



EB-2011-0067

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

AND IN THE MATTER OF an application by the Ontario
Waterpower Association pursuant to section 74(1)(b) of the
Ontario Energy Board Act, 1998 to amend Hydro One
Networks Inc.'s Electricity Distribution Licence ED-2003-
0043 to exempt Hydro One from sections 6.2.4.1(e)(i) and
6.2.18(a) of the Distribution System Code in respect to
waterpower generation facilities.

**NOTICE OF APPLICATION AND HEARING
AND
PROCEDURAL ORDER NO. 1**

The Application

On March 11, 2011, the Ontario Waterpower Association (the "OWA" or the "Applicant") filed an application with the Ontario Energy Board (the "Board") under section 74(1)(b) of the *Ontario Energy Board Act, 1998* (the "Act") to amend the distribution licence of Hydro One Networks Inc. ("Hydro One") to exempt Hydro One from sections 6.2.4.1(e)(i) and 6.2.18(a) of the Distribution System Code (the "DSC") for waterpower generation facilities and to substitute a special rule for waterpower generation facilities.

Section 6.2.4.1(e)(i) of the DSC states that a distributor's capacity allocation process must include a requirement that a generator have its capacity allocation removed if the generator does not sign a connection cost agreement with the distributor within 6 months of the date on which the generator received a capacity allocation. Section 6.2.18(a) of the DSC states that the connection cost agreement must include requirement that the generator pay a connection cost deposit equal to 100% of the total estimated allocated cost of connection at the time the connection cost agreement is executed.

The OWA requests that the Board amend Schedule 3 of Hydro One's distribution licence to reflect the OWA's proposed exemption. The OWA application also requests that the Board implement a different rule for waterpower generators as follows:

- ii) Hydro One is required, instead of 6.2.18(a), to collect a connection cost deposit of \$20,000 per MW of the Contract Capacity as that term is defined in the FIT Contract, for the Connection Cost Estimate Deposit at the time of the execution of the Connection Cost Agreement; and
- iii) The Connection Cost Agreement includes a schedule of payments as negotiated between Hydro One and the applicant such that Hydro One is not required to expend resources without prior payment, sufficiently in advance, from the waterpower generator.

The OWA states that completion of 27 waterpower projects with Feed-In Tariff Contracts are threatened due to the unique development and approval process for waterpower projects and sections 6.2.4.1(e)(i) and 6.2.18(a) of the DSC.

Applicant's Request for Confidentiality

Certain information in Exhibit A, Tab 3 of the Applicant's pre-filed evidence was filed with the Board with a request that it be treated as confidential pursuant to the Board's Practice Direction on Confidential Filings. The Applicant states that the information is commercially sensitive and could result in a significant competitive disadvantage should the information become public.

Interim Relief Sought by the Applicant

The Applicant requested that the Board render an interim decision by March 25, 2011 that would ensure that no waterpower generator would have its capacity allocation removed for 30 days following the issuance of a final decision in this proceeding. In the alternative, in the event that the Board decided to not grant the interim relief requested, that the Board proceed with the subject application on an expedited basis to prevent existing projects from losing their capacity.

The Board does not have sufficient evidence before it to consider the granting of the interim relief sought by the Applicant.

In order to make an interim decision of the kind requested by the Applicant the Board would need sufficient evidence from affected developers, which may include affidavit evidence, detailing their respective risk of loss of capacity allocation or the filing of a list, developed in concert with Hydro One Networks Inc, which would identify developers at risk of loss of allocation should the Board's Decision in this case not be issued prior to June 1, 2011.

The Board wants to emphasize that its consideration of a suspension of the provisions of the DSC for those hydro developers who may lose capacity is strictly limited to the circumstances of this case, and these prospective generators. The Board considers the provisions of the DSC to be otherwise fully enforceable and appropriate.

The Board will accommodate the Applicant's request to proceed with the application on an expedited basis. The Board therefore makes provision for a number of procedural steps as set out below, and seeks the parties' submissions with respect to these procedural matters.

Oral Hearing

The Board intends to proceed with this matter by way of an oral hearing.

The Board considers it necessary to make provision for the following matters related to this proceeding at this time. The Board may amend this procedural order or issue further procedural orders from time to time.

IT IS THEREFORE ORDERED THAT:

1. Intervenors or Board Staff wishing to file written submissions with respect to the schedule set out below and/or the Applicant's request for confidentiality, shall file their submissions with the Board and serve it on the Applicant and all intervenors on or before **April 18, 2011**.
2. If the Applicant wishes to file a reply submission, with respect to the claim for confidentiality and the proposed schedule, it shall file its reply submission with the Board and serve it on all intervenors on or before **April 25, 2011**.

3. Intervenor or Board staff wishing information and material from the Applicant that is in addition to the Applicant's pre-filed evidence, and that is relevant to the hearing, shall request it by written interrogatories filed with the Board and served on the Applicant and all intervenors on or before **April 18, 2011**.
4. The Applicant shall file its complete responses to the interrogatories with the Board and serve them on the intervenors on or before **April 25, 2011**.
5. An oral hearing will commence at 9:30 am on **May 4th, 2011 and may continue on May 5th and/or May 6th if necessary** in the Board's hearing room at 2300 Yonge St., 25th floor, Toronto, Ontario.

