
14 Advisory has found.

15 In the High 5 proposal evidence that was before the
16 Board in the previous proceeding, it was suggested that the
17 costs to LDCs and therefore customers like the ones
18 represented by VECC would be approximately \$900,000, and
19 that the benefits would be as much as \$11 million.

20 By contrast, the Power Advisory study suggests the
21 costs would be \$28.5 million to LDCs, and the benefits at
22 its most generous assessment, Power Advisory's most
23 generous assessment, would be approximately \$2.8 million in
24 benefits. So there is a huge disparity, in our view,
25 between the High 5 proposal cost and benefits as proposed
26 by AMPCO and the cost and benefits as found by Power
27 Advisory in their study, which I think is going to take
28 quite a bit of time to sort through, mostly because it

1 is -- it relies a lot on mathematical analysis and
2 statistics and things that I don't really understand but my
3 consultants do, which suggests to me that it might be a
4 good idea to hive that off from the rest of the proceeding
5 as a practical matter.

6 There is a second issue which I don't think my friend
7 for Hydro One addressed in his argument in-chief, which he
8 may do in his reply, which is raised certainly by CME in
9 their submissions, which is the last ones I read, which is
10 there has been advanced by some parties the issue of
11 whether there should be consequences as a result of the way
12 in which the evidence has got before the Board.

13 There is a suggestion that the report should have been
14 done earlier and that any delays that are resulting from
15 having to include the report and a review of the report in
16 this proceeding may affect the implementation of rates,
17 which may be, some people may argue should be -- the
18 consequences of which should be born by Hydro One in terms
19 of late implementation of rates.

20 That is a separate issue, I think, in terms of -- that
21 the Board will have to consider in terms of whether that
22 issue should be -- even if the rest of the proceeding goes
23 without this particular charge determinant issue within
24 scope, the separate issue of whether Hydro One
25 appropriately followed the direction of the Board on a
26 timely basis would probably have to remain within this
27 proceeding, and whether there should be consequences of
28 that -- the way in which they responded to the direction,

1 whether there should be consequences or not would probably
2 remain within the scope of this proceeding.

3 Having said that, for the practical purposes of this
4 proceeding, we are indifferent as to whether you actually
5 hear the charge determinant issue in this proceeding or a
6 generic proceeding, as long as it is done and done
7 properly, which is the substance of our written
8 submissions.

9 Subject to any questions, those are our submissions.

10 MR. SOMMERVILLE: Thank you. Mr. Lanni, your client
11 has been referred to in, Mr. Rogers has indicated, a four-
12 month requirement for implementation of any decision
13 respecting this subject matter.

14 This is not inherently an evidentiary proceeding, but
15 do you have any -- do you want to add anything to that or
16 do you want to comment on Mr. Rogers' characterization?

17 MR. LANNI: Thank you, Mr. Chair. I will make just a
18 few brief comments. With respect to implementation,
19 January 2011 isn't feasible, and that we know for sure.

20 As to implementation, it will take at least four
21 months, and the types of things we would need to consider
22 once we had more specific information, given that this is a
23 wholesale system change and not just a year-over-year, more
24 routine-type change. We would have to consider whether or
25 not there would be rule changes required.

26 2011 is a busy year for us, given that we are
27 implementing EDAC at the end of the year. So we have
28 allocated a lot of our resources and really frozen our

1 resources for that project.

2 Then we would also need to go through our regular
3 stakeholdering and education processes, which takes some
4 time for themselves.

5 Having said that, the IESO is prepared to attend at a
6 generic hearing or at the main rates case, however the
7 Board decides.

8 MR. SOMMERVILLE: Thank you very much.

9 Mr. Crocker, why don't you proceed? And I am going to
10 take you at your word, Ms. Helt, that your comments will be
11 - how shall I say - sort of pointing out perhaps some
12 logistical difficulties and that sort of thing, unless you
13 want to go now?

14 MS. HELT: No. I am prepared to proceed at this
15 point. Perhaps that would make things a little bit clearer
16 going forward.

17 MR. SOMMERVILLE: Thank you.

18 **SUBMISSIONS BY MS. HELT:**

19 MS. HELT: Board Staff's submission is really focussed
20 around ensuring, much like what Mr. Buonaguro submitted,
21 that the record before the Board is sufficient for a proper
22 consideration with respect to the issue of charge
23 determinants.

