



EB-2012-0031

IN THE MATTER OF the *Ontario Energy Board Act, 1998*,
S. O. 1998, 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

PROCEDURE FOR THE HEARING OF THE CONCURRENT EXPERT WITNESS PANEL

January 22, 2013

Hydro One Networks Inc. ("Hydro One") filed an application, dated May 28, 2012, with the Ontario Energy Board (the "Board") under section 78 of the *Ontario Energy Board Act, 1998*, c.15, Schedule B, 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. The Board assigned File Number EB-2012-0031 to the application.

The following experts' reports and evidence was filed on behalf of some of the parties:

- 1) The Export Transmission Service ("ETS")_Tariff Study by Charles Rivers Associates ("CRA") dated May 16, 2012 filed by Hydro One and commissioned by the intervenor IESO;
- 2) The ETS Tariff Study – Review of Rates in Neighbouring Jurisdictions by CRA dated May 16, 2012, filed in response to Board staff interrogatories;

- 3) The Ontario Cost Allocation and Export Tariff Survey evidence by Elenchus dated October 1, 2012 filed on behalf of the intervenor HQ Energy Marketing Inc. (“HQEM”);
- 4) The Evaluation of the Export Tariff evidence by Cliff Hamal (Navigant) dated October 1, 2012 on behalf of the intervenor APPrO;
- 5) The evidence of Marc-Andre Laurin (Brookfield Energy Marketing) dated October 1, 2012 on behalf of APPrO.

A Technical Conference was conducted on October 12, 2012 which included, among others, the following witness panel on behalf of Hydro One: Steve Dorey (CRA), Ira Shavel (CRA) and Darren Finkbeiner (IESO).

A Settlement Conference was held from October 23 to 26, 2012. Parties at the Settlement Conference achieved settlement on all but one issue from the approved Issues List: Issue #23: “What is the appropriate level for Export Transmission Rates in Ontario?”

In Procedural Order No. 8, issued on November 15, 2012, the Board established a process to address the remaining unsettled issue, set dates for an Experts’ Conference and related procedural steps and also set dates for an oral hearing of the unsettled issue on January 28 and 29, 2013.

In accordance with Procedural Order No. 8, a facilitated Experts’ Conference was held on December 12 and 13, 2012 and a joint expert statement was filed with the Board on January 16, 2013 (“Joint Expert Statement”). Procedural Order No. 8 also provided for parties to file submissions with respect to the process for the hearing of the concurrent expert witness panel by January 22, 2013.

Board staff offers the following brief submission with respect to the procedure for the Oral Hearing of Concurrent Expert Evidence.

Submissions of Board Staff

A. General Process

Board staff submits that the process followed by the Board in the Enbridge Gas Distribution case EB-2011-0354 (“Enbridge Case”), set out in the Decision on Procedure for Oral Hearing of Concurrent Expert Evidence dated November 15, 2012 (the “Enbridge Procedure Decision”) is generally appropriate for this proceeding. This would include, with some modification, Steps 1 through 7 as found on pages 4 – 6 of the Enbridge Procedure Decision, namely:

1. The Board would swear the expert witnesses.
2. The witnesses will be examined for the purposes of qualifying them as experts in the relevant area. The CRA witnesses would go first, followed by the Navigant and Elenchus witnesses
3. Each of the experts would adopt their evidence filed individually and concurrently and advise of any errors or other similar issues.
4. Each expert (or team of experts) will be given 30 minutes to make an opening statement, in lieu of an examination in chief conducted by counsel. In the opening statement the experts will be expected to summarize their own evidence, summarize their understanding of the evidence of other expert(s) and highlight the main areas of disagreement, including disagreements of fact, methodology, and opinion that are relevant to the resolution by this Board of the issue. The CRA expert witnesses will go first, followed by the Navigant and Elenchus witnesses.
5. Each of the experts or team of experts will be given an opportunity (at their option) to question the opposing expert(s). The purpose of this questioning is to enable further clarification of the major differences in fact, methodology, and opinion that are relevant to the resolution by the Board of this issue. This is not intended to be a cross-examination process and it should not preclude cross examination by counsel. The CRA expert(s) will be the first to ask questions, followed by the Navigant and Elenchus witnesses. Each expert will have 30 minutes to question the opposing expert(s).

