

By electronic filing and by e-mail



September 17, 2010

Kirsten Walli  
Board Secretary  
Ontario Energy Board  
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PETER C.P. THOMPSON, Q.C.  
direct tel.: (613) 787-3528  
e-mail: pthompson@blgcanada.com

Dear Ms Walli,

**Hydro One Networks Inc. ("Hydro One")**  
**2011-2012 Transmission Rate Case**  
**Board File No.: EB-2010-0002**  
**Our File No.: 339583-000057**

On September 16, 2010, counsel for Hydro One orally responded to our letter dated September 15, 2010, and refused to produce the documents requested in CME Interrogatory Numbers 1 and 2 on the grounds that the documents are irrelevant.

CME's Notice of Motion for an Order requiring Hydro One to produce the documents is enclosed. We are proposing that the motion be argued as one of the preliminary matters to be dealt with at the commencement of the hearing on Monday, September 20, 2010.

Please note that the packages of documents produced by Hydro One in prior proceedings, that comprise part of the documentary material upon which we will be relying to support the motion, are documents filed in confidence in those proceedings. We request that Hydro One bring copies of these materials to the hearing for distribution to Board members and counsel who have executed a confidentiality undertaking prior to the argument of the motion.

We have attached to the Notice of Motion copies of Hydro One's Responses to CME Interrogatory Numbers 1 and 2, the Globe & Mail article of May 6, 2010, and our September 15, 2010 letter to Hydro One. We have not attached other documents already in the record in these proceedings to which we will be referring during the argument of the motion, including Exhibits A12 and I, Tab 4, Schedule 4.

Yours very truly,

Peter C.P. Thompson, Q.C.

PCT\slc  
enclosure

c. Anne-Marie Reilly (Hydro One)  
Donald Rogers, Q.C. (Rogers Partners LLP)  
Intervenors EB-2010-0002  
Paul Clipsham (CME)

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**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** a review of an application filed by Hydro One Networks Inc. for an order or orders approving a transmission revenue requirement and rates and other charges for the transmission of electricity for 2011 and 2012.

**NOTICE OF MOTION**

The Canadian Manufacturers & Exporters ("CME") will make a motion to the Ontario Energy Board (the "Board") at 2300 Yonge Street, Toronto, Ontario, on Monday, September 20, 2010, at 9:30 a.m. or as soon thereafter as the motion can be heard.

**PROPOSED METHOD OF HEARING:**

CME proposes that the motion be dealt with orally.

**THE MOTION IS FOR:**

1. An Order requiring Hydro One Networks Inc. ("Hydro One") to produce the documents requested in CME Interrogatory numbers 1 and 2;
2. Such further and other relief as CME may request and the Board may grant.

**THE GROUNDS FOR THE MOTION ARE:**

1. Hydro One has applied to the Board for approval of increases in its transmission revenue requirement and rates for the 2011 and 2012 calendar years.
2. To support the requested increases, Hydro One presents budgets for 2011 and 2012 derived from its planning process over a five year planning horizon.
3. Integral to Hydro One's planning process, described in Exhibit A, Tab 12, Schedule 1, are presentations to Hydro One's Board of Directors and approvals stemming from those presentations.

4. The documents requested in CME Interrogatory numbers 1 and 2, being complete packages of materials presented to the Hydro One Board of Directors in June and November 2009, and February and May 2010, directly relate to the planning process upon which Hydro One relies to support its application.
5. The documents requested are no different in character than the confidential documents already produced by Hydro One in these proceedings in response to VECC Interrogatory Number 4 pertaining to the strategic direction and goals Hydro One established, in January 2009, during the annual planning cycle.
6. Complete packages of the documents are relevant evidence pertaining to the application, as evidenced by Hydro One's consistent production of such documents in prior cases and their use in the cross-examination of Hydro One's witnesses on matters pertaining to the planning process that preceded the particular application before the Board for consideration.
7. Hydro One's obligation to produce documents that directly relate to its planning process is mandatory; Hydro One has no discretion to refuse to produce such documents on the basis of its belief that the evidence is "internal to the company itself and not determinative of the substantive aspects of the application".
8. Hydro One's oral response to counsel for CME's letter dated September 15, 2010, refusing to produce the documents on the grounds that they are irrelevant.
9. The need to review documents relevant to the planning process and application prior to commencing any cross-examination of Hydro One's witnesses;
10. Such further and other grounds as counsel may advise and the Board permits.