24 One of those -- one of the Board Staff's concerns with
25 respect to ensuring the record is sufficient is to know,
26 from Mr. Crocker and from AMPCO, whether or not there is an
27 intention, perhaps on AMPCO's behalf, to file any
28 additional evidence in response to the Power Advisory

1 study, or otherwise; and, if there is an intention to file
2 any additional evidence, what that evidence may look like
3 and what the timing would be, with respect to that.

4 It is clear from Procedural Order No. 1 that was
5 issued by this Board that there is a date for filing
6 intervenor evidence, which is noted as August 26th. The
7 Board Staff submits that those dates -- or that date should
8 be adhered to, as the other dates are noted in the
9 procedural order, as well, should be adhered to, so as to
10 ensure that the proceeding proceeds on a timely basis.

11 The other issue that Board Staff has a concern with is
12 with respect to the implementation issues, but we have
13 heard from the IESO with respect to that and the
14 requirement that they would need an additional four months.

15 So that is really the thrust of Board Staff's
16 submission, unless you have any questions.

17 MR. SOMMERVILLE: No, thank you. Thank you, Ms. Helt.
18 Mr. Crocker.

19 MR. QUESNELLE: Mr. Crocker, I don't believe your
20 microphone is on.

21 **SUBMISSIONS BY MR. CROCKER:**

22 MR. CROCKER: I didn't push the button hard enough.
23 Thank you.

24 Basically, AMPCO's submissions are going to be grouped
25 into two areas. One, we don't think the motion is
26 appropriate, because it doesn't comply with the rules that
27 the Board has established for such motions.

28 Two, we believe that despite my friend Mr. Rogers'

1 submissions that Hydro One is indifferent, from a financial
2 perspective and it may be indifferent from a financial
3 perspective, change is a scary thing. Change can be an
4 expensive thing. Sometimes change should be avoided in
5 certain parties' perspective.

6 I think Hydro One has avoided dealing with this AMPCO
7 proposal, the High 5 proposal, for some time, and maybe it
8 is just because of a concern about change. But, in any
9 event, I don't think it is fair to say that they have been
10 indifferent. I think that they have been actively negative
11 with respect to what AMPCO has proposed.

12 Then the question becomes: How do we deal with the
13 position that we are in, because of the way in which AMPCO
14 allocated resources -- I'm sorry, Hydro One allocated the
15 resources to comply with the direction or request of the
16 Board. So those are the kind of three areas I would like
17 to deal with.

18 First of all, with respect to the appropriateness of
19 the motion, the rules of the Board talk about review,
20 beginning at Rule 42. And the Board rules at Rule 44.01
21 make clear the requirements of a motion to review. I think
22 this has to be considered a motion to review.

23 The Board made its decision pretty clearly after a
24 full discussion of the charge determinants, which begin at
25 page 64 of the decision in EB-2008-0272 at section 10. All
26 of the evidence was canvassed. The positions of the
27 parties was canvassed. The pros and cons were discussed,
28 and then the Board provided its direction to Hydro One as

1 set out and discussed by my friend.

2 In my respectful submission, any motion to change that
3 is a motion to review and should comply with the
4 requirements of Rule 44.01. I am just going to read it for
5 the record:

6 "Every notice of a motion made under Rule 42.01,
7 in addition to the requirements under Rule 8.02,
8 shall:

9 "(a) set out the grounds for the motion that
10 raise a question as to the correctness of the
11 order or decision, which grounds may include:

12 "(i) error in fact;

13 "(ii) change in circumstances;

14 "(iii) new facts that have arisen;

15 "(iv) facts that were not previously placed in
16 evidence..."

17 I suggest, with respect, that although this is -- the
18 rule deals with the requirements of a motion and what has
19 to be included in the motion, the rule provides the reasons
20 why the Board would consider such a motion, in my
21 respectful submission, that the original decision contained
22 an error in fact; that there have been -- there has been a
23 change in circumstances since that order was made; new
24 facts have arisen; and that there were facts that weren't
25 previously placed in evidence.

26 In my respectful submission, Hydro One doesn't suggest
27 that in their motion, and that is because none of those
28 conditions precedent exist.

1 The first submission we are making, therefore, AMPCO
2 is making, therefore, is that this motion shouldn't be
3 granted because none of those conditions precedent exist.

