

TAB 10

Canada Oil and Gas Operations Act (R.S.C., 1985, c. O-7)

JURISDICTION AND POWERS OF THE NATIONAL ENERGY BOARD

Jurisdiction

5.31 (1) The National Energy Board has full and exclusive jurisdiction to inquire into, hear and determine any matter

(a) if it appears to the National Energy Board that any person failed to do any act, matter or thing required to be done by this Act, any regulation, order or direction made under this Act, or an operating licence or authorization issued under section 5, or that any person has done or is doing any act, matter or thing contrary to or in contravention of this Act, any regulation, order or direction made under this Act, or an operating licence or authorization issued under section 5; or

(b) if it appears to the National Energy Board that the circumstances may require the Board, in the public interest, to make any order or give any direction, leave, sanction or approval that by law it is authorized to make or give, or with respect to any act, matter or thing that is prohibited, sanctioned or required to be done by this Act, any regulation, order or direction made under this Act, or an operating licence or authorization issued under section 5.

Of its own motion

(2) The National Energy Board may, of its own motion, inquire into, hear and determine any matter or thing that under this Act it may inquire into, hear and determine.

Matters of law and fact

(3) For the purposes of this Act, the National Energy Board has full jurisdiction to hear and determine all matters, whether of law or of fact.

TAB 11

secretary, who shall thereupon act in the place of the Secretary, and exercise his powers. 3 Edw. VII., cap. 58, sec. 19.

Staff of Board.

25. There shall be attached to the Board such officers, clerks, stenographers and messengers as the Board, with the approval of the Governor in Council, from time to time, appoints.

Dismissal.

2. The Board may at will dismiss any such officer, clerk, stenographer or messenger. 3 Edw. VII., cap. 58, sec. 21.

JURISDICTION AND GENERAL POWERS.

Jurisdiction.

26. The Board shall have full jurisdiction to inquire into, hear and determine any application by or on behalf of any party interested,—

(a) complaining that any company, or person, has failed to do any act, matter or thing required to be done by this Act, or the Special Act, or by any regulation, order or direction made thereunder by the Governor-in-Council, the Minister, the Board, or any inspecting engineer, or that any company or person has done or is doing any act, matter or thing contrary to or in violation of this Act, or the Special Act, or any such regulation, order, or direction; or,

(b) requesting the Board to make any order, or give any direction, sanction or approval, which by law it is authorized to make or give, [or with respect to any matter, act or thing, which by this Act, or the Special Act, is prohibited, sanctioned or required to be done.]

Mandatory orders.

2. The Board may order and require any company or person to do forthwith, or within or at any specified time, and in any manner prescribed by the Board, so far as is not inconsistent with this Act, any act, matter or thing which such company or person is or may be required [or authorized] to do under this Act, or the Special Act, and may forbid the doing or continuing of any act, matter or thing which is contrary to this Act, or the Special Act; and shall [for the purposes of this Act] have full jurisdiction to hear and determine all matters whether of law or of fact.

Restraining orders.

3. The Board shall, as respects the attendance and examination of witnesses, the production and inspection of documents, the enforcement of its orders, the entry on and inspection of property, and other matters necessary or proper for the due exercise of its jurisdiction under this Act, or otherwise for carrying this Act into effect, have all such powers, rights and privileges as are vested in a superior court.

4. The fact that a receiver, manager, or other official of any railway, or a receiver of the property of a railway company, has been appointed by any court in Canada or any province thereof, or is managing or operating a railway under the authority of any such court, shall not be a bar to the exercise by the Board of any jurisdiction conferred by this Act; but every such receiver, manager, or official shall be bound to manage and operate any such railway in accordance with this Act and with the orders and directions of the Board, whether general or referring particularly to such railway; and every such receiver, manager, or official, and every person acting under him, shall obey all orders of the Board within its jurisdiction in respect of such railway, and be subject to have them enforced against him by the Board, notwithstanding the fact that such receiver, manager, official, or person is appointed by or acts under the authority of any court.

5. The decision of the Board as to whether any company, municipality or person is or is not a party interested within the meaning of this section shall be binding and conclusive upon all companies, municipalities and persons. 6 Edw. VII., cap. 42, sec. 2.

The words in brackets in the above section were not in 3 Edw. VII., cap. 58, sec. 23.

The history of the Railway Commission since its establishment by the Act of 1903 has been one of constantly expanding jurisdiction. The original Act conferred powers greatly in excess of those enjoyed by the railway committee, and by legislation and judicial decisions since that time the jurisdiction of the Board has been extended and confirmed until as an executive and judicial body it now exercises a quite unique author-

TAB 12

Courts of Justice Act

R.S.O. 1990, CHAPTER C.43

Declaratory orders

97. The Court of Appeal and the Superior Court of Justice, exclusive of the Small Claims Court, may make binding declarations of right, whether or not any consequential relief is or could be claimed. 1994, c. 12, s. 39; 1996, c. 25, s. 9 (17).

TAB 13

Electricity Act, 1998

S.O. 1998, CHAPTER 15 SCHEDULE A

Emergency termination of service

31.1 (1) A distributor may shut off the distribution of electricity to a property without notice if the distributor has reason to believe that a condition exists in respect of the property that threatens or is likely to threaten,

- (a) the safety of any person; or
- (b) the reliability of all or part of the distribution system. 2005, c. 33, s. 5.

Notice

(2) The distributor shall,

- (a) give the Electrical Safety Authority written notice of the shut-off under subsection (1) as soon as possible afterwards; and
- (b) post a notice of the shut-off under subsection (1) in a conspicuous place on the property within 10 days afterwards. 2005, c. 33, s. 5.

Same

(3) The notices under subsection (2) shall set out the reasons for the shut-off and the notice posted under clause (2) (b) shall describe the right to a review by the Board, as provided by subsection (6). 2005, c. 33, s. 5.

Restoration of electricity

(4) At the request of the owner or occupier of the property to have the distribution of electricity to the property restored, the distributor shall assess the conditions existing in respect of the property and, subject to any requirements under Part VIII, shall restore the distribution of electricity to the property as soon as possible after the distributor is satisfied that neither of the conditions described in clauses (1) (a) and (b) exists in respect of the property. 2005, c. 33, s. 5.

Limit

(5) Despite subsection (4), the distributor is not required to assess the conditions existing in respect of the property more than once every five days. 2005, c. 33, s. 5.

Application for review

(6) The owner or occupier of the property may file an application in writing to the Board to have the distribution of electricity to the property restored, but may not file an application with the Board without first making a request to the distributor under subsection (4). 2005, c. 33, s. 5.

Same

(7) The Board shall forward a copy of an application filed under subsection (6) to the distributor before commencing its review. 2005, c. 33, s. 5.

Review by Board

(8) Upon receipt of an application under subsection (6), the Board shall review the matter and, upon the completion of its review, if it finds that the distributor acted unreasonably in shutting off the distribution of electricity to the property or in failing to restore the distribution of electricity to the property, may make an order directing the distributor to restore the distribution of electricity to the property, subject to any requirements under Part VIII. 2005, c. 33, s. 5.

Termination not a breach of contract

(9) If the Board finds that the distributor did not act unreasonably in shutting off the distribution of electricity to a property under subsection (1), the shut-off of the distribution of electricity to the property shall be deemed not to be a breach of any contract. 2005, c. 33, s. 5.

Application for review

33. (4) Any person may apply to the Board for review of an amendment to the market rules by filing an application with the Board within 21 days after the amendment is published under subsection (1). 2004, c. 23, Sched. A, s. 42.

Review by Board

34. (3) On application by a person who is directly affected by the amendment, the Board shall review the amendment. 1998, c. 15, Sched. A, s. 34 (3); 2002, c. 23, s. 3 (17).

Time for application

(4) The application must be filed within 21 days after the amendment is published under subsection (2). 1998, c. 15, Sched. A, s. 34 (4).

