



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 AND
DECISION ON CONFIDENTIALITY**

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.

INTERIM DECISIONS AND ORDERS

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.

On April 20, 2011, the Board issued another Interim Decision and 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.

The above Board Orders were issued based on requests filed by OWA and supported by affidavits.

OWA'S REQUEST FOR INTERIM RELIEF FILED ON APRIL 25, 2011

On April 25, 2011, the OWA filed a letter with the Board requesting an Order consistent with the April 7th Order with respect to a list of waterpower projects that have to meet a connection cost deposit deadline prior to June 30, 2011 (the "List"). A copy of the List is

attached to this Decision and Order as Appendix A. According to the letter, the List was developed in concert with Hydro One.

BOARD FINDINGS

The Board notes that May 2, 2011 is the capacity removal date for two projects; namely 12,150 - McGraw Falls and 12,650 - At Soo Crossing GS. However, no capacity removal dates have been identified for the balance of the List.

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 waterpower projects 12,150 - McGraw Falls and 12,650 - At Soo Crossing GS prior to the Board issuing a final decision in this proceeding, on an interim basis. However, with respect to waterpower projects 12,150 - McGraw Falls and 12,650 - At Soo Crossing GS, for the duration of the Interim Order, Hydro One must comply with the OWA's Proposed Rules.

The Board will consider the balance of the List during the course of the oral hearing.

The OWA is reminded that this decision does not constitute a final decision on the application and applies to the above noted 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.

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 stated that the information is commercially sensitive and could result in a significant competitive disadvantage should the information become public.

The Applicant has also made requests for the treatment of other documents as confidential for the same reasons as set out above. Specifically certain information that accompanied the Applicant's April 25th request for interim relief was filed with the Board with a request that it be treated as confidential.

In addition, in its responses to interrogatories posed by Board staff, OWA also requested confidentiality with respect to certain responses in whole or in part.

In accordance with section 5.1.11 of the Board's Practice Direction on Confidential Filings, the Board must notify all parties of its decision in relation to a request for confidentiality.

BOARD FINDINGS

The Notice required that parties wishing to make submissions on the confidentiality request relating to Exhibit A, Tab 3 of the Applicant's pre-filed evidence do so by April 18, 2011. No submissions were filed.

The Board accepts that this information is commercially sensitive and agrees that it should be treated as confidential.

With respect to the Applicant's confidentiality requests relating to other information filed with a request for confidentiality, the Board will treat the information as confidential at this time. That being said, the Board will hear submissions from parties wishing to challenge the characterization of this information as confidential at the oral hearing on May 4, 2011.

Parties wishing to see the confidential information may execute and file with Board a Declaration and Undertaking which is found as Appendix D to the Practice Direction on Confidential Filings (the "Declaration and Undertaking"). Upon receipt of an executed Declaration and Undertaking, the Board will make arrangements for the delivery of the unredacted confidential information.

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 waterpower projects 12,150 - McGraw Falls and 12,650 - At Soo Crossing GS.
2. With respect to waterpower projects 12,150 - McGraw Falls and 12,650 - At Soo Crossing GS, 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.

3. Pursuant to the Board's Practice Direction on Confidential Filings, OWA shall provide the parties who have filed an executed Declaration and Undertaking unredacted versions of the confidential material.
4. Where possible, parties shall frame cross examination questions related to the confidential material in a manner that will allow the questions and responses to be placed on the public record.
5. Parties in receipt of confidential information shall either return the subject information to the Board and communicate to the Applicant that they have done so, or destroy the information and execute a Certificate of Destruction, following the closing of the record of this proceeding. The Certificate must be filed with the Board and a copy sent to OWA.

ISSUED at Toronto, April 29, 2011

ONTARIO ENERGY BOARD

Original Signed by

Kirsten Walli
Board Secretary

Appendix A to
INTERIM DECISION AND ORDER AND
DECISION ON CONFIDENTIALITY
EB-2011-0067

THE FOLLOWING ARE WAITING FOR HYRDO ONE TO ISSUE THEM A CCA				
#	ID Number	Name	Capacity Removal Date	Connection Cost Deposit
1	11,790	Wasdell Falls Waterpower Project	-	\$ 1,344,000
2	11,850	Okikendawt Hydroelectric Project	-	
3	12,190	North Bala Small Hydro Project	-	\$ 656,521
4	12,300	Lizard Creek	-	\$ 649,000
5	12,310	Pecors Power	-	\$ 1,123,800
6	12,320	Birch Creek Hydro (Webbwood)	-	\$ 816,000
7	12,500	Latchford Dam	-	
8	12,630	Latchford Dam 2	-	
9	12,680	Wanatango Falls GS	-	\$ 2,040,700
10	12,690	Four Slide Falls Ltd	-	\$ 1,287,129
11	12,700	Wabageshik Rapids GS	-	\$ 1,587,000
12	12,710	Allen and Struthers GS	-	\$ 2,072,000
13	12,720	Ivanhoe Chutes GS	-	\$ 5,591,000
14	12,740	McCarthy Chute GS	-	\$ 1,585,000
15	12,790	Larder and Raven G.S.	-	\$ 784,643
16	12,890	Wendigo Waterpower Project	-	\$ 2,079,000
17	13,430	High Falls Hydropower Development (Namakan)	-	\$ 1,826,000

THE FOLLOWING HAVE BEEN ISSUED A CCA				
#	ID Number	Name	Capacity Removal Date	Connection Cost Deposit
18	12,150	McGraw Falls	2-May-2011	\$ 904,000
19	12,650	At Soo Crossing GS	2-May-2011	\$ 1,481,000

THE FOLLOWING HAVE BEEN GRANTED AN INTERIM EXEMPTION				
#	ID Number	Name	Capacity Removal Date As Per Interim Exemption Order	Connection Cost Deposit
20	11,730	Charlton Dam G.S. Expansion	14-Apr-11	\$ 1,188,000
21	11,740	Old Woman Falls Hydroelectric Project	27-Apr-2011	\$ 1,507,000
22	11,750	White Otter Falls Hydroelectric Project	27-Apr-2011	\$ 606,810
23	11,760	Camp Three Rapids Hydroelectric Project	27-Apr-2011	\$ 1,107,000
24	11,780	Big Beaver Falls Hydroelectric Project	27-Apr-2011	\$ 1,433,000

THE FOLLOWING HAVE EXECUTED THEIR CONTRACTS AND PAID THE FULL DEPOSIT				
#	ID Number	Name	Capacity Removal Date	Connection Cost Deposit
25	12,660	Cascade Falls GS		
26	12,670	McPherson Fall GS		
27	12,730	Marter Twp GS		