4 Secondly, our position is that the circumstances in
5 which we are in concerning timing is completely as a result
6 of Hydro One's approach to the decision of the Board.

7 The timing issues are set out pretty clearly in the
8 notice of motion.

9 The decision in the previous case, EB-2008-0272, was
10 released on May 28th, 2009. Hydro One's notice of motion
11 deals with the timing issues beginning at paragraph 14.

12 Nothing was done in response to that decision until,
13 as indicated in paragraph 14, November 16th, 2009, when a
14 stakeholder session was held. I don't have to count the
15 months. That is, in my respectful submission, an
16 inordinate amount of time.

17 Another almost month passed before a request for
18 proposal was issued, as indicated in paragraph 15.

19 In paragraph 16, the Power Advisory Group was retained
20 and their report was released on July 5th.

21 In my respectful submission, if we are in an awkward
22 position with respect to timing -- and I am not convinced
23 that we are -- it was because, to be as generous as I can
24 be, Hydro One was, in our respectful submission, pretty
25 casual with respect to implementing the decision of the
26 Board.

27 The timing issues, in my respectful submission,
28 shouldn't determine whether this issue should be hived off.

1 AMPCO has been urging the Board to consider this issue for
2 some time, and any delay is something which we would
3 oppose.

4 My friend tacks on to the timing issue, issues, other
5 issues, with respect to why we shouldn't proceed. One has
6 to do with other transmitters not having had an opportunity
7 to -- not being able to have an opportunity to fully
8 participate in the issue, if it were kept as part of this
9 hearing. Well, Mr. Sommerville, I think you raised that
10 issue in questioning my friend. I believe all of the
11 transmitters have indicated an intention to become a party
12 to this hearing.

13 In any event, Hydro One has the vast majority of
14 transmission facilities in Ontario, and I think that is
15 well known.

16 There are two positions now with respect to the
17 implications on LDCs and generators with respect to this
18 proposal. One is our position, AMPCO's position, as was
19 put in the previous hearing, and that is that it is not
20 that significant.

21 The Power Advisory Group suggests that there is more
22 significance to this.

23 I believe that it was pretty clearly advertised that
24 this was going to be an issue, as part of this hearing,
25 whether the significance of that issue has changed somewhat
26 since the report of the Hydro One consultants, but
27 nevertheless, if parties were concerned with the issue, in
28 my respectful submission, they would have become parties to

1 this hearing.

2 My friend suggests a parallel hearing, and we have
3 submitted that AMPCO may not have the resources to properly
4 deal with this as a parallel hearing.

5 We are now -- AMPCO is now a party to this hearing, a
6 party to the OPG rate hearing, the OPG hearing, and it will
7 be difficult to be a -- to fully participate in a parallel
8 hearing, which would mean probably, therefore, that the
9 consideration of AMPCO's proposal would be delayed, should
10 it not be part of EB-2010-0002. And needless to say, AMPCO
11 would strongly oppose the delaying of consideration of the
12 issue, because the implementation issues which my friend
13 raised and which the IESO responded to will remain the same
14 whether the decision with respect to the proposal is made
15 as a result of the decision in this hearing, or in a
16 separate hearing.

17 Any delay is something which we would oppose and
18 hopefully help to avoid.

19 Hydro One's submission to you is that if the issue is
20 hived off, it should be dealt with by way of a generic
21 hearing, and we suggest that is probably inappropriate,
22 that in fact Hydro One should lead any discussion of all of
23 this.

24 AMPCO has put its proposal before the Board and the
25 Board has responded to it. Hydro One has now responded to
26 it. In my respectful submission, it should be up to Hydro
27 One to establish -- whether it be as part of this hearing,
28 and hopefully it would be, or in a separate hearing -- that

1 it is inappropriate. And that shouldn't be, in my
2 respectful submission, as part of a generic hearing, which
3 implies something flat and where all participants would
4 have sort of equal -- an equal role in determining how the
5 position is put to the Board.