**THE FOLLOWING DOCUMENTARY MATERIAL AND EVIDENCE WILL BE RELIED UPON AT THE HEARING OF THE MOTION:**

1. The packages of documents produced by Hydro One in prior proceedings, in confidence, (which Hydro One will need to make available at the hearing of the motion since copies

thereof previously provided to counsel for CME have been destroyed), including the following Exhibits from the following proceedings;

- (a) EB-2008-0187, 2009 Distribution IRM Rates Application, decided May 13, 2009, Confidential Exhibits K1.6, K1.7 and K1.8;
  - (b) EB-2009-0272, 2009 and 2010 Transmission Revenue Requirement and Rates, decided May 28, 2009, Confidential Exhibits K3.4 and K3.5; and
  - (c) EB-2009-0096, 2010-2011 Distribution Rates, decided April 9, 2010, Confidential Exhibits H1, Tab 9, Schedule 4; H1, Tab 9, Schedule 44; and H1, Tab 13, Schedule 1.
2. Evidence in the record in these proceedings pertaining to Hydro One's planning process and its outcomes, including Exhibits A, Tab 12 and I, Tab 4, Schedule 4;
  3. Globe & Mail article dated May 6, 2010, entitled "Ontario Utilities told not to bother with requests for rate increases";
  4. Hydro One's responses to CME Interrogatory numbers 1 and 2;
  5. Letter dated September 15, 2010, from counsel for CME to Hydro One;
  6. Such further and other material as counsel may advise and the Board permits.

September 17, 2010

**BORDEN LADNER GERVAIS LLP**

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**Peter C.P. Thompson, Q.C.**

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Fax (613) 230-8842  
Lawyers for Moving Party,  
Canadian Manufactures & Exporters

**TO: Ontario Energy Board**  
Attention: Kirsten Walli, Board Secretary  
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Tel (416) 481-1967  
Fax (416) 440-7656

**AND TO: Don Rogers**  
Rogers Partners LLP  
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Toronto, ON M5H 3M7

Counsel for Hydro One Networks Inc.  
Tel (416) 594-4501  
Fax (416) 594-9100

**AND TO: Hydro One Networks Inc.**  
Attention: Anne-Marie Reilly  
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Tel (416) 345-6482  
Fax (416) 345-5866

**AND TO: All Parties of Record**

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## THE GLOBE AND MAIL

May 6, 2010

# Ontario utilities told not to bother with requests for rate increases

By Karen Howlett  
Globe and Mail Update

### *Government steps in to prevent backlash over soaring hydro costs*

The Ontario government has taken the highly unusual step of ordering the province's Crown-owned electricity utilities to cancel their requests for hydro rate increases, amid worries of a consumer backlash over soaring power costs.

The government's 11th-hour intervention in a rate-setting process that is designed to take the politics out of electricity pricing follows revelations that residential customers in Ontario are already facing increases of \$300 more a year on average to keep the lights on by the end of 2011.

Three days before Hydro One was set to go to the province's energy regulator in mid-March, government officials told the company not to file its application, according to industry sources. Months of preparation that had gone into applying for the new rate suddenly ground to a halt, including the printing of hundreds of thousands of pages of documents.

The magnitude of the increase Hydro One was seeking - 22 per cent over two years, according to industry sources - left many of its largest customers in shock. Ontario Power Generation's (OPG) intention to ask for a 9.6 per cent rate increase effective next January - equivalent to about \$2.75 a month for the average household - paled in comparison. But unlike Hydro One, OPG publicly announced its plans last March 29, and it was the negative reaction that prompted government officials to step in, the sources said.

Energy Minister Brad Duguid said government officials are scrutinizing any request for a price increase to determine whether it is, in fact, necessary.

"We're looking very closely at all increases in the system to ensure that we're standing up for consumers, to ensure that they're getting value for their money," he said in an interview on Thursday. "We are scrutinizing any impacts on rates very closely."

Opposition members say the McGuinty government is to blame for mismanaging the electricity system.

"This is more about politics than anything else," said Progressive Conservative energy critic John Yakabuski. "They don't want to deal with the negative push back from the consumer."

Energy consultants say several factors account for the \$300 annual increase, or 25 per cent, consumers are facing next year, including green-energy investors the government is luring with the promise of generous long-term contracts. The figure does not include the increases sought by Ontario Hydro and OPG.

