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BY EMAIL and RESS

October 17, 2012

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
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Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2012-0031– Hydro One Transmission – Notice of Motion

Please find attached a Notice of Motion filed on behalf of the School Energy Coalition (“SEC”). The motion seeks an order requiring Hydro One Networks Inc. to provide information and/or documents requested in certain interrogatories posed by SEC, and requested again at the Technical Conference.

Yours very truly,
Jay Shepherd P.C.

Original signed by

Mark Rubenstein

cc: Applicant and Intervenors (by email)

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

AND IN THE MATTER OF an Application by Hydro One
Networks Inc. for an Order or Orders approving just and reasonable
rates and other service charges for the transmission of electricity,
effective as of January 1, 2013 and January 1, 2014.

NOTICE OF MOTION

The School Energy Coalition (“SEC”) will make a motion to the Ontario Energy Board (“the Board”) at its offices at 2300 Yonge Street, Toronto, on a date and at a time to be fixed by the Board.

PROPOSED METHOD OF HEARING

SEC proposes that the motion be dealt with in writing.

THE MOTION IS FOR:

1. An order requiring Hydro One Networks Inc. to provide the information requested in SEC Interrogatories #3, #24 and #27.
2. Such further and other relief as the SEC may request and the Board may grant.

THE GROUNDS FOR THE MOTION ARE:

1. The Board issued a Notice of Proceeding on an application by Hydro One Networks Inc. (“HONI”) pursuant to section 78 of the *Ontario Energy Board Act, 1998* for an order or orders approving just and reasonable rates and other charges for electricity transmission to be effective January 1, 2013 and January 1, 2014.
2. SEC is an intervenor in this proceeding.

3. Pursuant to Procedural Order #1 issued July 12, 2012, SEC delivered written interrogatories to HONI. SEC sought various information and material that were in addition to HONI's evidence, and are relevant to the proceeding. HONI refused to provide the information requested in SEC Interrogatories #3, #24 and #27.
4. Only the refusal of SEC Interrogatory #3 is based on the issue of relevance. HONI's refusals regarding SEC Interrogatory #3 and #27 are essentially questions of confidentiality.
5. During the Technical Conference convened on October 12, 2012, SEC sought full and complete responses to the disputed interrogatories. HONI once again refused to provide the requested information.

Interrogatory #3

6. SEC Interrogatory #3 and the response read as follows:¹

Interrogatory

[A-13-2/p.28/ss.4.3.2]

Please provide the Canadian Electrical Association survey information referenced.

Response

The CEA survey information is illustrated in Figures 4.10, 4.11, and 4.12 in "red color" lines and identified as "Average" (i.e. CEA Average), and in Table 4.2 (Section 4.3.2, page 29) in the 10-Year Transmission Asset Management Outlook in Exhibit A, Tab 13, Schedule 2.

Hydro One is not able to provide the Canadian Electricity Association (CEA) – Committee On Performance Excellence (COPE) survey information, since this will breach the CEA-Hydro One confidentiality agreement.

Hydro One specifically asked the CEA if Hydro One could release the CEA survey, and Hydro One was reminded by the CEA of the confidentiality agreement provisions:

Only summaries of data may be used to show industry trends, provided they do not in any way identify other Member utilities; and CEA-COPE committee membership shall be withdrawn if the Steering Committee determines a Member has breached confidentiality of the committee.

If Hydro One was no longer able to be a CEA-COPE member, such industry trending information would no longer be available to Hydro One or the Board in the future.

