



EB-2013-0053

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

AND IN THE MATTER OF an application by Hydro One
Networks Inc. for an order or orders pursuant to section 92
of the *Ontario Energy Board Act, 1998* for Leave to
Construct upgraded electricity Transmission Line Facilities
in the Kitchener-Waterloo-Cambridge-Guelph area.

BEFORE: Paula Conboy
Presiding Member

Emad Elsayed
Member

July 08, 2013

**DECISION AND ORDER ON MOTION
AND PROCEDURAL ORDER NO. 4**

Background

Hydro One Networks Inc. (“Hydro One”) filed an application on March 11, 2013, with the Ontario Energy Board (the “Board”) under section 92 of the *Ontario Energy Board Act, 1998* (the “Act”). Hydro One has applied for an order of the Board granting leave to upgrade existing electricity transmission line facilities (the “Project”).

The Board issued a Notice of Application and Written Hearing on April 1, 2013.

The Board issued Procedural Order No. 1 on April 26, 2013, which set out the intervenors in the proceeding and the schedule for filing interrogatories and responses to interrogatories.

The Independent Electricity System Operator, the Ontario Power Authority (the “OPA”), Cambridge and North Dumfries Hydro Inc., Kitchener-Wilmot Hydro Inc., Waterloo North Hydro Inc. and Environmental Defence requested intervenor status, which was granted by the Board.

Pursuant to Procedural Order No. 1, Hydro One filed responses to interrogatories of Board staff and Environmental Defence on May 16, 2013.

On May 21, 2013, the Board issued Procedural Order No. 2, which set out the schedule for filing intervenor evidence, interrogatories on intervenor evidence and the schedule for filing arguments.

On May 22, 2013, Environmental Defence filed a letter with the Board advising that it was seeking more complete responses from Hydro One with respect to certain interrogatories and that it may seek a revision to the case schedule if a motion is ultimately necessary.

On May 24, 2013, Hydro One filed a letter with the Board indicating that it was providing an excel spreadsheet that was filed in response to Environmental Defence interrogatory No. 2. Hydro One also stated that it was not intending to provide any further responses to the other interrogatories of Environmental Defence.

On May 31, 2013, Environmental Defence filed a Notice of Motion in relation to the adequacy of the responses provided by Hydro One to certain interrogatories. Specifically, Environmental Defence is seeking an order of the Board directing Hydro

One and/or the OPA to provide “revised responses” that are “full and adequate” to the following interrogatories: 1, 5 (a), 10 (c) and (d), 22(b), 26(a) and (b), 29(b), 31, and 40 (b). Only interrogatory no. 31 was initially responded to by Hydro One. The responses to all the other interrogatories were provided by the OPA.

The Board issued Procedural Order No. 3 on June 5, 2013 which set the date for an oral hearing on the Motion and the schedule for filing motion materials.

The Motion was heard orally on June 18, 2013.

Board’s Rules of Practice and Procedure – Interrogatory Responses

Rules 28 and 29 the Board's *Rules of Practice and Procedure* inform the Board's process with respect to the Interrogatories.

Rule 28 establishes that the purpose of interrogatories is to clarify evidence, simplify the issues, permit a full understanding of the matters to be considered, as well as expedite the proceeding.

Rule 29 sets out the requirements for responses, and provides for a refusal to answer in circumstances where the requested response cannot be provided with reasonable effort, or where the question is considered to be not relevant to the issues established in the case.¹

Procedural Order No. 1 further clarified the purpose of interrogatories: “Board staff and intervenors who wish information and material from the Applicant that is in addition to Hydro One’s pre-filed evidence with the Board, and that is relevant to the hearing, shall request it by written interrogatories ...”

If a party refuses to answer an interrogatory because the interrogatory is not relevant, the party must set out specific reasons in support of that contention. Similarly, in refusing to answer an interrogatory because the party contends that the information necessary to provide an answer is not available or cannot be provided with reasonable effort, the party must set out the reasons for the unavailability of such information, as well as any alternative available information which may help with the response. In other words, the party must explain why a response cannot be given. It is not sufficient to simply refuse to answer the interrogatory.

¹ Decision and Order in EB-2005-0520 dated May 11, 2006, p. 3

In summary, in order to determine whether to compel a party to respond to an interrogatory, the Board is guided by the principles of relevance and proportionality. With respect to relevance, the Board requires the production of responses that are relevant to one or more of the issues in this proceeding. With respect to proportionality, the Board considers the time and resources that may be required to produce the responses relative to the probative value of the evidence that is ultimately expected to be produced².

The paramount consideration for the Board is to have available to it the information it requires to be able, at the end of the hearing process, to make a well-reasoned and properly informed decision on the application³.

Position of Parties and Board Findings

Interrogatory No. 1 and Interrogatory No. 31

Interrogatory no. 1 requests historical data on total peak demand and annual demand in the Kitchener-Waterloo-Cambridge-Guelph (“KWCG”) area. At the hearing, Environmental Defence acknowledged⁴ that it now has the information it needs and, therefore, no decision is required.

