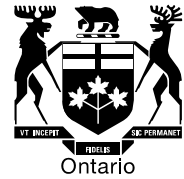


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BY E-MAIL

July 27, 2012

Attention: Ms. Kirsten Walli, Board Secretary

Dear Ms. Walli:

**Re: Board Staff Submission, Issues List
Hydro One Networks Inc. 2013 & 2014 Transmission Revenue Requirement
and Rates
Board File No. EB-2012-0031**

Please find attached the Board staff submission on the Issues List for this proceeding.

Sincerely,

Original Signed By

Harold Thiessen
Case Manager – EB-2012-0031
Senior Advisor - Applications

Attachment

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1988, c. 15 (Schedule B);

AND IN THE MATTER OF a review of an application filed by Hydro One Networks Inc. for an order or orders approving a transmission revenue requirement and rates and other charges for the transmission of electricity for 2013 and 2014.

BOARD STAFF SUBMISSION

Issues List

I INTRODUCTION

1. Hydro One Networks Inc. (“Hydro One”) filed an application, dated May 28, 2012, with the Ontario Energy Board under section 78 of the *Ontario Energy Board Act, 1998*, c.15, Schedule B (the “Act”), seeking approval for changes to its 2013 and 2014 transmission revenue requirement and for changes to the provincial uniform transmission rates charged for electricity transmission, to be effective January 1, 2013 and January 1, 2014.
2. Goldcorp Canada Ltd. and Goldcorp Inc. (collectively, “Goldcorp”) are intervenors in this proceeding.
3. On July 12, 2012, the Board issued Procedural Order No. 1 which, among other things, invited Hydro One and intervenors to make submissions on the draft issues list attached to the Procedural Order, and subsequently to respond to the submissions of other parties.
4. In response to Procedural Order No. 1, Goldcorp filed a letter with the Board on July 23, 2012 (the “July 23 Submission”) asking that the following be added to the draft issues list (the Proposed Interim Rate Issue):
 - 9.2 Should the Board establish an interim rate for Goldcorp in order to recover any bypass compensation due in an appropriate amount over the remaining life of the Red Lake Transformer Station (“RLTS”)?
5. Although Procedural Order No. 1 did not specifically make provision for the filing of submissions or responses by Board staff, Board staff respectfully requests leave of the Board to file these submissions, which are limited to the single issue of Goldcorp’s request to add the Proposed Interim Rate Issue to the issues list for this proceeding.
6. For the reasons set out below, Board staff submits that it is inappropriate for the Proposed Interim Rate Issue to be added to the issues list for this proceeding.

II SUBMISSIONS

A. *Background to the Request to add the Proposed Interim Rate Issue*

7. As the Board is aware, this is not the first time that the issue of Goldcorp's liability to pay bypass compensation in relation to the Red Lake Transformer Station ("RLTS") is before the Board. On October 17, 2011, Goldcorp filed an application with the Board seeking, among other things, an order under section 19 of the Act declaring that certain provisions of the *Transmission System Code* (the "TSC") are *ultra vires* the Act (the "Goldcorp Application") (EB-2011-0361). The impugned sections of the TSC were sections 4.1.2, 6.7.6, 6.7.7 and 11.2. These sections pertain to the payment of bypass compensation, as does the Proposed Interim Rate Issue.
8. On January 23, 2012, the Board issued a Decision with Reasons and Order in relation to certain threshold questions pertaining to the Goldcorp Application and to an application by another party that raised similar procedural issues in an unrelated context. For convenience of reference, that Decision with Reasons and Order is attached to these submissions as Appendix A. Among other things, the Decision with Reasons and Order sets out detail regarding an earlier proceeding (EB-2011-0106) in which Goldcorp was granted leave to construct the facilities in relation to which the bypass of the RLTS and the associated bypass compensation issue arises, as well as the Board's views with respect to the relationship between that proceeding and the Goldcorp Application.
9. In its Decision with Reasons and Order, the Board declined to hear the Goldcorp Application, and stated that "before it can proceed to address Goldcorp's concerns, Goldcorp must determine what form of application it wants to pursue". The Board then identified different options that Goldcorp might pursue if it wished to have its concerns heard. A request for an interim rate order made in the context of a Hydro One transmission rates case was not one of those options.
10. Goldcorp appealed the Decision with Reasons and Order to the Divisional Court. As part of its appeal, Goldcorp asked the Court to, among other things, hear and dispose of the *ultra vires* issue. On June 5, 2012, the Divisional Court issued its Endorsement dismissing Goldcorp's appeal.