6 In our submission, Hydro One should be the lead in any
7 discussion of this at this point.

8 MR. SOMMERVILLE: You are suggesting Hydro One has a
9 burden of proof with respect to this subject matter?

10 MR. CROCKER: Yes, I do.

11 Further to what Mr. Buonaguro has said, and repeating
12 to some extent what Mr. Thompson said on behalf of CME, I
13 think there should be consequences, regardless of how we
14 proceed here. Whether this proceeds as part of this
15 hearing, whether the -- and if it does, whether the -- any
16 new proposal, should one be accepted by the Board, be
17 implemented in 2011 or 2012, there should be consequences
18 with respect to the way in which Hydro One treated the
19 decision of the Board and the leisurely way - to put it
20 graciously, I hope - that they decided to implement the
21 Board's direction.

22 We are suggesting that the 2010 rates remain interim
23 until the Board makes a decision as to what the rate design
24 in Ontario is going to look like.

25 Mr. Shepherd -- I would just like to respond to one
26 other intervenor's position, and that is the position of
27 Mr. Shepherd on behalf of the School Energy Coalition. We
28 agree with what he suggested at the beginning, and that is

1 -- in the first several paragraphs of his submission, and
2 that basically is that Hydro now shouldn't be able to take
3 advantage of the benefit of approaching this leisurely.

4 But he then goes on to suggest that the evidentiary
5 basis for a broad discussion of charge determinants isn't
6 before the Board.

7 In my respectful submission, there are two pretty
8 distinct positions which are now before the Board: the rate
9 design proposed by AMPCO, which is based on five coincident
10 energy peaks, and the position that the consultants for
11 Hydro One have proposed.

12 In my respectful submission, that is the discussion
13 which should take place, and perhaps the broader academic
14 discussion which Mr. Shepherd suggests need also to take
15 place. But I don't think, in order to -- for the Board to
16 be in a position to implement a rate design in Ontario,
17 that that broader discussion need necessarily be a part of
18 your decision at this point.

19 So to summarize, we don't believe this is a proper
20 motion. In any event, we don't believe that Hydro One took
21 as seriously as they should the decision of the Board, and,
22 therefore, that any timing issues which result therefrom
23 shouldn't delay the discussion of the issue before the
24 Board and that there should be consequences in terms of the
25 ultimate rate, the interim rate which applies as a result
26 of that.

27 To respond to the submissions of Board Staff, we
28 haven't -- AMPCO hasn't made a decision yet with respect to

1 whether further evidence will be called. It will, to some
2 extent, depend on the decision of the Board.

3 We understand timelines and we understand what we
4 need, what has to be done in order to comply with those
5 timelines, and we have retained an expert to deal with the
6 consultant's report of Hydro One and to respond to AMPCO
7 with respect to approaches which can be taken with respect
8 to that.

9 MR. SOMMERVILLE: So I can take it from that, Mr.
10 Crocker, that it is your intention to provide evidence on
11 this subject for the Board's consideration?

12 MR. CROCKER: We haven't -- I can't bind AMPCO yet.

13 MR. SOMMERVILLE: Okay.

14 MR. CROCKER: Because, in fact, that decision hasn't
15 been made, but certainly the issue is forefront in our
16 minds.

17 MR. SOMMERVILLE: And with respect to the timelines
18 associated with that, specifically August 26th, that is a
19 date that is in your contemplation?

20 MR. CROCKER: Yes, and I can tell you that it will be
21 a date which is going to be difficult to meet, but if it is
22 your decision that we go ahead with this issue as part of
23 this hearing, we will make every effort to meet that date
24 or to come as close to it as we can.

25 MR. QUESNELLE: I have no questions.

26 MR. SOMMERVILLE: Mr. Rogers -- oh, Mr. Buonaguro?

27 MR. BUONAGURO: I'm sorry. Just if I might make a
28 brief submission in response to the burden of proof in a

1 generic proceeding, or...

2 MR. SOMMERVILLE: I think you are going to have to
3 leave that to us. Thanks very much. Mr. Rogers.

4 **FURTHER SUBMISSIONS BY MR. ROGERS:**

5 MR. ROGERS: Thank you, sir.

6 Let me respond to my friend's submissions seriatim.

7 His first point was that my client's application to
8 you is, in effect, a request to review a previous decision.
9 That simply is not the case at all. If it were, however,
10 your Rules 103 and 201 would enable you to dispense with
11 any rule if you were satisfied that the circumstances of
12 the proceedings required it, in the public interest, to
13 provide for an expeditious and efficient determination of
14 an issue.