All filings to the Board must quote the file number, EB-2011-0067, be made through the Board's web portal at www.errr.ontarioenergyboard.ca, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca/OEB/Industry. If the web portal is not available, parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies. All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

How to see Ontario Waterpower Association's Application

Copies of the application are available for inspection at the Board's office in Toronto and on its website, www.ontarioenergyboard.ca/OEB/Industry, and at Ontario Waterpower Association's office and may be on its website.

How to Participate

You may participate in this proceeding in one of three ways:

1. Become an Intervenor

Intervenors participate actively in the proceeding (i.e., submit written questions, evidence, and arguments, and cross-examine witnesses at an oral hearing).

A request for intervenor status must be made by letter of intervention and be received by the Board no later than **7 days** from the publication or service date of this notice. A letter of intervention must include: (a) a description of how you are, or may be, affected by the outcome of this proceeding; (b) if you represent a group, a description of the group and its membership; and (c) whether you intend to seek an award of costs and the grounds for your cost award eligibility.

You must provide a copy of your letter of intervention to the applicant.

Everything an intervenor files with the Board, including the intervenor's name and contact information, will be placed on the public record, which means that all filings will be available for viewing at the Board's offices and will be placed on the Board's website.

If you already have a user ID, please submit your intervention request through the Board's web portal at www.errr.ontarioenergyboard.ca. Additionally, two paper copies must be submitted to the address set out below.

If you do not have a user ID, visit the Board's website under e-Filing Services and complete a user ID/password request form. For instructions on how to submit documents and naming conventions please refer to the RESS Document Guidelines found at www.ontarioenergyboard.ca/OEB/Industry, e-Filing Services.

The Board also accepts interventions by e-mail, at the address below, and again, two additional paper copies are required. Those who do not have internet access are required to submit their intervention request on a CD in PDF format, along with two paper copies.

2. Send a Letter with your Comments to the Board

If you wish to comment on the proceeding without becoming an intervenor, you may submit a letter of comment to the Board Secretary.

All letters of comment sent to the Board will be placed on the public record, which means that the letters will be available for viewing at the Board's offices and will be placed on the Board's website.

Before placing the letter of comment on the public record, the Board will remove any personal (i.e., not business) contact information from the letter of comment (i.e., the address, fax number, phone number, and e-mail address of the individual). However, the name of the individual and the content of the letter of comment will become part of the public record.

A complete copy of your letter of comment, including your name, contact information, and the content of the letter, will be provided to the applicant and the Hearing Panel.

Your letter of comment must be received by the Board no later than **7 days** from the publication or service date of this notice. The Board accepts letters of comment by either post or e-mail at the addresses below.

3. Become an Observer

Observers do not participate actively in the proceeding but receive documents issued by the Board in the proceeding. There is no fee for observers to receive documents issued by the Board.

A request for observer status must be made in writing and be received by the Board no later than **7 days** from the publication or service date of this notice. The Board accepts observer request letters by either post or e-mail at the addresses below.

All letters requesting observer status will become part of the public record, which means that the letters will be available for viewing at the Board's offices and will be placed on the Board's website.

Before placing the request for observer status on the public record, the Board will remove any personal (i.e., not business) contact information from the request (i.e., the address, fax number, phone number, and e-mail address of the individual). However, the name of the individual and the content of the request for observer status will become part of the public record.

Observers may also request documents filed by the applicant and other parties to the proceeding but must request these documents directly from the relevant party. Observers may be required to pay for the costs of reproducing and delivering the material.

Most documents filed in this application will also be available on the Board's website.

How to Contact Us

In responding to this Notice, please reference Board file number EB-2011-0067 in the subject line of your e-mail or at the top of your letter. It is also important that you provide your name, postal address and telephone number and, if available, an e-mail address and fax number. All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

Need More Information?

Further information on how to participate may be obtained by visiting the Board's www.ontarioenergyboard.ca/OEB/Industry or by calling our Consumer Relations Centre at 1-877-632-2727.

IMPORTANT

IF YOU DO NOT PARTICIPATE IN THIS HEARING IN ACCORDANCE WITH THIS NOTICE, THE BOARD MAY PROCEED WITHOUT YOUR PARTICIPATION AND YOU WILL NOT BE ENTITLED TO FURTHER NOTICE IN THIS PROCEEDING.

Addresses

The Board:

Ontario Energy Board
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto ON M4P 1E4
Attention: Board Secretary
Filings:
<https://www.errr.ontarioenergyboard.ca/>

E-mail: boardsec@ontarioenergyboard.ca
Tel: 1-888-632-6273 (Toll free)
Fax: 416-440-7656

The Applicant:

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DATED at Toronto March 30, 2011

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary