



McCarthy Tétrault LLP
Box 48, Suite 5300
Toronto Dominion Bank Tower
Toronto ON M5K 1E6
Canada
Tel: 416-362-1812
Fax: 416-868-0673

George Vegh
Direct Line: 416 601-7709
Direct Fax: 416 868-0673
Email: gvegh@mccarthy.ca

January 22, 2013

VIA RESS AND COURIER

Ontario Energy Board
2300 Yonge Street
P.O. Box 2319
Suite 2700
Toronto, ON M4P 1E4

**Attention: Ms Kirsten Walli
Board Secretary**

Dear Ms. Walli:

**Re: Hydro One Networks Inc.
Change to Electricity Transmission Revenue Requirement and Rates
HQ Energy Marketing Inc. ("HQEM")
Board File No: EB-2012-0031**

Pursuant to Procedural Order No. 8, please find attached the submissions of HQEM with respect to the process for the oral hearing of the concurrent expert witness panel.

Sincerely,

signed in the original

George Vegh

- c. Mr. Matthieu Plante, Hydro Québec
- Mr. Yannick Vennes, Hydro Québec
- Ms. H el ene Cossette, Hydro Qu ebec
- Mr. Michael Roger, Elenchus
- Mr. D.H. Rogers, Q.C., Counsel to the Applicant (e-mail)
- Mr. Pasquale Catalano, Regulatory Affairs, Hydro One Networks (e-mail)
- All Interested Parties (e-mail)

ONTARIO ENERGY BOARD

IN THE MATTER OF the Ontario Energy Board Act, 1998, S.O. 1998, c. 15, Schedule B, as amended;

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

SUBMISSIONS OF HQ ENERGY MARKETING INC. (“HQEM”) REGARDING PROCEDURE FOR HEARING THE CONCURRENT EXPERT WITNESS PANEL

1. These submissions are made by HQ Energy Marketing Inc. (“HQEM”) in response to the Board’s direction in Procedural Order No. 8 “the oral hearing of the concurrent expert witness panel.” HQEM’s submission is that the evidence of Elenchus Research Associates Inc. (“Elenchus”) witness panel be provided to the Board as independent evidence and not as part of the concurrent witness panel. Presenting the evidence in this way permits the Board to obtain all of the evidence in the format that it finds helpful and at the same time is consistent with the objectives of holding a concurrent expert witness panel.

The Proceedings to Date

2. Evidence has been filed by three experts in this proceeding: Elenchus, Navigant Economics (“Navigant”) and Charles River Associates (“CRA”).
3. In Procedural Order No. 8, the Board directed all of the experts to participate in Experts’ Conference. According to that order:

“The purpose of the Experts’ Conference is to identify, scope, and narrow the relevant sub-issues, identify from the experts’

perspective the important points on which their views differ and are in agreement, and prepare a joint written statement (the “Joint Written Statement”) to be filed as evidence at the oral hearing of this matter.”

4. The Joint Written Statement sets out in detail the areas of agreement and disagreement between Navigant and CRA. With respect to Elenchus’ evidence, the Joint Written Statement provides in its entirety:

“Elenchus’ views are that Generally Accepted Regulatory Principles should be used by the Ontario Energy Board in establishing the ETS tariff in Ontario. A main criterion in these principles is cost causality. Should the OEB depart from cost causality while setting the ETS tariff, the reason for such departure should be provided, the amount of the subsidy to domestic customers should be established and clearly stated.

Navigant and CRA have not provided evidence or an opinion on what are Generally Accepted Regulatory Principles or on how they would apply in this case.” (p.4)

5. As a result, there are no differences among the experts on the topics addressed in the Elenchus Evidence.

The Purpose of Concurrent Witness Panel

6. The Board has adopted the process of using a concurrent witness panel. This process allows the Board to effectively and efficiently manage the receipt of expert evidence so that differences between them do not interfere with the Board’s understanding and application of their evidence. The purpose of concurrent witness panels has been described as follows:¹

“Basically, concurrent evidence (as known as the sobriquet, ‘hot tub’) is a civil procedure employed when parties have secured the services of experts and **those experts disagree about one or more issues pertinent to the resolution of a dispute.**”

7. Several commentators have noted that receiving expert evidence while the experts are on the same panel permits better understanding of the issues between them:

¹ Gary Edmond, “Merton and the Hot Tub: Scientific Conventions and Expert Evidence in Australian Civil Procedure” (2009), 72 Law & Contemporary Problems 159 at p. 162 (Emphasis Added).

“The ‘hot tub’ offers the potential, in many situations call for evidence, of a much more satisfactory experience of expert evidence for all involved. It enables each expert to concentrate on **the real issues between them.**”²

“As far as the decision-maker is concerned, my experience is that because of the opportunity to observe the experts in conversation with each other **about the matter**, together with the ability to ask and answer each others questions, the capacity of the judge to decide which expert to accept is greatly enhanced.”³

“Concurrent evidence can have a number of virtues over the traditional process:

- The evidence **on one topic** is all given at the same time.”⁴

The Appropriateness of a Concurrent Witnesses Panel in this Case

8. As indicated, none of the experts take issue with Elenchus’ expert evidence. Further, Elenchus has not taken issue with any of the expert evidence of Navigant and CRA. As a result, the rationale for a concurrent witness panel does not apply with respect to that evidence.
9. Further, having Elenchus appear on the Concurrent Witness panel will cause considerable unnecessary expense. As appears from the Experts’ Report, the issues between Navigant and CRA are considerable. It may take considerable time for their evidence to be heard. It would add expense and resources for the Elenchus to sit as an observer the discussion between the Navigant and CRA experts, while having little to add to that discussion.

² Steven Rares, “Using the ‘Hot Tub’ – How Concurrent Expert Evidence Aids Understanding Issues”, Paper Presented to New South Wales Bar Association Continuing Professional Development Seminar, August 23, 2010, at p. 3 (Emphasis Added).

³ Gary Edmond, “Merton and the Hot Tub: Scientific Conventions and Expert Evidence in Australian Civil Procedure” (2009), 72 Law & Contemporary Problems 159 at p. 167, quoting from Peter McClellan, Chief Judge at Common Law, Supreme Court of New South Wales (Emphasis Added).

⁴ Gary Edmond, “Merton and the Hot Tub: Scientific Conventions and Expert Evidence in Australian Civil Procedure” (2009), 72 Law & Contemporary Problems 159 at p. 168, quoting from Gary Downes, Judge of the Federal Court of Australia (Emphasis Added).

10. For the foregoing reason, HQEM respectfully submits the evidence of the Elenchus panel be provided to the Board as independent evidence and not as part of the concurrent witness panel.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated: January 22, 2013

George Vegh
McCarthy Tétrault LLP
Telephone 416-601-7709
Email: gvegh@mccarthy.ca
Counsel for HQEM