

1 The Board has arrived at a decision.

2 **DECISION:**

3 MR. SOMMERVILLE: After considering all of the
4 evidence and the submissions, the Board has been persuaded
5 that a general exemption to the licence of Hydro One should
6 be granted.

7 In coming to this conclusion, the Board is mindful
8 that proponents of hydroelectric projects located on Crown
9 land within the province of Ontario, or federally-regulated
10 lands, experience a unique set of circumstances which can
11 impair their ability to meet some of the obligations
12 created by the Distribution System Code and the FIT
13 program.

14 This is not an exemption request seeking relief from
15 paying the connection costs. It is about aligning the
16 payment obligations with the particular development and
17 regulatory approval cycle of hydroelectric projects.

18 The Board has heard evidence that the development of
19 hydroelectric projects is largely unique relative to other
20 types of renewable generation, for two reasons.

21 The first is that they are relatively site-specific,
22 and involve an iterative design process, in that the
23 specifications are subject to change as a result of the
24 regulatory permitting processes. And those regulatory
25 permitting processes are serially impacted by evolution
26 within the project.

27 The second reason is the extensive approval processes
28 where provincial, Crown or federally-regulated lands are

1 involved. The processes of various levels of government,
2 while expedited, we are sure, to the extent reasonably
3 possible, still can create circumstances where securing
4 financing from third parties for hydroelectric projects in
5 the timeframes required under the rules of the Distribution
6 System Code and those governing the FIT program, can be
7 difficult.

8 Lenders may reasonably be unwilling to extend
9 significant financing when projects are still facing
10 important regulatory hurdles and project uncertainty.

11 Even where financing is not an issue, the requirement
12 to fund projects so far in advance of commercialization
13 seems, in some cases, unreasonable. The Board also notes
14 that the DSC and other regulatory aspects of this new
15 renewables regime already acknowledge that there is a
16 difference in timelines associated with water generation
17 development as compared to other renewable energy projects.

18 The Board is appreciative of the role of Hydro One --
19 that Hydro One Networks has played in this proceeding.
20 Hydro One has very constructively engaged with the
21 applicant to arrive at a structure for the exemption
22 codified in Exemption K2.1 (sic), which protects the
23 interests of ratepayers, Hydro One and the hydroelectric
24 developers.

25 Hydro One has explicitly endorsed this approach.

26 The Board knows, as was very clearly and ably
27 expressed by Board Staff, that the purpose of the DSC
28 provision from which relief is sought is to eliminate

1 projects that are not being pursued aggressively or
2 reasonably by the proponents.

3 Capacity allocation is a very serious step, and
4 proponents who do not aggressively pursue commercialization
5 of their projects should be removed from the process.

6 This is what the DSC provision is intended to
7 accomplish.

8 The Board does not see the exemption sought by the
9 applicant in this case as compromising this objective. In
10 fact, what we heard was that these projects are being
11 diligently pursued by their proponents through a unique,
12 time-consuming and costly array of regulatory milestones.

13 The Board is concerned that maintaining the current
14 requirement of Section 6.2.18(a) of the DSC may actually
15 have the effect of freezing capacity inappropriately, which
16 is precisely what the provision is intended to avoid.

17 If water proponents are thwarted by this requirement,
18 their successors are likely to face the same obstacles that
19 they have.

20 The Board recognizes, and all parties in this
21 proceeding agree, that hydroelectric generation is an
22 important component of the province's supply mix, and
23 obstacles to its development need to be addressed. This is
24 not at the expense of other renewable projects, and that is
25 not the case here.

26 The Board notes that while notice in this proceeding
27 was extremely inclusive, no representatives of other forms
28 of generation or other stakeholders saw fit to oppose this

1 application. In fact, one association of generators
2 supported the application through letter of comment.

3 Board Staff emphasized that the DSC Code revisions
4 were the product of an extension -- extensive consultation
5 process. The argument of Board Staff is that Board should
6 be reluctant to unseat requirements arrived at through such
7 a process. The Panel agrees, but considers that in this
8 case we have been presented with practical examples of how
9 the policy may have unintended consequences for this narrow
10 category of generation developers, which could not have
11 been foreseen by the drafters of the amendments in
12 September 2009.

13 The Board would like to be clear that the exemption
14 provided for in this case is strictly limited to
15 hydroelectric projects between one and 10 megawatts in
16 nameplate capacity, that are located on provincial, Crown
17 or federally-regulated lands, and which are connected to
18 the distribution system owned by Hydro One, and that it is
19 not intended to extend to any other category of developers.

20 The Board accepts the proposal agreed to between OWA
21 and Hydro One as drafted, with the exception of narrowing
22 the category of projects as previously articulated.

23 The interim exemptions granted leading up to the oral
24 hearing in this proceeding, shall be deemed to be subject
25 to the revised provisions articulated in Exhibit K2.1.

26 The decision is effective today, negating any need for
27 additional interim licences. The Board will issue Hydro
28 One an amended licence in due course.

1 The Board notes that CME has participated in this
2 proceeding and has been deemed eligible for a cost award.
3 CME is to file any cost claims by May 12th, 2011. Any
4 concerns with the cost claim filed by CME must be received
5 by May 19th, with CME given until May 26th for a reply.

6 Are there any questions arising from the decision?

7 My colleague advises me that I may have misspoken when
8 I referred to exemption 2.1. In fact, what I mean to say
9 is Exhibit 2.1. Thank you for that clarification.

10 So it is Exhibit 2.1, which was filed today, which
11 represents the latest amendment to the application.

12 MR. STOLL: Just the upper boundary, was that 10 and
13 under, or less than 10?

14 MR. SOMMERVILLE: Including 10, 10 and under.

15 MR. NORRIS: And down to zero?

16 MR. STOLL: No. I think --

17 MR. SOMMERVILLE: Between one and 10.

18 As the Board reviewed the evidence in this case, that
19 comprised all of the components, I believe.

20 MR. NORRIS: No. No, it didn't.

21 MR. SOMMERVILLE: There was one that was less?

22 MR. STOLL: Yes.

23 MR. NORRIS: I would just observe for those 500-
24 kilowatt or 800-kilowatt facilities, it is the same issue.
25 So if it would be 10 and under, that would capture
26 everyone.

27 MR. SOMMERVILLE: The Panel is fine with that
28 correction.

1 MR. NORRIS: Thank you.

2 MS. HELT: Mr. Chair, perhaps it would be helpful if
3 the OWA re-submits, then, it's Exhibit K2.1, with the
4 further clarification as set out in your decision?

5 MR. SOMMERVILLE: That would be -- I think that is a
6 desirable step.

7 Hydro One can also review that and make sure that it
8 captures all of the amendments that we've talked about.

9 MR. STOLL: We will circulate it to Hydro One, as
10 well.

11 MR. SOMMERVILLE: Thank you.

12 MR. STOLL: Okay.

13 MR. SOMMERVILLE: Is there anything further?

14 Thank you very much. The Panel would like to express
15 its appreciation for the witnesses, who were very
16 forthright in their testimony and provided the Board with
17 very good information.

18 Hydro One, we've spoken in the decision of the very
19 constructive attitude that you have taken in this, and
20 that's very much appreciated, and I think was very -- was
21 instrumental in arriving at what the Panel thinks is a very
22 positive outcome.

23 And also Board Staff, that took a very principled
24 position on this subject, and which argued ably and cross-
25 examined very effectively, and was of great assistance to
26 the Board in reaching its conclusions.

27 So thank all of the parties for that. Thank you.

28 --- Whereupon the hearing concluded at 1:30 p.m.