



EB-2011-0021

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

AND IN THE MATTER OF an application pursuant to
section 74 of the *Ontario Energy Board Act, 1998* by Hydro
One Remote Communities Inc. to amend its Electricity
Distribution Licence ED-2003-0037.

INTERIM DECISION AND PROCEDURAL ORDER No. 3

On December 23, 2010, Hydro One Remote Communities Inc. ("Remotes") filed an application with the Ontario Energy Board (the "Board") and on March 1, 2011 filed an updated application for a licence amendment under section 74 of the *Ontario Energy Board Act, 1998* (the "Act"). Remotes sought exemptions from the following sections of the *Distribution System Code* ("DSC"): 2.7.1.2; 2.7.2; 2.8.1; 4.2.2.3; 4.2.3.1(a); 6.1.2.1; 6.1.2.2 and 7.10. Remotes also requested that the Board consider an exemption from the proposed section 2.7.1.3 of the DSC in anticipation of this section being added to the DSC effective October 1, 2011.

The above noted sections of the DSC deal generally with collection practices, treatment of arrears, payment arrangements and disconnection procedures for low income customers. The relevant sections of the DSC are attached as Appendix A.

The Board issued a Notice of Application and Written Hearing for the application on March 21, 2011. The Board received a request for intervention and cost eligibility from Nishnawbe Aski Nation ("NAN"). The Board granted NAN's intervention and cost eligibility request.

On April 21, 2011 the Board issued Procedural Order No. 1, providing for interrogatories and submissions. Board staff and NAN filed interrogatories and on May 26, 2011 Remotes replied to all interrogatories. Counsel for NAN expressed concerns with respect to the adequacy of Remotes' responses to NAN's interrogatories, and, pursuant

to Procedural Order No 2, Remotes filed supplementary information to its answers to certain interrogatories identified by NAN on June 24, 2011. NAN and Board staff filed submissions on the application, and Remotes filed a reply submission on July 14, 2011.

NAN in its submission opposed the granting of the DSC exemptions requested by Remotes. In addition to providing submissions on the specific exemptions requested, NAN submitted that “the constitutionally-recognized “Duty to Consult”, as well as the “Duty to Accommodate” [Aboriginal peoples] are called into play by Remotes application because Remotes seeks to limit rights and interests which the residents of NAN communities would otherwise enjoy”. NAN submitted that Remotes’ collection and disconnection practices, among other things, had never been presented to NAN communities for consideration, comments or approval. NAN proposed that the Board issue an interim order directing consultation between Remotes and NAN representatives.

The Crown’s duty to consult arises, as set out in *Haida Nation v. British Columbia (Minister of Forests)*¹, when the Crown has knowledge, real or constructive, of the potential existence of Aboriginal right or title and contemplates conduct that might adversely affect it. In some cases the duty to accommodate will also be triggered. What is not clear to me from the NAN submission is what Aboriginal right or title might be adversely affected by Remotes’ application. By this procedural order, NAN is invited to make a further submission identifying the potentially affected Aboriginal right or title. In the absence of such an Aboriginal right or title, the case law suggests that the duty to consult or accommodate does not arise.

However, the Board encourages discussion between the utilities it regulates and the utilities’ stakeholders. The allegations made by NAN that its member communities were unaware of Remotes existing or proposed practices are of concern to the Board. This procedural order will also provide for further opportunity for discussions between NAN and Remotes. It is to be hoped that some common ground can be found between these parties. Remotes will be required to file a summary of these discussions (and further information on previous discussions, if it so chooses) to support its application. If Remotes needs to update its application as a result of the discussions, that update can be filed concurrently with the summary.

I find that Remotes’ application should be granted on an interim basis for a period of one year, pending the final disposition of the application. Specifically, Remotes will be

¹ 2004 SCC 73, [2004] 3 S.C.R. 511, November 18, 2004

exempted for one year from compliance with the sections of the DSC listed in its March 1, 2011 updated application. The applicant is reminded that this decision does not constitute a final decision on the application.