¹ Ex. I/ Tab 2/ Schedule 9.03 SEC 3 (see Appendix)

7. In its evidence, HONI relies on the Canadian Electricity Association (CEA) – Committee On Performance Excellence (COPE) survey for the purposes of demonstrating cost effectiveness compared to other Canadian utilities.² It also relies on the CEA-COPE survey for the purposes of demonstrating productivity performance.³ The only data that HONI has provided from the survey is its own results on various metrics compared to the survey's average.
8. SEC submits that the Board and intervenors cannot properly scrutinize and assess the information HONI has provided without review all the information contained in the CEA-COPE survey. The full document will allow the Board and intervenors to understand how the survey was conducted, which other utilities were included in the survey and what ranges of results were obtained. Without that information, the evidence to date is not complete.
9. In HONI's refusal to produce the information requested in SEC Interrogatory #3, it has relied on a confidentiality agreement between itself and CEA, which it claims a breach of may cause its membership to be withdrawn.
10. At the Technical Conference, counsel for SEC reiterated its request for the information. HONI maintained its position that it will not produce the CEA-COPE survey, even on a confidential basis.⁴

MR. RUBENSTEIN: Perfect.

My second question is SEC 3; this is I2, 9.03. This is with respect to the COPE survey.

You said you won't be able to provide the survey because of breach of a CEA/Hydro One confidentiality agreement. So I am going to ask again if you could provide that, and you can make a claim that it should be on a confidential basis, but I would state -- and I have a number of questions similar to this, where, I mean, the Board has in the past -- and it has made provisions for confidentiality, but it has ordered in the past documents to be produced even if there is a confidentiality agreement between the utility and a third party, because the utilities need to be aware that, you know, that they should be reasonably expected to be able to provide this information in the regulatory process.

The Board has ordered in the 2010 Guelph proceeding and the Hydro One EWT proceeding similar sort of confidential documents between Hydro One and the third party.

So I am going to ask again. Will you provide this survey?

² Ex. A/ Tab13/ Schedule 2/ p.28/ ss.4.3.2

³ Ex. A/ Tab 17/ Schedule 1/ p.12

⁴ Technical Conference Transcript, p.128-29

MS. VARJACIC: No. It is quite clear. It is in the undertaking response right in front of you that the membership can be withdrawn if the steering committee members -- so unless the Board orders it, the answer is no.

11. SEC submits that if HONI is seeking to rely on the information contained in the CEA-COPE survey, than it must disclose the entire survey to the Board and intervenors.

12. A confidentiality agreement between a utility and a third-party is not a valid reason for non-disclosure. The Board has made it clear that it will make any final determinations regarding confidentiality treatment of documents germane to its process in the possession of a regulated utility. As the Board stated in EB-2011-0123 addressing a similar argument:

Utilities, such as Guelph Hydro must be cognizant of this when entering into confidentiality agreements with third parties that extend to the provision of information and documents that the utility knows or ought to know may reasonably be required to be produced as part of the regulatory process.⁵

13. The Board in its *Decision on Phase 1 Partial Decision and Order: Production of Documents*, wrote regarding similar argument made by HONI in the East-West Tie Designation proceeding (EB-2011-0140):

As set out in the Board's *Practice Direction on Confidential Filings* (the "*Practice Direction*"), it is the Board's general policy that all records should be open for inspection by any person unless disclosure of the record is prohibited by law. This reflects the Board's view that its proceedings should be open, transparent and accessible. The *Practice Direction* seeks to balance these objectives with the need to protect information properly designated as confidential. In the context of this proceeding, confidentiality concerns should not prevent access by the Board and parties to this proceeding to information in the possession of HONI and GLPT relevant to the development of the East-West Tie line. The fairness of the process is a primary consideration in this case. **Moreover, the Board is not bound by confidentiality agreements entered into by the utilities it regulates, and regulated utilities may be ordered to produce documents that are the subject of such agreements. The *Practice Direction* provides adequate mechanisms for the protection of confidential material.**⁶ [emphasis added]

14. SEC submits that the Board should order HONI to provide the information requested in SEC Interrogatory #3. HONI would still have the option for requesting that the information be filed confidentiality pursuant to the Board's *Practice Direction on Confidential Filings*.

⁵ *Decision on Confidentiality* (EB-2011-0123), dated August 19, 2011 at p. 3

⁶ *Decision on Phase 1 Partial Decision and Order: Production of Documents* (EB-2011-0140), dated June 14, 2012, at p.3

Interrogatory #24

15. SEC Interrogatory #23 and the response read as follows:⁷

Interrogatory

For all major projects planned for 2012, 2013 and 2014 please provide the most updated expected in-service dates (the expected month that the project will be in-service).

