

March 1, 2011

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File 10606.00060

Kirsten Walli  
Board Secretary  
Ontario Energy Board  
Suite 2701  
2300 Yonge Street  
Toronto ON M4P 1E4

Dear Ms Walli:

**Re: Hydro One Networks Inc. ("HONI")/Ontario Energy Board File EB-2010-0332**

We are counsel to the Consumers Council of Canada in this matter. On behalf of our client, we ask that the Board consider, at the outset of the oral hearing, certain questions about the scope of its inquiry.

By way of background, HONI's application is not what might be described as a conventional application for approval of rates. Having said that, however, all of the CDM programs for which HONI seeks Board approval represent costs to be incurred by HONI and recovered from ratepayers. Subsection 78(2) of the *Ontario Energy Board Act* (OEBA) provides that "no distributor shall charge for the distribution of electricity ... except in accordance with an order of the Board". In the ordinary course, that subsection would govern recovery of the costs of the CDM programs and recovery of costs would only be permitted if the costs were determined to be just and reasonable. The only other statutory authority for the Board to approve the recovery of costs for the CDM programs is, arguably, subsection 78.5(2) of the OEBA. Whether that section grants the Board a different authority and, if so, what criteria are to be used in exercising that authority are, we submit, open questions.

The central question to be resolved, in our respectful submission, is what criteria the Board is to apply in considering, and approving, the costs of the CDM programs. Is the Board, for example, to determine whether the costs are "just and reasonable"? If not, what other criteria is the Board to use?

A related question is whether, or to what extent, the Board can consider whether the cost of the CDM programs which HONI is acquiring from the Ontario Power Authority are just and reasonable, given that HONI is paying the costs of those programs, and seeking approval to recover those costs from ratepayers.

These questions relate, ultimately, to the underlying question of the nature and extent of the Board's jurisdiction in this matter.

It is our position that parties should know, in advance of the oral hearing, what the scope of the Board's inquiry is, and in particular, what criteria the Board will apply in considering and approving HONI's CDM programs. In the absence of guidance from the Board on those matters, it is virtually certain that the hearing will be interrupted, and therefore delayed, by frequent disputes over, among other things, the proper scope of cross-examination. Accordingly, we respectfully request that, at the outset of the hearing of this matter, the Board allow parties to make submissions on these questions.

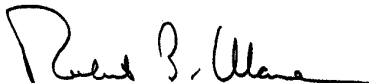
By Memorandum, circulated last week, to counsel for the parties in this matter, I posed these questions, among others. Accordingly, the parties will not be taken by surprise by our request that the Board consider them.

Our client is a party to the application of Hydro One Brampton Networks Inc. These questions are relevant to that application as well.

Your appreciation in this matter is appreciated.

Yours very truly,

**WeirFoulds LLP**



Robert B. Warren

RBW/dlh

cc: All Parties  
cc: Michael Millar  
cc: Julie Girvan