Industry sources said they were surprised the utilities had withdrawn their requests, because they typically seek the green light from government before proceeding to the Ontario Energy Board. This time around, both utilities had already spent two days meeting with large customers last March, explaining the need for rate increases, before suspending their applications.

Hydro One spokeswoman Daniele Gauvin said the utility, which owns the province's electricity transmission system, is now reviewing its application to look for areas where it can reduce costs by deferring work.

"In the current economic times, we are mindful of the impact of rate increases on our customers," Ms. Gauvin said. She would not confirm how much of an increase Hydro One was seeking.

OPG planned to file its application on April 15. But that same day, Andrew Barrett, OPG's vice-president of regulatory affairs, sent an e-mail to large customers, saying the date had been pushed back to late May.

"During this time, OPG will review our application to identify ways to further lessen the impact of our request on ratepayers," he said.

OPG spokesman Ted Gruetzner denied that it was Mr. Duguid who directed the utility to withdraw its application.

OPG generates about two-thirds of the province's electricity output and is the only producer whose rates are set through public hearings. The utility has not had a rate increase since 2008. It receives 5.5 cents a kilowatt hour for power from its nuclear reactors and 3.7 cents from its hydroelectric plants - well below what other producers receive.

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1                    **Canadian Manufactures & Exporters (CME) INTERROGATORY #1 List 1**

2  
3                    **Interrogatory**

4  
5                    Issue 1.2

6  
7                    References: Exhibit A, Tab 12, Schedule 1, page 2

8  
9                    As in prior cases, please produce, in confidence, the complete packages of materials  
10                    presented to Hydro One's Board of Directors for approval on each of the following key  
11                    dates in the 2010 to 2014 planning cycle referred to at Exhibit A, Tab 12, Schedule 1,  
12                    page 2:

- 13  
14                    • June 2009;  
15                    • November 2009;  
16                    • February 2010.

17  
18  
19                    **Response**

20  
21                    Hydro One believes the material relevant to the Board is that presented to the Hydro One  
22                    Board of Directors on May 13, 2010, as provided in Attachment 1. This letter, which the  
23                    Company is filing un-redacted, highlights the changes made to the application between  
24                    the intended March 2010 filing date and the May 19, 2010 actual filing date.

25  
26                    In support of Hydro One's decision not to provide all the Board Memos requested in  
27                    confidence, the Company relies on the Ontario Energy Board's Decision in Proceeding  
28                    EB-2008-0187 dated May 13, 2009, where the Board stated:

29  
30                    "While the genesis of an application is of general interest to the Board, it is not  
31                    determinative of the substantive aspects of the application. Once filed in  
32                    accordance with the provisions of the legislation, applications are reviewed on  
33                    their merit. The particulars surrounding the levels of approvals before a distributor  
34                    makes an application, is a matter that is internal to the company itself."

35  
36                    The Company believes the material requested by CME falls into the category of  
37                    information which the Board felt was internal to the company itself and not determinative  
38                    of the substantive aspects of the application.

**Hydro One Inc.**  
Submission to the Board of Directors



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**Date: May 13, 2010**

**Subject: Hydro One Revised Application for the 2011 – 2012 Transmission Rates**

**Submitted by:**

A handwritten signature in black ink, appearing to be "Peter Gregg", written over a horizontal line.

Peter Gregg  
Senior Vice President  
Corporate and Regulatory Affairs

**Approved for Submission to the Board by:**

A handwritten signature in black ink, appearing to be "Laura Formosa", written over a horizontal line.

Laura Formosa  
President and Chief Executive Officer

---

**RECOMMENDATION**

THAT the Board of Directors of Hydro One Inc. approve Hydro One's Revised 2011 – 2012 Transmission Revenue Requirement and Rate Application for submission to the Ontario Energy Board on or about May14, 2010.

**KEY HIGHLIGHTS**

- After careful review of the transmission costs and given the customer impact of rate increases, Hydro One has revised its 2011 – 2012 Application. The Transmission Business Revenue Requirement for 2011 has been reduced by \$57 million is now \$1,445 million and 2012 has been reduced by \$65 million and is now \$1,547 million.
- The resulting increase in transmission rates is now 15.7% versus 21.5% in 2011 and 9.8% in 2012 versus 9.1%. This represents an estimated increase on total customer bills of 1.2% in 2011 and 0.7% in 2012. The average residential customer's bill will increase by about \$1.40 per month in 2011 and by approximately \$0.95 per month in 2012.
- The major factors contributing to the rate increase continue to be the addition of in-service transmission investments in the asset base for expansion of our infrastructure and to sustain our current system.
- The filing includes Hydro One's Green Energy transmission plan (GEP) in response to the Green Energy and Green Economy Act, 2009. Accelerated cost recovery (Construction Work in Progress in rate base) will still be sought for the Bruce to Milton project.