Statutory powers of decision

35.1 The powers of the Board to make orders under sections 33, 34 and 35 shall be deemed to be statutory powers of decision for the purpose of the *Statutory Powers Procedure Act*. 2000, c. 26, Sched. D, s. 1 (1).

Appeals from sanction orders

36.3 (1) The IESO may appeal to the Board an order, finding or remedial action made or taken by a standards authority in respect of a violation of a reliability standard in Ontario, subject to such limitations as may be prescribed by regulation. 2008, c. 7, Sched. G, s. 4.

Other options to appeal

(2) An appeal shall not be commenced under subsection (1) unless the IESO has commenced all other reviews and appeals available to it and such reviews and appeals have been finally determined. 2008, c. 7, Sched. G, s. 4.

Time for appeal

(3) The appeal must be filed within the time prescribed by the rules of the Board. 2008, c. 7, Sched. G, s. 4.

Stay of order

(4) An appeal does not stay the operation of the order, finding or remedial action pending the determination of the appeal unless the Board orders otherwise. 2008, c. 7, Sched. G, s. 4.

Same

(5) In determining whether to stay the operation of an order, finding or remedial action, the Board shall consider,

- (a) the public interest;
- (b) the merits of the appeal;
- (c) the possibility of irreparable harm to any person; and
- (d) the balance of convenience. 2008, c. 7, Sched. G, s. 4.

Powers of Board

(6) After considering the appeal, the Board may make an order,

- (a) dismissing the appeal;
- (b) revoking or amending the order, finding or remedial action appealed from; or
- (c) making any other order, finding or decision or taking any other remedial action that the standards authority could have made or taken. 2008, c. 7, Sched. G, s. 4.

Same

(7) In addition to its powers under subsection (6), the Board may also make an order,

- (a) revoking or suspending a condition of the IESO's licence;
- (b) amending a condition of the IESO's licence; or
- (c) adding a condition to the IESO's licence. 2008, c. 7, Sched. G, s. 4.

TAB 14



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OF CANADA
1970**

**STATUTS REVISÉS
DU CANADA
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CHAPTER N-6

An Act to establish a National Energy Board

CHAPITRE N-6

Loi pourvoyant à l'établissement d'un Office national de l'énergie

SHORT TITLE

Short title

1. This Act may be cited as the *National Energy Board Act*, 1959, c. 46, s. 1.

TITRE ABRÉGÉ

Titre abrégé

1. La présente loi peut être citée sous le titre : *Loi sur l'Office national de l'énergie*, 1959, c. 46, art. 1.

INTERPRETATION

Definitions

2. In this Act

"Board"
«Office»

"Board" means the National Energy Board;

"certificate"
«certificat»

"certificate" means a certificate of public convenience and necessity issued under Part III;

"company"
«compagnie»

"company" means a person having authority under a Special Act to construct or operate pipelines;

"export"
«exportation»

"export" means

(a) with reference to power, to send from Canada by a line of wire or other conductor, and

(b) with reference to hydrocarbons, to send from Canada by any means;

"gas"
«gaz»

"gas" means any natural gas whether or not it has been subjected to processing, and includes any fluid hydrocarbons other than oil;

"import"
«importation»

"import" means

(a) with reference to gas, to bring gas into Canada through pipelines, and

(b) with reference to oil, to bring oil into Canada through pipelines, by railway tank car, by tank truck or by tanker;

"international power line"
«ligne...»

"international power line" means facilities constructed or operated for the purpose of transmitting power from any place in Canada to any place outside Canada;

INTERPRÉTATION

Définitions

2. Dans la présente loi

«certificat» signifie un certificat de commodité et nécessité publiques délivré selon la Partie III;

«compagnie» désigne une personne autorisée, en vertu d'une loi spéciale, à construire ou exploiter des pipe-lines;

«droit» comprend tout droit, taux ou prix ou tous frais exigés ou établis pour l'expédition, le transport, la transmission, la garde, la manutention ou la livraison d'hydrocarbures, ou pour l'emmagasiner, les surestaries ou choses analogues;

«exportation» signifie,

a) à l'égard de la force motrice, le fait d'envoyer du Canada au moyen d'une ligne de fil métallique ou d'un autre conducteur, et

b) à l'égard des hydrocarbures, le fait d'envoyer du Canada par un moyen quelconque;

«force motrice» signifie l'énergie électrique produite au Canada;

«gaz» signifie tout gaz naturel, soumis ou non à des opérations de traitement, et comprend tous hydrocarbures fluides autres que le pétrole;

«importation» signifie,

«certificat»
"certificat"«compagnie»
"company"«droit»
"droit"«exportation»
"export"«force motrice»
"power"«gaz»
"gas"«importation»
"import"

6

Chap. N-6

Office national de l'énergie

Partie I

employees appointed as provided in subsection (1) shall be deemed to be persons employed in the Public Service. 1959, c. 46, s. 8.

employés nommés de la manière prévue au paragraphe (1), sont réputés des personnes employées dans la Fonction publique. 1959, c. 46, art. 8.

Experts

9. The Governor in Council may appoint and fix the remuneration of experts or persons having technical or special knowledge to assist the Board in any matter in an advisory capacity. 1959, c. 46, s. 9.

9. Le gouverneur en conseil peut nommer des experts ou d'autres personnes possédant des connaissances techniques ou spéciales pour aider l'Office en toute matière, à titre consultatif, et il peut fixer leur rémunération. 1959, c. 46, art. 9.

Experts

*Powers of Board**Pouvoirs de l'Office*

Board a court

10. (1) The Board is a court of record.

10. (1) L'Office est une cour d'archives.

Cour

Official Seal

(2) The Board shall have an official seal, which shall be judicially noticed.

(2) L'Office a un sceau officiel, qui sera reconnu à toutes fins de droit.

Sceau officiel

Powers as to witnesses, etc.

(3) The Board has, with respect to the attendance, swearing and examination of witnesses, the production and inspection of documents, the enforcement of its orders, the entry upon and inspection of property and other matters necessary or proper for the due exercise of its jurisdiction, all such powers, rights and privileges as are vested in a superior court of record. 1959, c. 46, s. 10.

(3) En ce qui concerne la présence, l'assermentation et l'interrogatoire des témoins, la production et l'examen des documents, l'exécution de ses ordonnances, l'entrée en jouissance des biens et leur inspection, de même que toutes les autres matières indispensables ou appropriées à l'exercice régulier de sa juridiction, l'Office a tous les pouvoirs, droits et privilèges attribués à une cour supérieure d'archives. 1959, c. 46, art. 10.

Pouvoirs quant aux témoins, etc.

Jurisdiction

11. The Board has full and exclusive jurisdiction to inquire into, hear and determine any matter

11. L'Office est pleinement et exclusivement compétent pour examiner, entendre et décider toute question

Jurisdiction

(a) where it appears to the Board that any person has failed to do any act, matter or thing required to be done by this Act or by any regulation, certificate, licence or permit, or any order or direction made by the Board, or that any person has done or is doing any act, matter or thing contrary to or in violation of this Act, or any such regulation, certificate, licence, permit, order or direction, or

a) lorsqu'il lui apparaît qu'une personne a omis d'accomplir quelque acte, matière ou chose dont l'accomplissement est requis par la présente loi ou par tout règlement, certificat, licence ou permis, ou par toute ordonnance ou directive émanant de l'Office, ou qu'une personne a accompli ou est à accomplir quelque acte, matière ou chose à l'encontre ou en violation de la présente loi, ou de tout semblable règlement, certificat, licence, permis, ordonnance ou directive de ce genre, ou

(b) where it appears to the Board that the circumstances may require the Board, in the public interest, to make any order or give any direction, leave, sanction or approval that by law it is authorized to make or give, or with respect to any matter, act or thing that by this Act or any such regulation, certificate, licence, permit, order or direction is prohibited, sanctioned or required to be done. 1959, c. 46, s. 11.

b) lorsqu'il lui apparaît que les circonstances peuvent l'obliger, dans l'intérêt public, à rendre toute ordonnance ou à donner une directive, autorisation, sanction ou approbation que la législation lui permet de rendre ou donner, ou relativement à quelque matière, acte ou chose que la présente loi ou un semblable règlement, certificat, licence, permis, ordonnance ou directive interdit, sanctionne ou exige. 1959, c. 46, art. 11.