Response

The update, filed August 15, 2012, reflects the most updated expected in-service dates. Please refer to the updated exhibits and ISDs.

Hydro One will not provide the exact month for all the projects that will be in-service since that level of information is irrelevant to the calculation of rate base for an electric utility which is based upon a mid-year average.

16. HONI refused to provide the information on the basis that in their opinion the month of the asset in-service are not relevant to the rate base calculation which is based on mid-year averages.

17. At the Technical Conference, counsel to the SEC reiterated the request for the information sought in the SEC Interrogatory #24 and further explained its relevance. HONI once again refused to provide the information.⁸

MR. RUBENSTEIN: Thank you very much.

If I could take you to SEC 24, you state that you will not answer the question. I was wondering -- again, I will ask you if you can provide a response to the interrogatory.

MR. COWAN: You're talking about providing the exact month of in-service?

MR. RUBENSTEIN: Yes.

MR. COWAN: The reason we said we wouldn't answer that is that it is just totally immaterial. Electrical utilities have rate base calculated on a mid-year average, unlike the gas utilities that use average or the monthly averages. So whether it is April or whether it is June or whether it is December, there is no difference in impact of the month.

So we were struggling with what relevance a question of that nature had.

MR. RUBENSTEIN: But I think you could agree with me that, say, if a planned in-service date is December versus July and there is a one-month delay, that could lead to a rate impact.

⁷ Ex. I/ Tab 2/ Schedule 9.01 SEC 24 (see Appendix)

⁸ Technical Conference Transcript p.135-36

MR. COWAN: It could. And conversely, if it was January and it is moved up to December, the opposite would take place. And as we have all forecast, there will be ups and downs, and one-month slippage and one-month advancement. So it evens out over time.

MR. RUBENSTEIN: So that is a refusal?

MR. COWAN: Yes, it is.

18. SEC submits that the information requested is relevant to the Board's understanding of Issue 11, "[a]re the amounts proposed for rate base in 2013 and 2014 appropriate?" The information would provide the Board an understanding about the potential rate base implications of a delay of the in-service date of HONI's major transmission projects. As an example, a delay of a few months in a project schedule to go in-service in the latter part of a year will have a rate base impact while the same delay for a project scheduled to go in-service at any other time would not. HONI's in-service additions are projected to be \$1,321 million for the 2012 Bridge Year, and \$945.5 million and \$937.4 million respectively for the 2013 and 2014 Test Years.⁹ The rate implications of a delay may be significant.

19. SEC submits this information is relevant and should be produced as requested.

Interrogatory #27

20. SEC Interrogatory #27 and the response read as follows:¹⁰

Interrogatory

[A-15-1/p.2]

Please provide a copy of the Global Insight's February 2012 forecast.

Response

It is the proprietary property of IHS Global Insight and therefore cannot be provided.

21. IHS Global Insight's February 2012 forecast (also referred to in the material as the IHS Global Insight Power Planner) is the basis for a number of cost escalation assumptions made by HONI in its evidence. The IHS Global Insight forecast is the sole basis of HONI's Transmission Cost Escalation for Construction and for Operations & Maintenance calculations.¹¹ While HONI in

⁹ Ex. D1/ Tab 1/ Schedule 2/ p.1/ Table 1

¹⁰ Ex. I/ Tab 2/ Schedule 9.03 SEC 27 (see Appendix)

¹¹ Ex. A/ Tab 15/ Schedule 1/p.2

its evidence has provided the escalation percentages, it has refused to provide the document that underlies it.