THE BOARD ORDERS THAT:

1. Hydro One Remote Communities Inc. is exempted from compliance with sections 2.7.1.2, 2.7.1.3, 2.7.2, 2.8.1, 4.2.2.3, 4.2.3.1(a), 6.1.2.1, 6.1.2.2 and 7.10 of the Distribution System Code. This exemption expires October 15, 2012.
2. Nishnawbe Aski Nation may file a further submission identifying the Aboriginal right or title that may be adversely affected by Remotes' application. Any such submission must be filed with the Board and served on the applicant no later than November 30, 2011.
3. If the applicant chooses to reply to NAN's submission, the reply must be filed with the Board and served on NAN no later than December 15, 2011.
4. Hydro One Remote Communities Inc. shall initiate discussions with NAN representatives regarding collection practices, treatment of arrears, payment arrangements and disconnection procedures for low income customers in NAN communities. Such discussions should include Remote's existing practices in these areas, and the practical effect of the DSC exemptions sought in this application. Remotes must file a summary of these discussions, and describe any revisions to its practices that result from these discussions, with the Board and serve the same on NAN no later than June 30, 2012.

DATED at Toronto, October 12, 2011

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

Appendix A

Arrears Payment Arrangements

2.7.1.2 As part of the arrears payment agreement, a distributor may require that the customer pay a down payment of up to 15% of the electricity charge arrears accumulated, inclusive of any applicable late payment charges but excluding other service charges, when entering into the arrears management program.

2.7.1.3 Where an eligible low-income customer enters into an arrears payment agreement for the first time or subsequent to having successfully completed a previous arrears payment agreement as an eligible low-income customer, a distributor may require that the customer pay a down payment of up to 10% of the electricity charge arrears accumulated, inclusive of any applicable late payment charges but excluding other service charges.

2.7.2 The arrears payment agreement referred to in section 2.7.1 shall allow the residential electricity customer to pay all remaining electricity charges that are then overdue for payment as well as the current bill amount if the customer elects to do so, after applying a security deposit under section 2.7.1.1, and the down payment referred to in section 2.7.1.2, including all electricity-related service charges that have accrued to the date of the agreement, over the following periods:

(a) a period of at least 5 months, where the total amount of the electricity charges remaining overdue for payment is less than twice the customer's average monthly billing amount; or

(b) a period of at least 10 months, where the total amount of the electricity charges remaining overdue for payment is equal to or exceeds twice the customer's average monthly billing amount;

(c) in the case of an eligible low-income customer, a period of at least 8 months, where the total amount of the electricity charges remaining overdue for payment is less than or equal to 2 times the customer's average monthly billing amount;

(d) in the case of an eligible low-income customer, a period of at least 12 months where the total amount of the electricity charges remaining overdue for payment exceeds 2 times the customer's average monthly billing amount and is less than or equal to 5 times the customer's average monthly billing amount; or

(e) in the case of an eligible low-income customer, a period of at least 16 months where the total amount of the electricity charges remaining overdue for payment exceeds 5 times the customer's average monthly billing amount.

Opening and Closing of Accounts

2.8.1 Where a distributor opens an account for a property in the name of a person at the request of a third party, the distributor shall within 15 days of the opening of the account send a letter to the person advising of the opening of the account and requesting that the person confirm that he or she agrees to be the named customer. If the distributor does not receive confirmation from the intended customer, within 15 days of the date of the letter, the distributor shall advise the third party that the account will not be set up as requested.

6.1.2.1 Nothing in section 6.1.2 shall be construed as permitting a distributor to recover or to seek to recover charges for a service provided to a property from any person other than a person that has agreed to be the customer of the distributor in relation to the property or that has agreed to assume responsibility for those charges.

6.1.2.2 For the purposes of section 6.1.2.1, the agreement may be in electronic form pursuant to the *Electronic Commerce Act, 2000*, and includes telephone communications provided that a recording of the telephone communication is retained by the distributor for 24 months thereafter.

Standard Timelines for Disconnection Notice

4.2.2.3 A disconnection notice issued for non-payment shall expire on the date that is 11 days from the last day of the applicable minimum notice period referred to in section 4.2.3, determined in accordance with the rules set out in section 2.6.7. A distributor may not thereafter disconnect the property of the customer for nonpayment unless the distributor issues a new disconnection notice in accordance with section 4.2.2.

4.2.3.1 For the purposes of section 4.2.3:

(a) where a disconnection notice is sent by mail, the disconnection notice shall be deemed to have been received by the customer on the third business day after the date on which the notice was printed by the distributor;

7.10 Reconnection Standards

7.10.1 Where a distributor has disconnected the property of a customer for nonpayment, the distributor shall reconnect the property within 2 business days, as defined in section 2.6.7, of the date on which the customer:

(a) makes payment in full of the amount overdue for payment as specified in the disconnection notice; or

(b) enters into an arrears payment agreement with the distributor referred to in section 2.7.1A.

7.10.2 This service quality requirement must be met at least 85 percent of the time on a yearly basis.