6. Each party and Board staff will have an opportunity to cross-examine the experts as follows:

- Parties that have sponsored one or more experts will be expected to address their questions only to the opposing expert(s);
- The Board panel will interject to provide an opportunity for the expert that is not currently being questioned to respond to the particular line of questioning or the particular answers provided as and when the Board determines that there is a logical break in the questioning or when the Board is interested in hearing the other expert's view;
- The CRA expert witnesses will be subject to cross-examination first, with Hydro One's and/or IESO's counsel having an opportunity for re-examination.
- The Navigant witness will be subject to cross-examination next and counsel for APPrO will then re-examine the witness, if re-examination is necessary;
- The Elenchus witness will be subject to cross-examination and counsel for HQEM will then re-examine the witness.
- On any re-examination, the Board panel may ask the expert(s) that was not being re-examined to respond to one or more aspects of the re-examination.
- Although the Board would allow all parties and intervenors to cross-examine the expert witnesses, those intervenors that have not sponsored an expert witness should coordinate their efforts so that there is minimal duplication in cross examinations. The parties are requested to provide Board staff with an agreed order of cross-examination in advance of the hearing.

7. The Board panel, as is customary in Board proceedings, would ask questions at any time during the proceeding and may intervene with respect to procedural or other issues in order to most appropriately oversee and manage the proceeding so that it is fair, and to elicit the information it needs in respect of the issues to be decided.

B. Alternate Brookfield Witness

In a letter to the Board dated January 18, 2013 the Association of Power Producers of Ontario ('APPrO'), noting the unavailability of the original witness, Mr. Laurin on the scheduled hearing dates, indicated that he could be replaced by Mr. Richard Bordeleau (Senior Vice-President, Trading, Brookfield Energy Marketing LP.) Mr. Bordeleau could adopt Mr. Laurin's evidence and be available for cross examination. Board staff supports this request as a practical and effective solution to the unavailability of Mr. Laurin.

C. IESO Witness Mr. Darren Finkbeiner

Board staff notes that Mr. Finkbeiner, Manager of Market Development at the IESO, appeared as a witness with the CRA expert witnesses at the Technical Conference. In the Technical Conference, Mr. Finkbeiner provided information on the IESO administered markets and their operations with respect to the ETS rate. Board staff submits that Mr. Finkbeiner's presence at the Oral Hearing would be of assistance to intervenors and the Board panel, if questions arise to which Mr. Finkbeiner could respond and which the expert witnesses are unable to address.

D. Witness Panel Configuration

In its January 18, 2013 submission to the Board, at pages 9 and 10, APPrO proposes certain witness panel compositions. Board staff notes that, in the Enbridge Procedure Decision, the Board considered a request by the applicant, Enbridge, to have its expert witnesses give evidence on a panel together with Enbridge's company witness, *in addition to their evidence given as part of the concurrent expert witness panel*. The Board decided, at page 4 of the Enbridge Procedure Decision that it would allow the Enbridge expert witness to testify *only as part of the concurrent expert witness panel*.

Board staff submits that the first panel should include the concurrent experts who were the principal authors of the Joint Expert Statement and that cross examination of the concurrent expert panel should include all parties who wish to cross examine, and not just counsel for Hydro One (IESO) and APPrO.

Board staff submits that Mr. Finkbeiner should be available as a separate witness and not part of an expert panel, to be examined by counsel for all parties and the hearing. Similarly, Mr. Bordeleau (Brookfield) should sit as a separate witness to be examined by counsel for all parties and the hearing panel.

- All of which is respectfully submitted. -