15 So you have the power even if we are wrong. But this
16 is not, in any stretch of the imagination, an application
17 to review your decision. Your decision is accepted by the
18 applicant. Your decision was that the Hydro One was
19 ordered to come forward at its next application with --
20 this is from page 69 of your decision: "A further analysis
21 of AMPCO's proposal" that they have done with the Power
22 Advisory study that has been filed:

23 "A suitable proposal for implementation for the
24 Board's consideration in the event the Board
25 decides to change the charge determinant."

26 This they have done through their evidence, their
27 amended evidence. And, in effect, this application is an
28 attempt to supplement that implementation request or

1 direction from the Board.

2 So my client has complied with your direction. We are
3 not seeking to vary it in any way. What we are trying to
4 do is come up with a practical solution for the problem
5 that we all have here.

6 Let me deal with the second issue, and that is one of
7 timing. My client has been criticized for the timing of
8 the commissioning of the study, in effect.

9 All parties have limited resources. I mean, you must
10 allocate resources. I would just like the Board to be
11 aware of some of the things that were going on at the time
12 Hydro One was trying to deal with this matter.

13 Your decision was issued on May 28th, 2009. On July
14 13th, 2009 the distribution case was filed by my client.
15 That is just a few weeks later. There were interrogatories
16 and IR requests to be met, and so on. It was a very busy
17 period over that summertime for my client.

18 On November 16th, it held a session on the High 5, a
19 stakeholdering session, which it is obligated to do and
20 does in all of these cases.

21 Shortly thereafter, on December 10th, after the
22 stakeholdering, when opinions were solicited from everyone,
23 including AMPCO, as to what a study would look like and how
24 it should be structured and who should perform the study,
25 Hydro One issued its request for proposal.

26 It then had a second stakeholder session on March the
27 2nd, 2010, a few months later, two months later, to deal
28 with other issues in this case, as it does in all of these

1 cases.

2 In March of 2010, about the same time as its second
3 stakeholdering session, it awarded the contract to Power
4 Advisory Group.

5 Now, Mr. Crocker didn't mention the fact some of the
6 criticism about the late filing of this case, but let me
7 deal with that now, because I think Mr. Thompson perhaps
8 did in his submission to you -- or, sorry, Mr. -- I have
9 forgotten. One of the other intervenors did.

10 It is true the original plan was to file this case on
11 May 31st, 2010 and it was delayed -- I'm sorry, March 31st,
12 March 31st, 2010, and it was delayed for about six weeks or
13 so.

14 MR. SOMMERVILLE: Mr. Rogers, with respect, I don't
15 think discussion of this delay is particularly relevant to
16 the consideration of the motion.

17 MR. ROGERS: Fine. Thank you.

18 MR. SOMMERVILLE: That may arise later on, pursuant to
19 the extent to which the company has met the directions of
20 the Board, or whatever, however parties may want to cast
21 that issue.

22 But I don't think it has very much to do with the
23 motion itself.

24 MR. ROGERS: Very well. I am quite happy to leave
25 that. I thought I should respond to it, and I will in due
26 course.

27 MR. SOMMERVILLE: Thank you.

28 MR. ROGERS: Once again, then, the corollary issue is,

1 I guess, whether or not my clients should pay some penance
2 for what was presented to you as a cavalier attitude to
3 your direction I will leave to a later time, too; simply to
4 say that categorically I reject that proposal and I would
5 like an opportunity at some point to tell you why.

6 MR. SOMMERVILLE: You may well get that opportunity,
7 Mr. Rogers.

8 MR. ROGERS: All right. That's fine.

9 One last thing I will say, sir, and that is this, that
10 we have proposed a parallel generic proceeding. Should the
11 Board decide that you wish to deal with it in this case,
12 rather than in a generic case, I would propose and request
13 that somehow this issue be hived off in some way into a
14 separate module so that it doesn't delay the implementation
15 of the rate increase, which my client feels is important
16 for January 1, 2011.

17 If you decide that the revenue requirement should be
18 increased as my client proposes, then I submit to you that
19 it is in no one's interest to delay recovery of those
20 proper costs beyond January 1, 2011.

21 It is important that this -- it is not appropriate to
22 starve this utility for resources because of an issue that
23 is going to take longer to examine and develop concerning
24 how those costs would be recovered from its customers,
25 which is a matter of fairness between my client's
26 customers.

