



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.

BEFORE: Paul Sommerville
Presiding Member

Paula Conboy
Member

Marika Hare
Member

INTERIM DECISION AND ORDER

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 a 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 requested 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 (the "OWA's Proposed Rules") as follows:

- ii) Hydro One is required, instead of conformity with 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 stated that completion of 27 waterpower projects with Feed-In Tariff Contracts were 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.

THE PROCEEDING

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 not to 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 issued a Notice of Application and Hearing and Procedural Order No. 1 (the "Notice") on March 30, 2011, which among other things, made provision for a number of procedural steps. In the Notice, the Board indicated that it did not have sufficient evidence before it to consider the granting of the interim relief sought by the Applicant. The Board further indicated that:

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.

On April 7, 2011, the Applicant filed a letter with the Board, in which it requested that the Board exempt Hydro One from sections 6.2.4.1e(i) and 6.2.18(a) of the DSC until 30 days following the issuance of a final decision in this proceeding with respect to Kagawong Power Incorporated's Project 11,730. With its request, the Applicant also filed the Affidavit of Emile Masbou, owner of Kagawong Power Incorporated, the generator with Project 11,730.

On April 7, 2011, the Board issued an Interim Decision and Order (the "April 7th Order") exempting Hydro One Networks Inc. from the requirements of sections 6.2.4.1e(i) and 6.2.18(a) of the Distribution System Code until 30 days following the Board's final disposition of proceeding EB-2011-0067 with respect to Kagawong Power Incorporated's Project 11,730. With respect to the same project, the Board required Hydro One to comply with the OWA's Proposed Rules within seven days from the date of the Board's Decision and Order and required Hydro One to continue to apply the OWA's Proposed Rules until 30 days following the Board's final disposition of proceeding EB-2011-0067.

APPLICANT'S REQUEST FOR INTERIM ORDER FILED ON APRIL 18, 2011

On April 18, 2011, the Applicant filed another letter with the Board, in which it requested a Board Order consistent with the Board's April 7th Order with respect to the following waterpower projects: 11,780 - Big Beaver Falls Project owned by Amik-BBF HydroKap L.P. ;11,760 - Camp Three Rapids Project owned by Amik-CTR HydroKap L.P.;11,750 - White Otter Falls Project owned by Nipiy-WOF HydroKap L.P.; and 11,740 - Old Woman Falls Project owned by Nipiy-OWF HydroKap L.P. (collectively referred to as the "Relevant Projects").

With its request, the Applicant also filed the affidavit of Jacky Cerceau, a shareholder and the president of the majority limited partner of the owners of the Relevant Projects. The Relevant Projects are included on the list of 27 waterpower projects filed with the Board as part of the Applicant's pre-filed evidence in this matter. According to the affidavit, if the deposit amounts required by Hydro One are not provided by the end day of April 21, 2011, Hydro One will have the right to remove the capacity allocated to the Relevant Projects on its distribution system. The affidavit indicates that the owners of the Relevant Projects are not able to pay Hydro One the amounts requested in one lump sum.

BOARD FINDINGS

The Board finds that it is in the public interest to exempt Hydro One from the obligation to comply with sections 6.2.4.1e(i) and 6.2.18(a) of the Board's DSC with respect to the Relevant Projects prior to the Board issuing a final decision in this proceeding, on an interim basis. However, with respect to the Relevant Projects, for the duration of the Interim Order, Hydro One must comply with the OWA's Proposed Rules.

The OWA is reminded that this decision does not constitute a final decision on the application and applies to the Relevant Projects only. Further, the issuance of this Interim Order should not be construed as predictive in any manner or degree of the Board's final determination with respect to the OWA application.

IT IS THEREFORE ORDERED THAT:

1. Hydro One Networks Inc. is exempt from the requirements of sections 6.2.4.1e(i) and 6.2.18(a) of the Distribution System Code until 30 days following the Board's final disposition of proceeding EB-2011-0067 with respect to the Relevant Projects.
2. With respect to the Relevant Projects, Hydro One must comply with the OWA's Proposed Rules within seven days from the date of this Interim Decision and Order and must continue to apply the OWA's Proposed Rules until 30 days following the Board's final disposition of proceeding EB-2011-0067.

ISSUED at Toronto, April 20, 2011

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary