

## Hydro One Networks Inc.

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### LAW

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November 3, 2010

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

Dear Ms Walli:

### **EB-2010-0295 – OEB Cost Recovery - Late Payment Penalty Class Action Settlement – Hydro One Networks Inc. Request for Withdrawal**

Hydro One Networks Inc. ("HONI") does not wish to participate in the above-noted proceeding because HONI has not asked for, nor will HONI be asking for, any recovery from its ratepayers regarding any amounts that HONI pays pursuant to the settlement of the class action Late Payment Penalty ("LPP") lawsuit. Furthermore, because of the facts in the preceding sentence, HONI submits that it would be inappropriate for HONI to advertise the proceeding (as directed in the Board's Letter of Direction in this proceeding) to HONI's ratepayers, given that HONI will not be seeking any contribution from them in the form of higher rates or in any other manner. In fact, the Notice would actually be misleading to HONI's ratepayers, because the Notice that the Board directed to be published reads:

*The Ontario Energy Board has now issued its Notice of Application and Hearing (the "Notice") on a proceeding initiated by the Ontario Energy Board ("OEB") to determine whether Affected Electricity Distributors (see definition below) should be allowed to recover from their ratepayers the costs and damages incurred as a result of the Minutes of Settlement approved on April 21, 2010 by the Honourable Mr. Justice Cumming of the Ontario Superior Court of Justice (Court File No. 94-CQ-50878) and as amended by addenda dated July 7, 2010 and July 8 (the Minutes of Settlement") in the late payment penalty class action, and if so, the form and timing of such recovery.*

The Notice would be misleading to HONI's ratepayers in that the Notice asks for submissions on whether Affected Electricity Distributors should be allowed to recover the LPP costs and damages from their ratepayers, whereas in this case, the Affected Electricity Distributor (HONI) has no such intention.

We would appreciate receiving from the OEB, as soon as possible (given the short deadline for the advertising requirement), an acknowledgment that HONI's two requests in the first paragraph of this e-mail are acceptable to the Board.

The background to HONI's requests in this letter is that HONI acquired liability in the late payment penalty lawsuit only by virtue of HONI's purchase of the shares of 15 local distribution companies in the early 2000s. HONI's total liability is in the neighbourhood of \$250,000; but, more importantly, in the case of 13 of the 15 share purchases, HONI obtained an indemnity from the municipality that sold the shares to HONI. Each indemnity is for all monies that HONI may need to pay in the future as a result of the LPP class action lawsuit. HONI will therefore be looking to those 13 municipalities (rather than to HONI's ratepayers) for recovery of the amounts paid to settle the LPP lawsuit. For the remaining two municipalities (from whom HONI did not obtain an indemnity), the settlement amounts to be paid by HONI are very small, and HONI has decided not to seek recovery from its ratepayers for those small amounts.

It is for the above reasons that HONI does not wish to participate in EB-2010-0295, does not wish to seek recovery from its ratepayers, and does not wish to publish to its ratepayers a notice of a proceeding whose results will have no effect on them. Also, HONI's last distribution rate application did not ask the Board to hold a generic hearing to deal with this matter, as HONI's last distribution rate application predated that plan of the Board.

We look forward to hearing from the Board.

Yours very truly,

ORIGINAL SIGNED BY MICHAEL ENGELBERG

Michael Engelberg