27 So those are my submissions, and I thank you for your
28 attention.

1 MR. SOMMERVILLE: Thank you, Mr. Rogers.

2 I think that concludes submissions on the motion. Is
3 there anything outstanding?

4 The Board will recess for 20 minutes. And, in fact,
5 why don't we recess until 11 o'clock, and we will come
6 back, and, as I have indicated, we will provide our
7 decision orally with respect to the issues list. And
8 whether we address this -- whether we address the motion
9 remains to be seen.

10 So with that, we will rise until 11 o'clock. Thank
11 you.

12 --- Recess at 10:23 a.m.

13 --- On resuming at 11:03 a.m.

14 MR. SOMMERVILLE: Please be seated. Thank you.

15 **DECISION ON MOTION:**

16 MR. SOMMERVILLE: The Board has reached a decision on
17 the motion, and will provide our decision on that now, to
18 be followed by our decision with respect to the rest of the
19 Issues List.

20 The Board denies the motion. It is the Board's view
21 that severing the so-called ^H5 charge determinant proposal
22 from this proceeding is both inappropriate and inefficient.
23 It is the Board's finding that the parties necessary for
24 appropriate consideration of the matter are, in fact,
25 parties to this case, and they will have the usual
26 opportunities to file, challenge, support, and test all of
27 the evidence surrounding the proposal.

28 The Board will consider making provision for a

1 technical conference in September to deal with this, to
2 deal with this issue, should it seem to be advisable.

3 The Board, in considering the issue, will be mindful
4 of the general desirability of having rates -- a rates
5 decision in place to be effective January 1st, 2010, and
6 the timing issues -- I beg your pardon, 2011 -- and the
7 timing issues elucidated by IESO and Hydro One.

8 So it is the Board's view that we will consider this
9 issue as originally drafted in the draft Issues List, 8.1,
10 in this proceeding.

11 And are there any questions arising from that?

12 What follows now is the Board's decision with respect
13 to the Issues List.

14 **DECISION ON ISSUES LIST:**

15 Pursuant to Procedural Order No. 1, the Board
16 distributed a draft Issues List and solicited comments from
17 the parties. This is the Board's decision with respect to
18 the Issues List.

19 First, the Board would like to thank parties for their
20 very constructive suggestions and their approach with
21 respect to the Issues List. The Board notes that in some
22 instances parties sought to amend the list so as to provide
23 considerable detail with respect to the Issue List. As a
24 general comment, the Board considers that too much
25 specificity or granularity in the Issues List is not
26 necessarily a virtue. The purpose of the Issues List is to
27 provide, at the outset of a proceeding, its scope, so that
28 the interrogatory process can be conducted with reasonable

1 efficiency. Too much detail in the Issues List can have
2 the effect of unnaturally constraining the scope of the
3 proceeding to a point -- at a point when the evidentiary
4 foundation of the case is only partially developed.

5 Perhaps most importantly, the Issues List can provide
6 guidance to parties with respect to issues that the Board
7 will simply not entertain in the context of the proceeding
8 because they can be handled more effectively in some other
9 forum or at some other time.

10 Unless specifically referenced in this Oral Decision,
11 the parties should conclude that the wording of the issues
12 is identical to that appearing in the draft Issues List
13 circulated by the Board as part of Procedural Order No. 1.

14 Board Staff will circulate a revised Issues List,
15 which will govern the interrogatory process for this
16 proceeding over the next few days. That Issues List will
17 reflect this Decision.

18 With respect to Issue 1.3, the Board considers it
19 appropriate to amend that issue so as to delete the words:
20 "given the overall bill impact on consumers". This change
21 was supported by a couple of intervenors. The Board
22 considers the deletion of the "overall bill impact
23 reference" as appropriate insofar as, as amended, it more
24 accurately describes the Board process in arriving at
25 rates. The Board also considers it appropriate to enable
26 intervenors to place the implications of consequential
27 rates in a context that is broader than the overall bill
28 impact.

1 Schools urged the Board to adopt four new issues,
2 which it numbered 1.4 through 1.7.

3 The Board does not consider it advisable to include
4 the proposed 1.4 in the Issues List. 1.4, as proposed by
5 SEC, dealt with the Applicant's compliance with the filing
6 requirements.