Part I

National Energy Board

Chap. N-6

7

Mandatory orders

12. The Board may order and require any person to do, forthwith, or within or at any specified time and in any manner prescribed by the Board so far as it is not inconsistent with this Act, any act, matter or thing that such person is or may be required to do under this Act, or any regulation, certificate, licence or permit, or any order or direction made or given under this Act and may forbid the doing or continuing of any act, matter or thing that is contrary to this Act or any such regulation, certificate, licence, permit, order or direction and, for the purposes of this Act, has full jurisdiction to hear and determine all matters, whether of law or of fact. 1959, c. 46, s. 12.

12. L'Office peut ordonner et enjoindre à toute personne d'accomplir immédiatement ou dans un délai spécifié ou à quelque époque déterminée et de quelque manière par lui prescrite, dans la mesure où cela n'est pas incompatible avec la présente loi, tout acte, matière ou chose que cette personne est astreinte ou peut être astreinte à accomplir selon la présente loi, ou un règlement, certificat, une licence, un permis, une ordonnance ou directive rendue ou donnés selon la présente loi, et il peut interdire l'accomplissement ou la continuation de tout acte, matière ou chose contraire à la présente loi ou à un semblable règlement, certificat, licence, permis, ordonnance ou directive. En outre, l'Office, aux fins de la présente loi, a la compétence voulue pour entendre et décider les questions de droit ou de fait. 1959, c. 46, art. 12.

Ordres impératifs

Delegation

13. The Board may delegate to one or more of its members, either jointly or severally, all or any of the powers, functions and duties of the Board under this Act, except those under subsection 36(3), section 37, 38, 39, 42, 44, 46, 47, 49, 52, 84 or 88, or under Part IV, 1959, c. 46, s. 13.

13. L'Office peut déléguer à un ou plusieurs de ses membres, conjointement ou individuellement, l'ensemble ou l'un quelconque des pouvoirs, fonctions et devoirs de l'Office visés par la présente loi, sauf ceux que prévoient le paragraphe 36(3), l'article 37, 38, 39, 42, 44, 46, 47, 49, 52, 84 ou 88, ou la Partie IV. 1959, c. 46, art. 13.

Délégation

Powers of single member

14. (1) The Board or the Chairman may authorize any one of the members to report to the Board upon any question or matter arising in connection with the business of the Board, and the person so authorized has all the powers of the Board for the purpose of taking evidence or acquiring the necessary information for the purpose of such report, and upon such a report being made to the Board, it may be adopted as the order of the Board or otherwise dealt with as the Board considers advisable.

14. (1) L'Office ou le président peut autoriser n'importe lequel des membres à faire un rapport à l'Office sur tout sujet ou question découlant des opérations de l'Office, et la personne ainsi autorisée a tous les pouvoirs de l'Office pour recueillir des témoignages ou acquérir les renseignements nécessaires aux fins de ce rapport. Sur présentation d'un tel rapport à l'Office, on peut l'adopter à titre d'ordonnance de l'Office ou il peut être autrement statué sur ledit rapport selon que l'Office l'estime opportun.

Pouvoirs d'un membre isolément

Board may act upon own motion

(2) The Board may of its own motion inquire into, hear and determine any matter or thing that under this Act it may inquire into, hear and determine. 1959, c. 46, s. 14.

(2) L'Office peut de sa propre initiative examiner, entendre et décider toute question ou chose qu'il lui est loisible d'examiner, d'entendre et de décider aux termes de la présente loi. 1959, c. 46, art. 14.

L'Office peut agir de sa propre initiative

Orders and Decisions

Ordonnances et décisions

Enforcement of Board orders

15. (1) Any decision or order made by the Board may, for the purpose of enforcement thereof, be made a rule, order or decree of the Exchequer Court of Canada or of any superior court of any province of Canada and shall be

15. (1) Toute décision ou ordonnance rendue par l'Office peut, en vue de l'exécution de cette décision ou ordonnance, devenir un arrêt; une ordonnance ou un jugement de la Cour de l'Échiquier du Canada ou de toute

Exécution des ordonnances de l'Office

TAB 15

PART I - NATIONAL ENERGY BOARD

CHAPTER N-7 CONSOLIDATED STATUTES OF CANADA

Board may act on own motion

15. (3) The Board may of its own motion inquire into, hear and determine any matter or thing that under this Act it may inquire into, hear and determine.

R.S., 1985, c. N-7, s. 15; 1990, c. 7, s. 7.

TAB 16

Ontario Energy Board Act, 1998

S.O. 1998, CHAPTER 15 SCHEDULE B

Appeal from delegated function

7. (1) A person directly affected by an order made by an employee of the Board pursuant to section 6 may, within 15 days after receiving notice of the order, appeal the order to the Board. 2003, c. 3, s. 13.

Exception

- (2) Subsection (1) does not apply to,
- (a) a person who did not make submissions to the employee after being given notice of the opportunity to do so; or
 - (b) a person who did not give notice requiring the Board to hold a hearing under section 112.2, in the case of an order made by the employee under section 112.3, 112.4 or 112.5. 2003, c. 3, s. 13.

Parties

- (3) The parties to the appeal are:
- 1. The appellant.
 - 2. The applicant, if the order is made in a proceeding commenced by an application.
 - 3. The employee who made the order.
 - 4. Any other person added as a party by the Board. 2003, c. 3, s. 13.

Powers of Board

- (4) The Board may confirm, vary or cancel the order. 2003, c. 3, s. 13.

Stay

(5) An appeal under this section does not stay the order of the employee, unless the Board orders otherwise. 2003, c. 3, s. 13.

Power to determine law and fact

19. (1) The Board has in all matters within its jurisdiction authority to hear and determine all questions of law and of fact. 1998, c. 15, Sched. B, s. 19 (1).

Order

(2) The Board shall make any determination in a proceeding by order. 1998, c. 15, Sched. B, s. 19 (2); 2001, c. 9, Sched. F, s. 2 (1).

Reference

(3) If a proceeding before the Board is commenced by a reference to the Board by the Minister of Natural Resources, the Board shall proceed in accordance with the reference. 1998, c. 15, Sched. B, s. 19 (3).

Additional powers and duties

(4) The Board of its own motion may, and if so directed by the Minister under section 28 or otherwise shall, determine any matter that under this Act or the regulations it may upon an application determine and in so doing the Board has and may exercise the same powers as upon an application. 1998, c. 15, Sched. B, s. 19 (4).

Exception

(5) Unless specifically provided otherwise, subsection (4) does not apply to any application under the *Electricity Act, 1998* or any other Act. 1998, c. 15, Sched. B, s. 19 (5).

Jurisdiction exclusive

(6) The Board has exclusive jurisdiction in all cases and in respect of all matters in which jurisdiction is conferred on it by this or any other Act. 1998, c. 15, Sched. B, s. 19 (6).

Order

42.(3) Upon application, the Board may order a gas transmitter, gas distributor or storage company to provide any gas sale, transmission, distribution or storage service or cease to provide any gas sale service. 1998, c. 15, Sched. B, s. 42 (3).

Application for licence

50. (1) A person may apply to the Board for the issuance or renewal of a gas marketing licence. 2003, c. 3, s. 37.

Application for licence

60. (1) A person may apply to the Board for the issuance or renewal of a licence authorizing one or more of the activities referred to in section 57 as specified in the application. 1998, c. 15, Sched. B, s. 60 (1); 2003, c. 3, s. 43 (1).

Leave to construct hydrocarbon line

90. (1) No person shall construct a hydrocarbon line without first obtaining from the Board an order granting leave to construct the hydrocarbon line if,

- (a) the proposed hydrocarbon line is more than 20 kilometres in length;
- (b) the proposed hydrocarbon line is projected to cost more than the amount prescribed by the regulations;

- (c) any part of the proposed hydrocarbon line,
 - (i) uses pipe that has a nominal pipe size of 12 inches or more, and
 - (ii) has an operating pressure of 2,000 kilopascals or more; or
- (d) criteria prescribed by the regulations are met. 2003, c. 3, s. 63 (1).

Exception

(2) Subsection (1) does not apply to the relocation or reconstruction of a hydrocarbon line unless the size of the line is changed or unless the acquisition of additional land or authority to use additional land is necessary. 1998, c. 15, Sched. B, s. 90 (2); 2003, c. 3, s. 63 (2).

Application for leave to construct hydrocarbon line or station

91. Any person may, before constructing a hydrocarbon line to which section 90 does not apply or a station, apply to the Board for an order granting leave to construct the hydrocarbon line or station. 2003, c. 3, s. 64.

Interim order

98. (1.1) The Board may, upon application, issue an interim order authorizing a person and the officers, employees and agents of that person to enter on land at the intended location of any part of a proposed work and to make such surveys and examinations as are necessary for fixing the site of the work and as are specified in the order if,

- (a) the person has applied for leave under section 90 or 92 and has complied with section 94;
- (b) the person has applied to the Board for an exemption under section 95; or
- (c) the Board has commenced a proceeding to determine whether to require the person, pursuant to a condition of the person's licence, to expand or reinforce a transmission or distribution system. 2006, c. 33, Sched. X, s. 2 (2).

Expropriation

99. (1) The following persons may apply to the Board for authority to expropriate land for a work:

1. Any person who has leave under this Part or a predecessor of this Part.
2. Any person who intends to construct, expand or reinforce an electricity transmission line or an electricity distribution line or make an interconnection and who is exempted from the requirement to obtain leave by the Board under section 95 or a regulation made under clause 127 (1) (f). 1998, c. 15, Sched. B, s. 99 (1).

Crossings with leave

101. (1) The following persons may apply to the Board for authority to construct a work upon, under or over a highway, utility line or ditch:

1. Any person who has leave to construct the work under this Part.
2. Any person who intends to construct the work and who is exempted under section 95 from the requirement to obtain leave.
3. Where the proposed work is the expansion or reinforcement of a transmission or distribution system, any person who is required by the Board, pursuant to a condition of the person's licence, to expand or reinforce the transmission or distribution system.
4. The officers, employees and agents of a person described in paragraph 1, 2 or 3. 2006, c. 33, Sched. X, s. 3.

Procedure for orders under ss. 112.3 to 112.5

112.2 (1) An order under section 112.3, 112.4 or 112.5 may only be made on the Board's own motion. 2003, c. 3, s. 76.

Notice

(2) The Board shall give written notice to a person that it intends to make an order under section 112.3, 112.4 or 112.5. 2003, c. 3, s. 76.

Contents of notice

(3) Notice under subsection (2) shall set out the reasons for the proposed order and shall advise the person that, within 15 days after receiving the notice, the person may give notice requiring the Board to hold a hearing. 2003, c. 3, s. 76.

Service of notice or order

(3.1) Any notice or order required to be given or served by the Board under this Part or Part VII.2 is sufficiently given or served if,

- (a) delivered personally;
- (b) sent by registered mail; or
- (c) sent by another manner, if the Board can prove receipt of the notice or order. 2010, c. 8, s. 38 (30).

Deemed service

(3.2) Where service is made by registered mail, the service is deemed to be made on the third day after the day of mailing unless the person on whom service is being made establishes that the person did not, acting in good faith, through absence, accident, illness or other cause beyond the person's control, receive the notice or order until a later date. 2010, c. 8, s. 38 (30).

Exception

(3.3) Despite subsection (3.1), the Board may order any other method of service. 2010, c. 8, s. 38 (30).

Hearing

(4) A person to whom notice is given under subsection (2) may, within 15 days after receiving the notice, give notice to the Board requiring the Board to hold a hearing. 2003, c. 3, s. 76.

If hearing not required

(5) If no notice requiring a hearing is given within the time permitted by subsection (4), the Board may make an order. 2003, c. 3, s. 76.

Interim orders under s. 112.3

(6) An interim order of the Board may be made under section 112.3, with or without a hearing, and may take effect before the time for giving notice under subsection (4) has expired. 2003, c. 3, s. 76.

Action required to comply, etc.

112.3 (1) If the Board is satisfied that a person has contravened or is likely to contravene an enforceable provision, the Board may make an order requiring the person to comply with the enforceable provision and to take such action as the Board may specify to,

- (a) remedy a contravention that has occurred; or
 - (b) prevent a contravention or further contravention of the enforceable provision.
- 2003, c. 3, s. 76.

Application

(2) This section applies to contraventions that occur before or after this section comes into force. 2003, c. 3, s. 76.

Suspension or revocation of licences

112.4 (1) If the Board is satisfied that a person who holds a licence under Part IV or V has contravened an enforceable provision, the Board may make an order suspending or revoking the licence. 2003, c. 3, s. 76.

Application

(2) This section applies to contraventions that occur before or after this section comes into force. 2003, c. 3, s. 76.

Administrative penalties

112.5 (1) If the Board is satisfied that a person has contravened an enforceable provision, the Board may, subject to the regulations under subsection (5), make an order requiring a person to pay an administrative penalty in the amount set out in the order for each day or part of a day on which the contravention occurred or continues. 2003, c. 3, s. 76.

Purpose

(1.1) The purpose of an administrative penalty is to promote compliance with the requirements established by this Act and the regulations. 2010, c. 8, s. 38 (31).

Limitation

(2) The Board shall not make an order under subsection (1) in respect of a contravention later than two years after the later of,

- (a) the day the contravention occurred; and
- (b) the day on which the evidence of the contravention first came to the attention of the Board. 2003, c. 3, s. 76.

Amount of penalty, limited

(3) An administrative penalty in respect of a contravention shall not exceed \$20,000 for each day or part of a day on which the contravention occurs or continues. 2003, c. 3, s. 76.

No offence to be charged if penalty is paid

(4) If a person who is required by an order under subsection (1) to pay an administrative penalty in respect of a contravention pays the amount of the penalty in accordance with the order, the person shall not be charged with an offence in respect of the contravention. 2003, c. 3, s. 76.

Regulations

(5) The Lieutenant Governor in Council may make regulations,

- (a) specifying types of contraventions in respect of which an order may not be made under this section and circumstances when the Board shall not make an order under this section;
- (b) governing the determination of the amounts of administrative penalties, including the criteria to be considered and including providing for different amounts depending on when an administrative penalty is paid;
- (c) respecting any other matter necessary for the administration of the system of administrative penalties provided for by this section. 2003, c. 3, s. 76.

General or particular

(6) A regulation under subsection (5) may be general or particular in its application. 2003, c. 3, s. 76.

Application

(7) Subject to subsection (8), this section applies to contraventions that occur before or after this section comes into force. 2003, c. 3, s. 76.

Same

(8) This section does not apply to a contravention that occurred before this section came into force unless, at the time it occurred, section 125.2 was in force and a notice could have been issued in respect of the contravention under that section. 2003, c. 3, s. 76.

TAB 17

Ontario Municipal Board Act

R.S.O. 1990, CHAPTER O.28

When Board may act

41. (1) The Board may, of its own motion, and shall, upon the request of the Lieutenant Governor in Council, inquire into, hear and determine any matter or thing that it may inquire into, hear and determine upon application or complaint, and with respect thereto has and may exercise the same powers as, upon any application or complaint, are vested in it.

TAB 18

Courts of Justice Act

**R.R.O. 1990, REGULATION 194
RULES OF CIVIL PROCEDURE**

Application under Rules

14.05 (3) A proceeding may be brought by application where these rules authorize the commencement of a proceeding by application or where the relief claimed is,

- (d) the determination of rights that depend on the interpretation of a deed, will, contract or other instrument, or on the interpretation of a statute, order in council, regulation or municipal by-law or resolution;

TAB 19

Statutory Powers Procedure Act
R.S.O. 1990, CHAPTER S.22

Dismissal of proceeding without hearing

4.6(1) Subject to subsections (5) and (6), a tribunal may dismiss a proceeding without a hearing if,

- (a) the proceeding is frivolous, vexatious or is commenced in bad faith;
- (b) the proceeding relates to matters that are outside the jurisdiction of the tribunal;
or
- (c) some aspect of the statutory requirements for bringing the proceeding has not been met.

Notice

(2) Before dismissing a proceeding under this section, a tribunal shall give notice of its intention to dismiss the proceeding to,

- (a) all parties to the proceeding if the proceeding is being dismissed for reasons referred to in clause (1) (b); or
- (b) the party who commences the proceeding if the proceeding is being dismissed for any other reason.

Same

(3) The notice of intention to dismiss a proceeding shall set out the reasons for the dismissal and inform the parties of their right to make written submissions to the tribunal with respect to the dismissal within the time specified in the notice.

Right to make submissions

(4) A party who receives a notice under subsection (2) may make written submissions to the tribunal with respect to the dismissal within the time specified in the notice.

Dismissal

(5) A tribunal shall not dismiss a proceeding under this section until it has given notice under subsection (2) and considered any submissions made under subsection (4).

Rules

(6) A tribunal shall not dismiss a proceeding under this section unless it has made rules under section 25.1 respecting the early dismissal of proceedings and those rules shall include,

- (a) any of the grounds referred to in subsection (1) upon which a proceeding may be dismissed;
- (b) the right of the parties who are entitled to receive notice under subsection (2) to make submissions with respect to the dismissal; and
- (c) the time within which the submissions must be made.

Continuance of provisions in other statutes

(7) Despite section 32, nothing in this section shall prevent a tribunal from dismissing a proceeding on grounds other than those referred to in subsection (1) or without complying with subsections (2) to (6) if the tribunal dismisses the proceeding in accordance with the provisions of an Act that are in force on the day this section comes into force. 1999, c. 12, Sched. B, s. 16 (3).

Classifying proceedings

4.7 A tribunal may make rules under section 25.1 classifying the types of proceedings that come before it and setting guidelines as to the procedural steps or processes (such as preliminary motions, pre-hearing conferences, alternative dispute resolution mechanisms, expedited hearings) that apply to each type of proceeding and the circumstances in which other procedures may apply. 1999, c. 12, Sched. B, s. 16 (3).

TAB 20

Telecommunications Act (S.C. 1993, c. 38)

48. (1) The Commission may, on application by any interested person or on its own motion, inquire into and make a determination in respect of anything prohibited, required or permitted to be done under Part II, except in relation to international submarine cables, Part III or this Part or under any special Act, and the Commission shall inquire into any matter on which it is required to report or take action under section 14.

Interested persons

(2) The decision of the Commission that a person is or is not an interested person is binding and conclusive.

Quorum

TAB 21

ONTARIO ENERGY BOARD
Rules of Practice and Procedure

PART V – HEARINGS

34. Hearing Format and Notice

34.01 In any proceeding, the Board may hold an oral, electronic or written hearing, subject to the *Statutory Powers Procedure Act* and the statute under which the proceeding arises.

34.02 The format, date and location of a hearing shall be determined by the Board.

34.03 Subject to **Rule 21.02**, the Board shall provide written notice of a hearing to the parties, and to such other persons or class of persons as the Board considers necessary.

TAB 22

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Hydro One Networks Inc., Re

In the Matter of a proceeding initiated by the Ontario Energy Board to determine whether the transmission rates of Hydro One Networks Inc. are just and reasonable, and to approve or fix just and reasonable rates for 2006

Ontario Energy Board

B. Betts Member, G. Kaiser Presiding Member, P. Vlahos Member

Judgment: February 21, 2006

Docket: EB-2005-0501

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Counsel: None given

Subject: Public

Public law --- Public utilities — Operation of utility — Rates — Statutory requirements.

Public law --- Public utilities — Operation of utility — Rates — Fairness and impartiality.

Cases considered by G. Kaiser Presiding Member:

Canadian Manufacturers & Exporters, Re (2006), 2006 CarswellOnt 5731 (Ont. Energy Bd.) — referred to

Statutes considered:

Ontario Energy Board Act, 1998, S.O. 1998, c. 15, Sched. B

s. 19 — pursuant to

s. 21(1) — referred to

s. 78 — pursuant to

s. 78(9) — referred to

G. Kaiser Presiding Member:

Background

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1 On October 26, 2005, the Ontario Energy Board commenced a proceeding on its own motion to determine whether the transmission rates of Hydro One Networks Inc. (Hydro One) are just and reasonable, and to approve or fix just and reasonable rates for the transmission of electricity, pursuant to sections 78 and 19 of the *Ontario Energy Board Act*.

2 In the Notice of Proceeding, the Board required Hydro One to prepare evidence to establish a revenue requirement and set just and reasonable transmission rates, pursuant to subsections 21(1) and 78(9) of the *Ontario Energy Board Act*. The evidence would support Hydro One's transmission revenue requirements for 2006 and 2007. The Board indicated that it would also consider an adjustment formula to be applied to 2007 revenues for 2008. A Notice of Hearing was issued on October 26, 2005.

3 The Notice of Hearing included the following:

The Board is reluctant to have existing transmission rates declared interim for the prolonged period that might occur should Hydro One not be able to file for revised rates in the near future. The Board is therefore considering methods which may limit uncertainty during the rate setting process.

Accordingly, the Board will begin this proceeding by holding a hearing on the alternatives for treatment of utility earnings for the period of January 1, 2006 until revised transmission rates are implemented. The apparent alternatives to declaring rates interim are:

- Establish an overearnings deferral account; or
- Establish an earnings sharing mechanism.

4 The Board began the proceeding by holding a hearing on the alternatives for the treatment of transmission earnings for the period from January 1, 2006 until revised transmission rates are set. A settlement conference was held on November 21, 2005, where Hydro One presented its initial proposal on this issue. No settlement was achieved.

5 Hydro One's proposal was brought forward to a hearing before the Board on November 25, 2005. Hydro One's proposal outlined four key options that the Board could use to address the treatment of transmission earnings beginning January 1, 2006:

1. Establish Interim Uniform Transmission Rates
2. Reset Revenue Requirement for 2006, and a portion of 2007, retrospectively during the 2007 Transmission Rate Hearing
3. Establish a Tracking Mechanism based on an over/under earnings deferral account
4. Establish a Tracking Mechanism based on an Earnings Sharing Mechanism

Establish Interim Uniform Transmission Rates

6 Hydro One rejected this option on the basis that it would require some form of detailed review of the utility's revenue requirement which could not be carried out in the near term, would negatively affect other transmission providers due to the make-up of the Uniform Transmission Rates in the province, and would affect the reconciliation process of the IESO for all transmission utilities. Hydro One also noted that this option is not an earnings tracking mechanism and that the financial uncertainty would be harmful to Hydro One.

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Reset Revenue Requirement for 2006, and a portion of 2007, retrospectively during the 2007 Transmission Rate Hearing

7 Hydro One rejected this option on the basis that retroactive rate increases are problematic for customers. Hydro One also noted that this option is not an earnings tracking mechanism.

Establish a Tracking Mechanism based on an over/under earnings deferral account

8 While noting that this option is focused on earnings, Hydro One rejected it on the basis that there is no incentive for the utility to look for efficiencies. Hydro One also noted that this option could negatively affect the utility's credit ratings due to the length of period of uncertainty. Hydro One further noted that this option has not been typically used for longer periods of earnings tracking mechanisms.