## **EXECUTIVE SUMMARY**

### **1. Strategic Significance**

Hydro One plans to file an application with the Ontario Energy Board on or about May 14, 2010, for new transmission rates effective January 1, 2011 and January 1, 2012, consistent with the Company's strategy of building and maintaining a reliable, cost effective transmission system and supporting the facilitation of the Government's green energy initiatives. The Regulatory and Environment Committee has guided the development of the 2011 – 2012 Transmission Rate Application since August 2009.

### **2. Purpose**

To obtain Hydro One Board approval to file an Application for the Transmission Business Revenue Requirement for 2011 and 2012 at \$1,445 million and \$1,547 million respectively. The Revenue Requirement is composed of annual OM&A as well as the carrying costs for assets in-service including the depreciation of the assets, CWIP in rate base for the Bruce to Milton project, taxes, and cost of capital (interest payments and return on equity). The requested level of funding balances system requirements and concern for customer rate increases given the current economic climate and recent concerns communicated by the government. Table 1 provides a summary of the revenue requirement which will be requested compared to the original March 31 submission values.

**Table 1**  
**Revenue Requirement (M\$)**

	<b>OEB Approved</b>	<b>2011</b>	<b>2011</b>	<b>2012</b>	<b>2012</b>
	<b>2010</b>	<b>Original</b>	<b>Proposed</b>	<b>Original</b>	<b>Proposed</b>
<b>OM&amp;A</b>	426	456	436	470	450
<b>Carrying Costs of Assets</b>					
<b>Depreciation</b>	281	314	303	346	335
<b>Cost of Capital</b>	550	732	706	797	762
<b>Total Revenue Requirement</b>	<b>1,257</b>	<b>1,502</b>	<b>1,445</b>	<b>1,613</b>	<b>1,547</b>
<b>Capital Expenditures</b>	<b>1,058</b>	<b>1,263</b>	<b>1,152</b>	<b>1,264</b>	<b>1,008</b>
<b>Rate Base</b>	<b>7,636</b>	<b>8,783</b>	<b>8,379</b>	<b>9,637</b>	<b>9,135</b>

### **3. Regulatory**

In 2011, the 15.7% increase is mainly attributed to the growth in asset base (and the related carrying costs), the inclusion of CWIP in rate base for the Bruce to Milton project and OM&A increases to support the ongoing business and improve system reliability. In 2012, the 9.8% increase is mainly attributed to an even further growth in asset base.

The main changes that have been reflected in the revised Application are a reduction or deferral of \$19 million of OM&A expenditures in 2011 and \$20 million in 2012 including reductions in transmission sustainment activities, real estate, corporate services and a freeze on compensation increases for management staff. These reductions account for about 1.6% of the decrease in 2011.

Similarly, a review of Hydro One's capital expenditure projects and programs and anticipated in-service dates for other projects has resulted in a significant reduction in rate base for the two test years. Rate base for 2011 is now forecast at \$8,378 million down \$404 million and down \$502 million to \$9,134 million for 2012. These reductions account for approximately 3% of the decrease in 2011.

The load forecast has also been revised upward to reflect a revised OPA forecast for conservation and demand management targeted for 2011 while still achieving the OPA's original IPSP forecast target by the end of 2012. This adjustment accounts for 1.2% of the decrease in 2011.

In total the revenue requirement increase for 2011 has dropped by 5.8% to 15.7% as a result of the 3 factors identified above. For 2012 the revenue requirement increase has grown by 0.7% to 9.8% as a result of the anticipated increase in conservation and demand management in 2012.

### **4. Risk Analysis**

Hydro One's revised application reflects a reduction in rate base from levels initially proposed for both 2011 and 2012; however, the nature of the reductions or deferrals does not materially increase the risk to the Company. These reductions largely reflect Green Energy Project deferrals pending confirmation by the OPA that there is sufficient demand to proceed with the projects or deferrals as a result of delays in customer requests. Reductions in Transportation and Work Equipment and delays in bringing on additional resources are a direct result of these project delays. Nevertheless, Hydro One is still requesting a \$700 million increase in rate base for 2011 and an additional \$800 million increase for 2012.

Anticipated intervenor concerns regarding the appropriateness of this level of work will be addressed with extensive evidence on capital projects and programs. The evidence will reinforce the fact that the increases are largely the result of previous Decisions which come into service in the test year (e.g. Bruce to Milton project) and government direction on the need to expand the transmission system to accommodate renewable generation. Hydro One's request to include CWIP in rate base for the Bruce to Milton project will also be challenged.

Approximately \$12 million of the OM&A reductions relate to project and program deferrals. A risk-based assessment of the Transmission system at this reduced OM&A sustainment funding levels was carried out. This assessment, took into account the following;

- asset condition
- safety
- performance
- system function
- customer impact, and
- statutory requirements.

It was concluded that while individual assets may face increased risks in the short term, the overall system impact is minimal with safety and reliability remaining at current levels.

1                    **Canadian Manufactures & Exporters (CME) INTERROGATORY #2 List 1**

2  
3                    **Interrogatory**

4  
5                    Issue 1.2

6  
7                    References: Exhibit A, Tab 12, Schedule 1, page 2

8  
9                    Please produce, in confidence, the materials presented to Hydro One's Board of  
10                    Directors for approval in April or May 2010 that led to the filing of this application that  
11                    reduced, by about 25%, the Revenue Requirement that Hydro One was requesting in  
12                    the application materials that it initially intended to file on or about April 1 , 2010.

13  
14  
15                    **Response**

16  
17                    Please refer to Exhibit I, Tab 3, Schedule 1.



BORDEN  
LADNER  
GERVAIS

By e-mail

September 15, 2010

Susan Frank  
Vice President and Chief Regulatory Officer  
Regulatory Affairs  
Hydro One Networks Inc.  
8<sup>th</sup> floor, South Tower  
483 Bay Street  
Toronto, ON M5G 2P5

Dear Ms Frank,

<b>Hydro One Networks Inc. ("Hydro One")</b>	
<b>2011-2012 Transmission Case</b>	
<b>Hydro One's Response to CME Interrogatory No. 1</b>	
<b>Board File No.:</b>	<b>EB-2010-0002</b>
<b>Our File No.:</b>	<b>339583-000057</b>

In preparing this case for the Settlement Conference tomorrow, and for the oral hearing that commences on Monday, we noted that Hydro One has not yet provided a complete response to CME Interrogatory No. 1.

In that Interrogatory, we asked Hydro One to produce, as it has in prior cases, the complete packages of materials presented to Hydro One's Board of Directors on the key dates referenced in the planning cycle described as Exhibit A, Tab 12, Schedule 1, page 2. Those key dates are: June 2009, November 2009, and February 2010. Nothing has yet been produced pertaining to the June and November 2009, and February 2010 key dates. Instead, Hydro One has produced documents presented to its Board of Directors on May 13, 2010.

Would you please produce the packages of information we requested pertaining to the key dates of June and November 2009, and February 2010 at the outset of the Settlement Conference tomorrow morning. If you are seeking confidentiality protection for these packages of documents, then please produce them to us under the auspices of the Confidentiality Undertaking we have executed.

A refusal to produce the documents requested will prompt a motion compelling their production. We do not understand why such a motion should be necessary when the same types of packages of documents we are requesting have been readily and repeatedly produced by Hydro One in prior proceedings.

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**BORDEN  
LADNER  
GERVAIS**

The documents are clearly relevant to an examination of Hydro One's business planning process and the specific Business Plans that form the subject matter of this Application.

We would appreciate being advised today, if possible, whether it will be necessary for us to prepare and serve a motion returnable at the opening of the oral hearing on Monday, September 20, requesting that the Board order Hydro One to produce these documents to us. We will be unable to proceed with our cross-examination of witnesses who will be appearing as part of Panel 1 until we have had an opportunity to review these relevant and admissible documents.

Yours very truly,

Peter C.P. Thompson, Q.C.

PCT\slc

c. EB-2010-0002  
Board Secretary (OEB)  
Paul Clipsham (CME)

OTT01\4192044\1

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

**AND IN THE MATTER OF** a review of an application filed by Hydro One  
Networks Inc. for an order or orders approving a transmission revenue  
requirement and rates and other charges for the transmission of electricity for  
2011 and 2012;

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ONTARIO ENERGY BOARD

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**NOTICE OF MOTION OF  
CANADIAN MANUFACTURERS & EXPORTERS  
("CME")**

**(Motion returnable September 20, 2010)**

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