7 It is always open to the intervenors to seek
8 additional information and/or argue that the record does
9 not adequately support the relief sought in any particular
10 element of the application. The Board does not consider it
11 necessary or advisable to facilitate this assessment
12 through a holistic review exercise.

13 The Board notes that Hydro One has indicated that it
14 considers the subject matters of issues 1.5 to 1.7 to be
15 covered under the existing Issue 1.3. The Board
16 understands that the approach adopted by Hydro One means it
17 will not object to questions addressing the subject matters
18 canvassed in the proposed new issues, and will take a
19 reasonably liberal attitude with respect to them.

20 The Board agrees that these topics can be dealt with
21 under Issue 1.3. Similarly, the Board finds that the
22 suggestions for additions under issue headings 2 and 3 to
23 be unnecessary.

24 With respect to 4.2, VECC suggested additional wording
25 to address the need for system expansion within the capital
26 expenditures proposals of the Applicant. The Board
27 considers that the original wording of 4.2 includes, as
28 part of the development component, consideration of the

1 need for system expansion, and accordingly no amendment to
2 this issue is required.

3 With respect to Issue 4.4, the Board accepts the
4 suggestions of several intervenors that this issue should
5 be worded so as to be consistent with Issue 3.5.

6 Specifically, the Board amends Issue 4.4 so as to read:

7 "Are the methodologies used to allocate shared
8 services and other capital expenditures to the
9 transmission business, appropriate?"

10 The Board considers that a similar change should be
11 made to Issue 4.5, so that it will now read:

12 "Are the inputs used to determine the working
13 capital component of the rate base and the
14 methodology used appropriate?"

15 AMPCO suggested that a new issue should be added to
16 section 4 to address the question of Hydro One's request
17 for accelerated cost recovery with respect to the costs
18 associated with the Bruce-to-Milton double-circuit line
19 project.

20 In response to AMPCO's submission, Hydro One proposed
21 that a new 9.3 should be included in the Issues List, which
22 would read as follows:

23 "Are Hydro One's accelerated cost recovery
24 proposals for the Bruce-to-Milton line and for
25 Green Energy projects appropriate?"

26 The Board adopts Hydro One's proposal, but with the
27 following commentary. Inclusion of this issue in the Green
28 Energy Plan section of the Issues List should not be

1 construed in any degree as a recognition by the Board that
2 the Bruce-to-Milton line is inherently a Green Energy
3 project, or that the Report of the Board With Respect to
4 the Regulatory Treatment of Infrastructure Investment, that
5 is EB-2009-0152, is or is not relevant to the costs
6 associated with that project. In other words, it will be
7 open to parties to direct interrogatories to the extent to
8 which the Bruce-to-Milton project falls within the scope of
9 the Board's Regulatory Treatment of Infrastructure
10 Investment report.

11 In addition, the Board wants to highlight that it is
12 not clear at this stage, before any of the interrogatories
13 have been filed and have been asked or answered, as to what
14 the Board is being asked to decide with respect to
15 accelerated cost recovery or any other aspect of the Green
16 Energy projects described in the application.

17 It appears on the record as it stands that it is the
18 company's proposal to advance accelerated cost recovery
19 proposals in the course of Section 92 proceedings
20 associated with the Green Energy projects.

21 If that is so, it is unclear as to what this Panel
22 could decide with respect to any of those projects.

23 The Board does, however, want to facilitate the
24 development of the record in this respect, and has
25 accordingly adopted the applicant's proposal.

26 With respect to Issue 5.2, SEC proposed a revision,
27 which in its view would include the appropriateness of the
28 results of the methodologies used to determine return on

1 equity and the rate for short-term debt, not merely the
2 methodology itself.

3 Hydro One responded with a revised Issue 5.2, which
4 would read as follows:

5 "Is the proposed timing and methodology for
6 determining the return on equity and short-term
7 debt prior to the effective date of rates
8 appropriate?"

9 The Board will accept Hydro One's proposal, but with
10 the observation that the Board considers the
11 appropriateness of the outcome of the methodology to be
12 inherently included in the issue.

13 With respect to Issue 6.2, the Board notes that VECC
14 sought to include specific reference to the proposed
15 amounts for disposition within this issue. The Board
16 considers the issue of the amounts to be disposed of as
17 included in 6.2 as it is currently written. That is the
18 issue related to deferral accounts and variance accounts.

19 With respect to Issue 7.1, the Board accepts SEC's
20 proposal to amend that issue so as to read:

21 "Is the cost allocation proposed by Hydro One
22 appropriate?"

23 I beg your pardon, let me reread that.

24 With respect to issue 7.1, the Board accepts SEC's proposal
25 to amend that issue so as to read, quote:

26 "Is the cost allocation proposed by Hydro One
27 appropriate?"

28 This change is consistent with the previous changes,

1 which make it open to intervenors to submit interrogatories
2 addressing the appropriateness of the allocation, not
3 simply its consistency with the Board-approved methodology.

4 The Board wants to observe that in making the
5 appropriateness of these allocations fair game, from an
6 interrogatory point of view, does not mean that the Board
7 has itself any specific concerns with respect to the Board-
8 approved methodology. The Board does consider it
9 reasonable, however, to enable questions addressing this
10 aspect.

11 The Board will of course be making a determination
12 with respect to section 8.1, which we have now made in our
13 earlier decision, the decision delivered earlier today.

14 In addition to 8.1, AMPCO has also proposed the
15 addition of an issue which it numbered 8.2, addressing the
16 export transmission service tariff. The Board received
17 fairly detailed and voluminous submissions on this point
18 from a variety of intervenors, and this issue has
19 considerable history within the regulatory community in
20 general and the Board in particular.

21 Most notably, from the Board's points of view, the
22 Board Panel in the previous transmission application
23 specifically referenced the appropriateness of a review of
24 the IESO report which was developed as part of a
25 consultative involving a wide range of stakeholders. There
26 is also correspondence from the Board secretary's office
27 which, in this Panel's view, makes a review of the IESO
28 report appropriate.

1 Hydro One, for its part, has indicated that it
2 considers the issue to fall under the scope of issue 1.1,
3 which addresses the adequacy of its responses to Board
4 directions from previous proceedings.

5 The Board agrees, but with the following important
6 observation. The Board does not see a value in a
7 fundamental reconsideration of the IESO report de novo.
8 The Board recognizes the very systemic consultation
9 undertaken by IESO in developing its report and the
10 application of its very considerable expertise in the
11 subject matter.

12 The Board will permit questions addressing the subject
13 matters canvassed in the proposed new issues list and will
14 take -- I beg your pardon.

15 The Board will permit questions respecting the IESO
16 report which are in the nature of a review of the report,
17 but not a fundamental reconsideration of it.

18 With respect to section 9, the Board is persuaded that
19 section 9.1 is unnecessary and can be deleted from the
20 ^issues list. In doing so, the Board wants to ensure that
21 the parties understand that the Board's view of section 9.2
22 is that it includes, as part of the, quote, "appropriate
23 planning criteria", end quote, subject matter the variety
24 of instructions and directions of whatever character or
25 kind have been provided to Hydro One by the government, in
26 whatever capacity, and other regulatory or governmental
27 agencies, such as the OPA.

28 The Board has already addressed the question of the

1 inclusion of the new issue numbered by Hydro One as 9.3,
2 which addresses the accelerated cost recovery proposals of
3 the applicant.

4 Finally, with respect to the proposed new section 10
5 of the issues list, the Board received detailed submissions
6 from CME with respect to consumer impacts and affordability
7 issues.

8 The Board considers that the consumer impacts and
9 affordability issues are subsumed under the revised section
10 1.3, with the following observation. The Board is prepared
11 to enable intervenors to pose interrogatories respecting
12 consumer impacts and affordability with considerable
13 latitude. However, the Board does not see this proceeding
14 as the appropriate forum for the development of measures to
15 evaluate consumer impacts and affordability, as suggested
16 by CME in its proposed new 10.2.

17 It is the Board's view that the development of
18 objective measures or specific methodologies for the
19 evaluation of customer impacts and affordability is a
20 subject matter that falls outside the scope of this case.

21 As I indicated, Board Staff will distribute to the
22 parties the approved issues list, which will be in
23 conformity with this decision, in due course.

24 Are there any questions arising?

25 I think that concludes our business today. Thank you
26 all for your very thoughtful and helpful submissions, and
27 we are adjourned. Thank you.

28 --- Whereupon the hearing concluded at 11:18 a.m.