Establish a Tracking Mechanism based on an Earnings Sharing Mechanism

9 Hydro One submitted that this option is superior in that it provides the utility with incentives for pursuing efficiency gains, benefiting both customers and the utility in the near and longer term. Hydro One noted that the establishment of earning sharing mechanisms is a common method.

10 Hydro One recommended the implementation of an earnings sharing mechanism with the following design principles:

- The calculation of any over/under earnings based on Hydro One audited transmission financial statements, adjusted for weather normalization.
- Earnings above the established threshold level would be used on a priority basis to invest in designated transmission system expansion projects, which are not currently funded in existing rates. These capital expenditures would be treated for accounting purposes as capital contributions and therefore would not be included in rate base.
- Earnings which exceeded the capital requirements of the transmission system, as established by Hydro One, would be subjected to a sharing mechanism with a dead-band approach, to provide the incentives necessary for the pursuit of utility efficiencies. A plus or minus 2% tolerance band was recommended for the dead-band to moderate the utility risk profile. Earnings in excess of the tolerance band would be returned to customers. Earnings falling below the minus 2% tolerance band would be recoverable from customers.

11 Hydro One submitted that an earnings sharing mechanism with these design principles would achieve a good balance of benefits to both customers and the utility. The benefits include:

1. Providing the potential for near-term cash required for the expansion of the transmission system, thereby lowering near-term borrowing requirements and stabilizing rates over the medium and long term.
2. Availability of appropriate commercial signals for pursuing utility efficiency gains.
3. Sharing of earnings, which exceed the requirements of the transmission system.
4. The ability to maintain sufficient financial certainty by developing a method for forecasting earnings and reporting ongoing financial results

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12 In its written submission, Hydro One provided details of the mechanism of its proposal.

Intervenor Positions

13 Hydro One's proposal was supported by Power Workers' Union. This intervenor also submitted that the Board should be mindful that its decision does not create a perverse incentive for the utility in regards to its reliability performance.

14 The Independent Electricity System Operator stated that it supports the Board's initiative to avoid the adoption of interim rates with their attendant uncertainty and administrative burden of settlement-free calculations.

15 All other intervenors (School Energy Coalition, Association of Major Power Consumers in Ontario, Energy Probe, Vulnerable Energy Consumers Coalition, Canadian Manufacturers and Exporters, and ECMI - coalition of seven electricity distributors) were opposed to the establishment of Hydro One's revenue requirement for 2006 in the absence of an evidentiary base and argued that all decisions on the establishment of, and disposition of the 2006 overearnings should be based on the evidence presented to the Board at the time that a full filing was made. These intervenors argued that since the Board has already stated that it will require the preparation of evidence by Hydro One to establish a revenue requirement for 2006, there is no other direction that is required.

Board Findings

16 In its Notice of Hearing, the Board stated it will require the preparation of evidence by Hydro One to establish a revenue requirement in order to set just and reasonable transmission rates, and that the evidence must support transmission revenue requirements for 2006 and 2007. The Board also stated that it would begin the proceeding by holding a hearing on the alternatives for treatment of utility earnings for the period of January 1, 2006 until revised transmission rates are implemented. Further, the Board noted that it is reluctant to have existing rates declared interim for the prolonged period that might occur should Hydro One not be able to file for revised rates in the near future. Finally, the Board stated that Hydro One and interested parties may suggest other methods of ensuring that the interests of rate-payers are sufficiently protected during the period of the rate review, including the alternatives of establishing an overearnings deferral account or an earnings sharing mechanism.

17 This led to different interpretations of parties. Hydro One's proposals have been noted earlier. Ratepayer groups, and others, interpreted the Board's Notice of Hearing as indicating that the Board has already decided that there will be a standard revenue requirement review for 2006 and argued that the Board did not need to decide anything further until the time of the review. The Board understands the interpretation of the Notice of Hearing by certain intervenors. However, it cannot be concluded from the wording in the Notice of Hearing that Hydro One's proposal should not be considered on its merits, and the Board will do so.

18 Based on a number of reasons advanced by Hydro One as set out above, the Board accepts on balance that the application of an earnings sharing mechanism is the best option in the circumstances. The issues for the Board then for purposes of this decision are as follows:

- Should the earnings sharing mechanism be based on the reported results in Hydro One's 2006 audited financial statements?
- Should underearnings matter?
- Is Hydro One's contributed capital proposal, namely to use a portion of overearnings to fund capital expenditures, reasonable?

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- By what mechanics should excess earnings be established?

19 Before the Board answers the above questions, it will first address a matter arising from the 2006 Hydro One Distribution Rate Hearing (RP-2005-0020 / EB-2005- 0378) [*Canadian Manufacturers & Exporters, Re., 2006 CarswellOnt 5731* (Ont. Energy Bd.)] underway concurrently with this application. That proceeding has provided evidence regarding the reallocation of costs between Hydro One's transmission and distribution operations. While costs allocations went in both directions, there seems to have been a net reduction in cost allocation to transmission at the expense of distribution.

20 While the final disposition of the cost allocation issue in the distribution hearing, has not been made at this time the Board wishes to consider the potential for double recovery of certain costs by Hydro One in the 2006 rate year, by having the costs of certain activities and assets included in both the existing rates of transmission, and the new rates of distribution.

21 To avoid that unreasonable result, the Board orders Hydro One Transmission to report revenue changes for the 2006 rate year resulting from the Board's decision on cost allocation in RP-2005-0020 / EB-2005- 0378. The report will be reviewed with the objective of crediting the resultant cost allocation adjustment to transmission customers in the 2007 rate application.

22 The Board findings that follow, regarding excess earnings, are based upon earnings after this cost allocation adjustment is made.

Should earnings sharing be based on Hydro One's financial statements?

23 The question of whether the review is on the basis of Hydro One's financial statements as requested by Hydro One or a more standard revenue requirement filing, as proposed by ratepayer groups and others, is best addressed after the Board has considered its expectation for the standard of the review. In other words, does the Board expect the review to include an examination of the prudence and reasonableness of the actual costs incurred in 2006? The use of the financial statements is, in the Board's view, simply another depiction of these costs. Hydro One does not object to a revenue requirement review to determine 2006 earnings. What Hydro One objects to is undergoing a full review given a host of considerations, including the need to focus on other regulatory proceedings (such as its 2006 filing for distribution rates and the filing for 2007 rates). Hydro One is also concerned with issues around investor confidence that would be associated with a full review during a time of high investment demands.

24 The Board accepts Hydro One's proposal to use actual results from its audited financial statements (Transmission) as the basis for determining earnings for 2006. The Board agrees that the near term represents a period that will require significant engagement by Hydro One in preparation for the review of, among other, its 2006 distribution rates and for the filing and review of its 2007 transmission rates. The use of the utility's financial statements and a pre-determined mechanical approach to determining earnings for 2006, while not ideal, is a practical approach. In reaching this conclusion, the Board was mindful not to diminish investor confidence in the utility by heavy handed regulatory actions. Investor confidence is always a key consideration in the Board's deliberations and actions. In the instant case, Hydro One's increased capital investment requirements to enhance or even maintain adequate and reliable electricity service in the Province are not in dispute. Access to needed capital at a reasonable cost is important to Hydro One and the customers it serves. Neither Hydro One nor ratepayers should be burdened with higher financing costs because of diminished investor confidence, when it is unnecessary. Investor uncertainty would arise from the fact that a review for 2006 will be taking place likely in 2007, when 2006 will be a historical rate year. The prospect of a prudence review of the utility's historical costs will not bode well for the need to have as certain an investment environment as possible.

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25 With respect to the rate of return on common equity, Hydro One's proposal was not clear. In its written submission, a reasonable interpretation would be that the utility was willing to accept an adjustment that would flow from the application of the Board's guideline for establishing a rate. During submissions, Hydro One appeared to argue that the rate should be maintained at the previously authorized 9.88%. It pointed to the timing of the Board's Motion for a revenue requirement review for 2006 rates being too late to provide a rate making decision until late in 2006, at best, and the need to minimize uncertainty, as reasonable grounds to continue the currently approved 9.88% ROE into 2006.

