

February 21, 2008

Kirsten Walli
Board Secretary
Ontario Energy Board
Suite 2701
2300 Yonge Street
Toronto ON M4P 1E4

Dear Ms. Walli:

Re: Scheduling

We are counsel to the Consumers Council of Canada ("Council"). We write to express our concern about the scheduling of Board proceedings.

By way of background, intervenors, particularly those representing consumers, play a critical role in the Board's decision-making processes. The participation of those intervenors is one important means by which the Board can assure itself, and assure the public, that its decision-making processes are fair and balanced, and that its decisions reflect the interests of ratepayers. That intervenors play an essential role in the Board's decision-making process as evidenced most recently by the Board's acceptance of the settlement agreements in the Union and Enbridge incentive regulation applications, agreements which had been negotiated between the utilities and intervenors.

To be able to participate effectively, intervenors must have both adequate resources and time. The Board's recent increase in the tariff rate for counsel and consultants certainly assists in providing the necessary resources. However, intervenors still have difficulty when too many proceedings run in close proximity. When that happens, important cases do not get the time and attention they deserve, and, as a corollary, the interests of consumers do not get the attention they deserve. In addition, and given the importance of intervenor participation, anything which diminishes the ability of intervenors to participate effectively diminishes the strength of the Board's decision-making processes.

Individual utilities have significant resources, and personnel, which they can devote to just one case. Ironically, it is the ratepayers who pay for the utilities to be able to do that. By contrast, intervenors have no ability to keep large numbers of staff available on a permanent basis. Also, and as noted below, it is effectively impossible for intervenors to increase staff on short notice for one case only.

Beginning in the Fall of 2007, the Board's schedule had a number of important cases running back-to-back and sometimes overlapping. For example, in the month of December, the ADR discussions on the incentive regulation cases were taking place at the same time as applications by several larger electric LDCs, including Toronto Hydro, were being processed, and at the same time the Board asked for written and oral submissions on the IPSP issues list. The unfortunate reality is that the Council, along with, we suspect, a number of other groups representing consumers, could not devote the time and attention to each of those cases that the importance of the cases, and the protection of the consumers, warranted. That benefited some utilities at the expense of consumers and, we believe, at the expense of the quality of the information upon which the Board had to make decisions.

Intervenors now face similar problems. The Board's current proposed schedule contemplates at least four large cases running back-to-back, or simultaneously. They are the IPSP case, OPG's application, Hydro One Network's application, and the Bruce to Milton application.

The Council will make every effort it can to accommodate this schedule. For example, it will look for additional staff on a short-term basis. But it is simply impractical for the Council, or indeed most of the other intervenors, to retain additional help, with the necessary qualifications, on short notice and for a short period of time.

We believe that some accommodation is required. To that end, we make the following suggestions:

1. A longer break should be allowed between the completion of the Hydro One Networks case and the beginning of the OPG case. A longer break would allow the intervenors adequate time to prepare for the OPG case;
2. The commencement of the IPSP hearing should be delayed until September. The interrogatory process, and the filing of intervenor evidence, in that case is likely to be very time consuming, for all participants. It is also unrealistic to expect everyone to remain fully operational during the course of the summer. For example, it is difficult to change vacation plans, particular for people with school-age children.

In addition to those accommodations in the schedule, we ask that the Board consider extending the notice period it gives for the various stages of a proceeding. For example, intervenors were given four working days' notice of the issues conference in the Hydro One Networks case. The Council appreciates that, where there are many parties, it is impossible for the Board to accommodate everyone's schedule. However, four working days' notice is simply insufficient time for parties to prepare adequately and to consult with their clients. In addition,

counsel have other obligations which make it very difficult, if not impossible, to accommodate dates set on short notice.

In making these comments, we acknowledge the Board has the burden of trying to process, in a timely and cost effective way, an unusual number of large and complex cases. We also acknowledge that consideration for the ability of intervenors to participate effectively is only one of many matters which the Board must balance in carrying out its statutory obligations. We believe, however, that making the adjustments we have suggested will not prejudice the applicants or adversely affect the Board's ability to fulfill its mandate, but will help the intervenors to play as effective a role as possible.

This letter expresses the views of the Council on these scheduling concerns. We believe, however, that these concerns are shared by other intervenors, and we hope that they will express their views to you, as well.

Yours very truly,

WeirFoulds LLP

Robert B. Warren

RBW/dh

cc: Bill Huzar
cc: Joan Huzar
cc: Julie Girvan
cc: J. Shepherd
cc: M. Buonaguro
cc: Ontario Power Generation, attention: Barbara Reuber
cc: Hydro One Networks, attention: Susan Frank
cc: Ontario Power Authority, attention: Mike Lyle
cc: Michael Penny, Torys LLP
cc: D.H. Rodgers, Rogers Partners LLP
cc: George Vegh, McCarthy, Tetrault

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