Interrogatory No. 31 requests Hydro One’s load forecast for the 6 subsystems in the KWCG area as well as the studies and analyses underlying that forecast. Specifically, interrogatory no. 31 states:

- (a) Please provide Hydro One’s forecast of the peak day demands of the KWCG area and each of the subsystems listed in Ex. B, Tab 1, Schedule 5, Page 10, Table 1 for each year from 2013 to 2040 inclusive.
- b) Please provide the studies and analyses that support Hydro One’s load forecasts.

Environmental Defence submitted that it was unclear from Hydro One’s response whether it had produced an alternate load forecast. Environmental Defence was concerned that the forecast provided by the local distributors and the OPA may be too high and wanted to compare it to a Hydro One generated estimate. Hydro One

² Articulated in EB-2011-0120

³ Decision and Order on Motions related to Interrogatory Responses of the OPA, EB-2007-0707, dated July 29, 2008, p. 4

⁴ Transcript, June 18, 2013, page 13, lines 15 - 22

confirmed at the motion hearing that it did not have a comparative load forecast for the subject area. As a result, Environmental Defence agreed that no further action was required.

Board Finding

As both matters were resolved during the course of the motion hearing, the Board is not required to make a decision in relation to interrogatory no. 1 and interrogatory no. 31.

Interrogatory No.5 (a)

Interrogatory No. 5 (a) relates to a request for information in relation to Hydro One's compliance with the Ontario Resource and Transmission Assessment Criteria ("ORTAC") and states:

Approximately when were (i) the OPA and (ii) Hydro One first aware of the need to take steps to ensure compliance with the ORTAC criteria described in section 5 of the OPA KWCG Report?

Environmental Defence submitted that the response to the interrogatory is inadequate and that Hydro One and the OPA have not specifically indicated when they were first aware of the need to take steps to ensure compliance with the ORTAC criteria.

Environmental Defence further submitted that the Board should direct Hydro One to provide at a minimum, (i) when it (and the OPA) first forecast that the ORTAC criteria would not be met and (ii) when Hydro One first actually failed to meet the ORTAC criteria in the KWCG area.

Environmental Defence submitted that the information was necessary to assess the need for the Project and to identify if Hydro One and/or the OPA had failed to assess alternatives in a timely manner.

Board Finding

At the hearing, the OPA stated that it became aware of the ORTAC compliance issue in 2007, the same time it began to assess the options for the KWCG area.⁵ Upon examination by the Board Panel, the OPA undertook to further investigate and provide additional information, if any, to satisfy Environmental Defence's request in relation to

⁵ Transcript, p. 69, lines 17 – 20.

when ORTAC protocols were breached⁶. The Board is satisfied that the OPA's response (including any additional information that can be provided by the undertaking) is sufficient and will not require anything further.

Interrogatory No. 10 (c) and (d)

In interrogatories no. 10 (c) and (d), Environmental Defence requests estimates of the following:

- c) The cumulative total number of potential *peaksaver* and *peaksaver plus* participants;
- d) The cumulative total potential demand reductions from the total number of potential *peaksaver* and *peaksaver plus* participants.

Environmental Defence submitted that the OPA's response states that it does not have an estimate of the total potential demand reduction that could be achieved for *Peaksaver* and *Peaksaver Plus* programs, and provides no reason why an estimate cannot be developed. Environmental Defence therefore submitted that the OPA should be directed to develop an estimate as requested or provide Environmental Defence with the data needed to produce its own estimate. Environmental Defence submitted that the information is needed to assess the cost effectiveness of the Project.

At the hearing, the OPA reaffirmed its position and noted that it does not have the information that is requested in the interrogatory. The OPA also submitted that Environmental Defence's request for data to produce its own estimate should be refused because it is a new request and that parties are not entitled to a further round of interrogatories. The OPA also questioned the appropriateness of Environmental Defence producing its own estimate given that it does not intend to adduce evidence. Environmental Defence stated that it did not expect the analysis to be a burden for the OPA to provide and if so, providing alternative information would be consistent with Rule 29.02B which states that if information can't be provided with reasonable effort, the responding party is required to set out the reasons for the unavailability of information, as well as any alternative available information in support of the response. The OPA contended that Rule 29.02B does not apply in this case because the information requested does not exist.

⁶ *Ibid*, p.69, lines 22 – 27.

Board Finding

The Board accepts that the OPA does not have estimates of the cumulative total number of potential Peaksaver and Peaksaver Plus program participants and the cumulative total potential demand reduction from the total potential participants. The Board does not believe that this information is of sufficient importance to justify the additional effort.

The Board will not require the OPA to provide further information in relation to this interrogatory.

Interrogatory No. 22(b)

Interrogatory No. 22 (b) relates to actual local generation projects that have been submitted to the OPA in the City of Guelph under the Feed-in-Tariff ("FIT") and Combined Heat and Power Standard Offer Program ("CHPSOP") programs. It is stated that these projects have a total generation capacity of approximately 60 MW.