26 The Board recognizes that this rate may be different from the rate that may apply to Hydro One's distribution business and the other electricity distributors for 2006. That rate would be the result of applying the Board's Rate Handbook or in the case of forward test year filers, a rate to be determined by the Board. However, distribution utilities and capital markets have been aware for some time that the current review for 2006 rates might produce a different rate of return on capital. This was not the case for the transmission side of Hydro One. Further, any differences will be short-lived as a new rate for Hydro One Transmission will be set for 2007, and a change at this time would set Hydro One's ROE at a different level than any of the other provincial transmitters.

27 For the reasons cited above, the Board finds it expedient, fair and reasonable to allow the continued use of the 9.88% ROE.

28 Hydro One proposes to adjust its actual net income to reflect normal rather than actual weather for 2006. The Board's normal practice is to allow determination of excess earnings on a weather normalized basis. This is the case for the two gas utilities when an earnings sharing mechanism has been instituted. However, unlike the case of the gas utilities, in the case of Hydro One the information is unclear as to whether and, if so, to what extent Hydro One's current rates reflect a Board-approved weather normalization methodology. Hydro One's proposal would add a level of complexity in determining excess earnings and that would be contrary to the Board's efforts to keep the 2006 process as simple as possible. For these reasons, the Board concludes that actual net income should not be normalized for weather.

Should underearnings matter?

29 In conjunction with its proposal for a dead-band, Hydro One proposed that it should be protected in the event that its earnings fall below 2% of the authorized rate of return on its common equity.

30 The Board does not accept Hydro One's proposal. Hydro One was willing to forego a review for 2006, meaning that it would have been at risk of not recovering the shortfall in the event that the utility did not achieve the previously Board-authorized rate of return.

31 Further, it is evident from the Board's Notice of Hearing that the Board's concern was a situation of excess earnings. Moreover, symmetry has not been applied by the Board recently in its regulation of utilities. Utilities have all the information and they in large part are in control of their expenditures and the timing of asking for rate review if they feel that relief is necessary. This information and control imbalance is offset by an asymmetrical approach. Both gas utilities, Union and Enbridge, have recently been under an earnings sharing mechanism and both were established as asymmetrical arrangements.

32 For the balance of this decision, therefore, discussion on the determination of earnings and sharing for 2006 refers only to excess earnings.

Is Hydro One's contributed capital proposal reasonable?

33 Hydro One proposed that excess earnings be used by the utility for capital infrastructure spending and treated as ratepayers' contributed capital. Earnings which exceeded these capital requirements would be subjected to a sharing

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mechanism with a 2% dead-band approach over the rate of return on common equity. Earnings in excess of the tolerance band would be returned to customers.

34 There are two rationales for Hydro One's proposal. The first is that excess earnings would provide additional capital for projects that are not funded in existing rates. Hydro One acknowledged that its financing plans for 2006 and beyond were already in place and, further, the funding from contributed capital monies would represent "a very small percentage" of the utility's capital financing program. The utility's attempts to explain aspects of the designation of these monies to specific "incremental capital projects" left many questions unanswered. The concern by intervenors that these monies, in whole or in part, might not necessarily be designated to such projects, in which case they would remain with the utility as excess profits, is understandable. The proposal lacked clarity.

35 The second rationale by Hydro One is that its proposal would smooth future rate increases. This is a laudable consideration but its significance very much depends on the materiality and impact of contributed capital on future rates. There was no information provided in this case to conclude that such a provision is absolutely necessary at this time to offset future rate pressures. Hydro One's revenue requirement review for 2007 and beyond is not yet underway to gain an understanding of any such pressures.

36 In view of the above, and in view of the Board's finding below that there shall be a 50:50 split of excess earnings between the shareholder and the ratepayers, the Board does not accept Hydro One's contributed capital proposal, but agrees that Hydro One may, if it wishes, bring this matter forward at the time of the disposition of excess earnings for 2006, as an alternate method of disposition. At that time the issue of materiality and need to consider this funding approach would become clearer and assessed for constituting acceptable regulatory practice.

By what mechanics should excess earnings be established?

37 This section outlines the mechanism for calculating excess earnings for 2006. The outline reflects Hydro One's section 7.1 in its submission with the necessary changes to reflect the Board's findings in this decision.

38 The following information items will be sourced from the audited financial statements (Transmission):

- Net Income (actual, not normalized for weather) - from Statement of Operations
- Net Interest (financing charges) — from Statement of Operations
- Fixed Assets (net of accumulated depreciation) — from Balance Sheet (average of beginning and ending year)
- OM&A — from Statement of Operations
- Long-term debt (including debt payable within one year) — from Balance Sheet (average of beginning and ending year)
- Gross interest — from note in the Statement of Operations showing breakdown of financing charges

39 The above information will be used to calculate the following:

- Rate base — average fixed assets, plus a working capital allowance calculated as 15% of OM&A
- Actual return on assets — net income plus net interest, divided by rate base

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- Average cost of debt — gross interest divided by average total debt outstanding
- Allowed return on assets — weighted average of a) cost of debt, b) cost of preferred shares, and c) 9.88% rate of return on common equity, based on the previously approved notional capital structure
- Excess earnings — the difference between the actual and the allowed rate of return on assets, multiplied by rate base

Who should be the recipient of any excess earnings?

40 The remaining issue is whether any excess earnings should be to the benefit of the shareholder, the ratepayers, or shared in some fashion.

41 The Board acknowledges that intervenors may have more vigorously addressed the excess earnings sharing option and its specifics had they more clearly understood the Board's intent with respect to the options for the 2006 review. Hydro One certainly presented its view of the formula contained in its proposal, but did not have an adequate opportunity to respond to any other alternatives that the Board might contemplate. Hydro One did acknowledge that the Board may choose something different from its proposal. The Board considered the option of leaving this matter to the time that the actual 2006 review took place, but concluded that it would be in the interest of all parties and in the public interest to provide as much certainty as possible and as soon as possible on this issue by deciding now.

42 In earnings sharing mechanisms in recent decisions for gas utilities, (Union and Enbridge), the Board has found that a 50/50 sharing of excess earnings between shareholders and ratepayers provided a reasonable benefit for ratepayers, balanced by a reasonable earnings expectation by shareholders and a significant utility incentive to control costs. The Board sees no reason to depart from this practice in this case. The Board therefore finds that any excess earning in 2006 shall be split 50:50 between the shareholder and ratepayers.

43 The Board acknowledges that this decision can reasonably be described as "rough justice". The Board identified the issue of potential overearnings at a point in time that did not allow Hydro One to make a full revenue requirement application for rates to be reasonably implemented in 2006. The decision, with respect to 2006 rates uses the 50/50 sharing mechanism as a simple method of returning some benefit to ratepayers while not undermining the financial and corporate planning foundation of the utility. The Board's motion does allow reasonable time for a full revenue requirement review for the 2007 rate year, which will establish a firm ratemaking foundation going forward.

44 The Power Workers' Union submitted that the Board ought to require Hydro One to file a continuity statement on its reliability performance indicators back to 2002, and require Hydro One to, at a minimum, maintain its highest historic levels. While reliability remains very important, the Board does not find that this decision creates a perverse incentive for Hydro One that would not otherwise exist with respect to its performance on matters of reliability.

45 The Board awards intervenors who are eligible for cost awards, 100% of their reasonably incurred costs. Intervenors shall file their cost statements with the Board and Hydro One by March 3, 2006, Hydro One may respond by March 10, 2006, and intervenors may reply by March 17, 2006.

46 The Board's costs of and incidental to this proceeding, if applicable, shall be paid immediately by Hydro One upon receipt of the Board's invoice.

END OF DOCUMENT

TAB 23



EB-2009-0326

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

AND IN THE MATTER OF a proceeding initiated by the
Ontario Energy Board to determine and implement a
distribution rate for embedded generators having a
nameplate capacity of 10 kW or less.