22. If HONI is seeking to rely on the information contained in the Global Insight's February 2012 survey, then it must disclose the document to the Board and intervenors. SEC submits that the Board and intervenors require a copy of the IHS Global Insight forecast to have a proper understanding of the methodology behind the Transmission Cost Escalation for Construction and for Operations & Maintenance calculations that are central to HONI's application.
23. HONI has refused to provide the information on the basis that it is proprietary property of IHS Global Insight. At the Technical Conference, counsel for SEC sought again requested the information sought in SE Interrogatory #27 and inquired about HONI's willingness to provide it on a confidential basis.¹² HONI again refused.

MR. RUBENSTEIN: Okay. So then...

So you have refused to provide it [referring to the IHS Global Insight February 2012 Forecast], and I am going to ask, again, much the same thing as I asked earlier with the survey; I will ask again if you can provide that information, since you are relying on it.

MR. BUT: We have the same answer, because the consultant said those are proprietary informations, and they would not want that to be circulated publicly.

MR. RUBENSTEIN: Even confidentially? You won't provide it confidentially?

MR. BUT: That would be the proprietary property.

24. For the same reasons as outlined with respect to Interrogatory #3, the Board is not bound by confidentiality agreements between HONI and third-parties. The fact that the information is proprietary property of IHS is only relevant to its potential confidentiality treatment under the Board's rules. HONI, like any other utility, has the ability to seek to have any document it is asked to produce, be provided on a confidential basis pursuant to the *Practice Direction on Confidential Filings*.
25. SEC submits that the Board should order HONI to provide the information requested in SEC Interrogatory #27.

¹² Technical Conference Transcript p.137

THE FOLLOWING DOCUMENTARY MATERIAL AND EVIDENCE WILL BE RELIED UPON AT THE HEARING OF THE MOTION:

1. The Record in EB-2012-0031, including Interrogatory Responses and Technical Conference transcript.
2. Such further and other material as counsel may advise and the Board may permit.

October 16, 2012

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AND TO: Intervenors

Appendix

1 **School Energy Coalition (SEC) INTERROGATORY #3 List 1**

2
3 **Issue 2 Is the overall increase in 2013 and 2014 revenue requirement**
4 **reasonable?**

5
6 **Interrogatory**

7
8 [A-13-2/p.28/ss.4.3.2]

9 Please provide the Canadian Electrical Association survey information referenced.

10
11
12 **Response**

13
14 The CEA survey information is illustrated in Figures 4.10, 4.11, and 4.12 in “red color”
15 lines and identified as “Average” (i.e. CEA Average), and in Table 4.2 (Section 4.3.2,
16 page 29) in the 10-Year Transmission Asset Management Outlook in Exhibit A, Tab 13,
17 Schedule 2.

18
19 Hydro One is not able to provide the Canadian Electricity Association (CEA) –
20 Committee On Performance Excellence (COPE) survey information, since this will
21 breach the CEA-Hydro One confidentiality agreement.

22
23 Hydro One specifically asked the CEA if Hydro One could release the CEA survey, and
24 Hydro One was reminded by the CEA of the confidentiality agreement provisions:

- 25
26 • Only summaries of data may be used to show industry trends, provided they do not in
27 any way identify other Member utilities; and
28 • CEA-COPE committee membership shall be withdrawn if the Steering Committee
29 determines a Member has breached confidentiality of the committee.

30
31 If Hydro One was no longer able to be a CEA-COPE member, such industry trending
32 information would no longer be available to Hydro One or the Board in the future.

1 **School Energy Coalition (SEC) INTERROGATORY #24 List 1**

2
3 **Issue 11 Are the amounts proposed for rate base in 2013 and 2014**
4 **appropriate?**

5
6 **Interrogatory**

7
8 For all major projects planned for 2012, 2013 and 2014 please provide the most updated
9 expected in-service dates (the expected month that the project will be in-service).

10
11 **Response**

12
13 The update, filed August 15, 2012, reflects the most updated expected in-service dates.
14 Please refer to the updated exhibits and ISDs.

15
16 Hydro One will not provide the exact month for all the projects that will be in-service
17 since that level of information is irrelevant to the calculation of rate base for an electric
18 utility which is based upon a mid-year average.