B. This Proceeding is not the Appropriate Forum in Which to Hear the Proposed Interim Rate Issue

11. Board staff notes at the outset that, under the current regulatory framework, a rate order is not required in order for a transmitter to recover bypass compensation from a customer. Bypass compensation is recoverable by a transmitter under the terms of the TSC.
12. In its July 23 Submission, Goldcorp states that it is “not necessarily interested in challenging the TSC, rather the company is seeking a fair and transparent process to challenge the Hydro One’s Bypass Compensation calculation”.
13. It is not, in Board staff’s view, entirely clear from the July 23 Submission whether Goldcorp is alleging that Hydro One is seeking bypass compensation under circumstances other than those specifically permitted by the TSC, or that Hydro One has miscalculated the amount of bypass compensation (in other words, it has misapplied the methodology set out in the TSC), or both. In any case, however, Board staff submits that the appropriate means of addressing any dispute(s) of this nature (i.e., whether a particular case is one that is covered by the bypass compensation provisions of the TSC or whether the bypass compensation methodology set out in the TSC has been properly applied) is to have the matter addressed under the dispute resolution process described in section 13 of the TSC or in the connection agreement between the transmitter and its customer, as applicable. If Goldcorp is alleging that Hydro One is in non-compliance with the TSC, with which Hydro One must comply as a condition of licence, it may also make that known to the Board, which has internal processes in place for considering complaints that allege non-compliance by a regulated entity. These are avenues through which the concerns expressed in the July 23 Submission can be addressed on an expeditious basis and, importantly, in proper context.
14. In its July 23 Submission, Goldcorp also states that adding the Proposed Interim Rate Issue to the issues list would allow the Board to consider “whether it is reasonable for Hydro One to expect Goldcorp to pay bypass compensation under the circumstances and, if so, what the appropriate quantum should be, and whether compensation found due would be recovered over time in the interim rate”. It appears from the July 23 Submission that Goldcorp believes that the

benefits that it claims will result from the construction and operation of its new facilities line should be considered in determining any amount of bypass compensation that may be payable by it.

15. Board staff notes that the TSC is highly prescriptive as to how a transmitter is to calculate bypass compensation in any given case. In brief, the amount of bypass compensation is determined under section 6.7.7 of the TSC based on a calculation that involves the net book value of the bypassed facility, the bypassed capacity on the relevant connection facility and the normal supply capacity of the bypassed facility. The TSC does not permit a transmitter to calculate bypass compensation in another manner.¹
16. Board staff submits that the appropriate process for allowing Hydro One to calculate bypass compensation in a manner other than that prescribed by the TSC is an application to amend Hydro One's licence to exempt it from the mandatory application of the bypass compensation methodology set out in the TSC. Board staff notes that this is one of the options specifically identified in the Board's January 23, 2012 Decision with Reasons and Order issued in relation to the Goldcorp Application referred to above. Board staff also takes from Goldcorp's July 23 Submission that Goldcorp is not averse to this option ("[A]dding the Interim Rate Issue to the Draft Issues List in this proceeding would effectively be bringing [an application to amend Hydro One's licence]"). Again, Board staff submits that an application to amend Hydro One's licence is an avenue through which the concerns expressed in the July 23 Submission can be addressed on an expeditious basis and, importantly, in proper context.
17. Board staff submits that a transmission rates case is not an appropriate proceeding in which to hear matters pertaining to allegations of non-compliance by a transmitter or to matters pertaining to exemptions from the requirements of one of the Board's codes. Fundamentally, these are not rates issues.²

¹ For completeness, Board staff notes that section 6.7.7 of the TSC is subject to section 6.7.8, which states that where an economic evaluation is conducted on the basis of a load forecast, bypass compensation is not required during the economic evaluation period in relation to load that represents the customer's contracted capacity.

² Although arising under a different regulatory framework, in its December 2010 Decision and Order in respect of a rate application by Natural Resource Gas Limited (EB-2010-0018), the Board indicated that it would determine only those matters that impact rates, and would not make a determination on all costs that were in dispute between Natural Resource Gas Limited and a third party in respect of a pipeline built to serve that third party.

18. In its July 23 Submission, Goldcorp refers to the provision of the February 2012 Connection and Cost Recovery Agreement (“CCRA”) between Hydro One and Goldcorp that speaks to bypass compensation. Specifically, the CCRA contains the following provision under the heading “Special Circumstances”:

The Customer shall pay bypass compensation in accordance with the methodology set out in Section 6.7 of the Transmission System Code unless a final order of the OEB or a court of competent jurisdiction states that the Customer shall not be required to pay the said bypass compensation.

19. Goldcorp states that the Board will, by adding the Proposed Interim Rate Issue to the issues list in this proceeding, “be able to provide a final order that would satisfy the terms of Goldcorp’s CCRA with Hydro One”.
20. Board staff submits that the Board is under no obligation to “satisfy the terms” of the CCRA, which is not binding on the Board. Bypass compensation is payable under the circumstances set out in the TSC. No Board order is required to trigger an obligation by a transmitter to recover bypass compensation under those circumstances, and the parties to a CCRA cannot purport to make that recovery contingent on the issuance of a Board order.

All of which is respectfully submitted.