**NOTICE OF A PROCEEDING TO DETERMINE A JUST
AND REASONABLE RATE TO RECOVER THE COSTS
ASSOCIATED WITH EMBEDDED GENERATORS HAVING
A NAMEPLATE CAPACITY OF 10 KW OR LESS**

AND PROCEDURAL ORDER NO. 1

The Ontario Energy Board (the Board) has commenced a proceeding on its own motion to determine a just and reasonable rate to be charged by an electricity distributor for the recovery of costs associated with an embedded generator having a nameplate capacity of 10 kW or less (embedded micro generator) account that meets the eligibility requirements of the Ontario Power Authority's (OPA) microFIT program. It is the Board's intention that this service classification and associated rates will be added to the rate tariffs of every distributor.

Background

No Ontario distributor currently has a specific rate for embedded micro generators. Historically, the number of embedded micro generation facilities has been extremely limited and typically distributors have classified any embedded micro generator into whichever existing rate classification best matched its load characteristics.

The implementation of the OPA's proposed microFIT program is expected to lead to a significant increase in the number of embedded micro generators.

The Board anticipates that the microFIT program will be initiated by the OPA starting in September 2009, and that microFIT generators may look to access the distribution system very shortly thereafter.

In the Board's EB-2009-0303 Notice, issued August 5, 2009, the Board stated that it intended to initiate a separate proceeding to determine an appropriate service charge applicable to OPA-contracted embedded micro generators.

Establishment of a Service Classification and Interim Rate

The Board recognizes that there will be costs to the distributor associated with administering these embedded micro generation accounts, and considers it appropriate to assess these unique costs through a separate service classification and rate rather than using the rates developed for a load classification.

As the Board will be unable to set a final charge for the recovery of costs associated with the administration of micro generator accounts by the OPA's roll-out date for its microFIT program, the Board is ordering the establishment of a service classification and an interim rate for embedded micro generators for every rate regulated distributor. The definition of the service classification for the purpose of the interim rate is shown in Appendix A. The interim rate will be a fixed monthly charge equal to the distributor's existing residential monthly service charge. By creating this interim rate for the microFIT applications, the Board is allowing itself the flexibility to retroactively adjust the implementation date of any rate determined through a final order at the conclusion of the proceeding to the date of this notice. To be clear, the Board has made no determination on the ultimate implementation date of any new rate or rates, and it will receive submissions on this issue prior to making any final decision. The new rate is being created on an interim basis to allow for flexibility.

Process

The Board intends to proceed by way of a written hearing unless a party satisfies the Board that there is a good reason for not holding a written hearing. If you object to the Board holding a written hearing in this matter, you must provide written reasons why an oral hearing is necessary. Any submissions objecting to a written hearing must be received by the Board within **7 days** of the publication date of this Notice.

The timelines for submitting evidence, proposals and submissions is set out below. Additional Procedural Orders may be issued for this matter as necessary.

Participation

The Board has developed a draft Issues List for this proceeding (attached as Appendix B) and has identified a list of deemed intervenors in this proceeding (attached as Appendix C). Intervenors may participate in any of the process steps identified below.

Cost Awards

Cost awards will be available to eligible participants under section 30 of the *Ontario Energy Board Act, 1998* for their participation in this consultation. Costs awarded will be recovered from all rate-regulated electricity distributors based on their respective distribution revenues.

The Board will determine eligibility for costs in accordance with its *Practice Direction on Cost Awards*. Any person requesting cost eligibility must file with the Board a written submission to that effect within 14 days of the of the publication date of this Notice, identifying the nature of the person's interest in this process and the grounds on which the person believes that it is eligible for an award of costs (including addressing the Board's cost eligibility criteria as set out in section 3 of the Board's *Practice Direction on Cost Awards*).

All rate-regulated electricity distributors will be provided with an opportunity to object to any of the requests for cost award eligibility. If a distributor has any objections to any of the requests for cost eligibility, such objections must be filed with the Board within 21 days of the publication date of this Notice. The Board

will then make a final determination on the cost eligibility of the requesting parties.

THE BOARD ORDERS THAT:

1. Pursuant to its powers under s. 21(7) of the Ontario Energy Board Act, 1998, for every rate regulated electricity distributor, the Board hereby establishes a service classification for embedded micro generator accounts (as defined in Appendix A) and approves, on an interim basis, a fixed monthly service charge, the level of which will be equal to the distributor's existing residential monthly service charge.
2. Any intervenor that wishes to make comments on the draft Issues List shall file such submissions with the Board, and serve on every other intervenor, not later than **14 days** of the publication date of this Notice. After considering all comments, the Board will issue a final Issues List.
3. Any intervenor wishing to submit evidence and/or proposals for a rate relating to the issues on the Issues List, shall file such evidence and/or proposals by **14 days** of the publication date of the final Issues List.
4. Any intervenor or Board staff who wishes information on the evidence or proposal of another intervenor shall request the information by way of written interrogatories filed with the Board and served to the intervenor from whom the information is requested, and all other intervenors, on or before **21 days** after the publication date of the final Issues List (or as established through a Procedural Order).
5. Intervenors shall, no later than **35 days** after the publication date of the final Issues List, (or as established through a Procedural Order) file with the Board and serve on all other intervenors, a complete response to every interrogatory that it has received.
6. Intervenors or Board staff shall file with the Board, and serve on all other intervenors, their final submissions in this proceeding not later than **49 days** after the publication date of the final Issues List (or as established through a Procedural Order).

7. If an intervenor's or Board staff's final submissions make reference to the proposal or evidence of another intervenor, that intervenor may file with the Board, and serve on all other intervenors, a response to these submissions not later than **63 days** after the publication date of the final Issues List (or as established through a subsequent Procedural Order) .

All filings to the Board must quote file number EB-2009-0326, be made through the Board's web portal at www.errr.oeb.gov.on.ca, and also consist of two paper copies and one electronic copy in searchable/unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.oeb.gov.on.ca. If the web portal is not available you may email your document to BoardSec@oeb.gov.on.ca. Those who do not have internet access are required to submit all filings on a CD or diskette in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary and be received no later than 4:45 p.m. on the required date.

DATED at Toronto, September 21, 2009

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

APPENDIX A

Service Classification for Embedded Micro Generation Accounts

This classification applies to an electricity generation facility meeting the eligibility requirements of the Ontario Power Authority's microFIT program and connected to the distributor's distribution system. To be eligible for the microFIT program, the nameplate capacity of the generation facility can not be greater than 10 kW.

Draft Issues List for the examination and recovery of costs associated with an embedded generation facility within the microFIT program.

Service Classification

1. Is the description/definition for the embedded micro generation service classification shown in Appendix A appropriate? If not, what should be the description/definition of this service classification?

Treatment of non-microFIT applications

2. In that this initiative is in response to the introduction of the microFIT program, how should a distributor handle existing applications and installations?

Cost Elements to be Recovered

3. What cost elements should be used to establish the rate? Based on the Uniform System of Accounts, which specific accounts or components ought to be included in the development of the rate?

Rate Design

4. Should the approved rate be a uniform rate for all distributors, or should different distributors have different rates?
5. Should the costs be recovered through a fixed charge, a volumetric rate or a combination of the two? If there is to be a volumetric rate, what should be the basis for establishing the charge determinant? If there is to be a combination of fixed and volumetric, what should be the basis for the cost recovery split?

Implementation

6. What should the effective date be for any new rate or rates created by this proceeding? Does the incentive regulation framework pose any difficulties for implementation?

**Ontario Energy Board
EB-2009-0326**

LIST OF INTERVENORS

September 22, 2009

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Ontario Energy Board
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APPLICANT & LIST OF INTERVENORS

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Ontario Energy Board

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September 22, 2009

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Ontario Energy Board
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APPLICANT & LIST OF INTERVENORS

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September 22, 2009

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