Interrogatory No. 22(b) states:

Please provide a revised version of Table 3 [Ex. B, Tab 1, Schedule 5, Page 20] based on the assumption that those 60 MW of projects are all issued contracts by the OPA and constructed as soon as possible.

In its response to the interrogatory, the OPA stated that connection points for projects referred to in the City of Guelph Council Report are needed to respond to the interrogatory. At the hearing, the OPA submitted that the issue raised by Environmental Defence is of marginal relevance⁷ and noted the uncertainty related to the FIT program. The OPA further stated that even if all the 60 MW were connected, it would not satisfy the needs that have been identified in the application. Environmental Defence submitted that the issue of uncertainty was not relevant and focused on the fact that the potential exists to add 60 MW of renewable generation capacity.

Board Finding

In the Board's view, the request is speculative and not likely to assist the Board in its deliberations. In that regard, the Board notes OPA's evidence that all the renewable

⁷ *Ibid*, p. 42, lines 25-28

generation projects in the City of Guelph Council Report are large-FIT projects⁸. Given the recent changes to the rules of the FIT program, particularly with respect large-FIT connections, the Board agrees with the OPA that there is considerable uncertainty and that it is unlikely that all projects will proceed as planned.

The Board will therefore not require the OPA to provide further information in relation to this interrogatory.

Interrogatory No. 26 (a) and (b)

Interrogatory No. 26 (a) and (b) state:

- a) Please describe and list all steps taken by the OPA to assess whether increased CDM and/or DG could avoid or defer the need for a new transmission line in the KWCG area as well as the dates that each of these steps were taken. Please include a listing of the dates and subjects of all memos and reports prepared in this regard.
- b) Please provide a copy of all documentation (e.g. memos, reports, etc.) prepared by the OPA in relation to an assessment of whether increased CDM and/or DG could avoid or defer the need for a new transmission line in the KWCG area.

Environmental Defence submitted that the interrogatory response provided only a partial synopsis of the OPA's analysis of Conservation and Demand Management ("CDM") and Distributed Generation ("DG") as alternatives to the proposed Project. Environmental Defence submitted that the OPA's response did not provide (i) a list of all steps taken by the OPA to investigate these alternatives, (ii) the relevant dates, or (iii) the underlying documentation.

Environmental Defence stated that the information is needed in order to assess whether a sufficient assessment of the alternatives has been undertaken by the OPA and, if so, whether it was done early enough.

The OPA submitted that the interrogatory was not aimed at any particular section of the evidence and is an "open-ended, blanket request" which is an inappropriate use of the interrogatory process. At the hearing, Environmental Defence agreed that the wording of the interrogatory may be too broad for a Board order and that getting a copy of "key memos and reports prepared in relation to the OPA" would satisfy its interest.

⁸ *Ibid*, p. 43, lines 11-18.

Board Finding

The Board is of the view that interrogatories no. 26(a) and (b) are very broad and questions the relevance of the information that is being requested. The Board is also concerned about the considerable effort entailed in collecting and assembling the requested information. To that end, the Board notes that Environmental Defence acknowledges that its request may be construed as being too broad and agreed that the provision of only the key documents is acceptable.

The Board also notes that in part (a), the OPA has provided a description of the planning process and the consideration of alternatives.

The Board will require Hydro One and/or the OPA to produce any reports and “thorough analysis” (in whatever format) that they have on the very specific topic of “assessment of whether increased CDM and DG could avoid or defer the need for new transmission line in KWCG area”⁹.

Interrogatory No. 29 (b)

Interrogatory No. 29 (b) states:

Please provide copies of all of the KWCG Working Group’s meeting agendas and minutes and reports.

Environmental Defence submitted that the OPA had failed to respond to the interrogatory and had provided no justification for its non response. Environmental Defence stated that the information that is requested is relevant because the Working Group’s support for this project is presented as a justification for this Project. According to Environmental Defence, the timing seems to raise a question as to whether, and to what extent, the Working Group considered DG and CDM as alternatives prior to indicating its support.

In response to 29 (b), the OPA provided the draft report of the KWCG Working Group, titled *Kitchener-Waterloo-Cambridge-Guelph - Integrated Regional Planning Report 2013 (“KWCG Working Group Draft Report”)*. The OPA argued that the report provides the information that Environmental Defence is seeking and therefore its response is sufficient.

⁹ Environmental Defence Interrogatory No. 26 (a) and (b)

The OPA stated that its concerns with interrogatory no. 29(b) were similar to those noted in respect to interrogatories no. 26 (a) and (b).

Board Finding

With respect to interrogatory no. 29(b), the Board is of the view that the KWCG Working Groups Draft Report that has been provided to Environmental Defence in response to this interrogatory is sufficient and that no further disclosure is required.

Interrogatory No. 40 (b)

Interrogatory No. 40 (b) requests information on the operating measures investigated by Hydro One and/or the OPA to address summer peak demands.

In its response, the OPA stated that load transfers were used, but that there is limited availability of load transfer capability. Environmental Defence submitted that the OPA should also indicate the amount of load transfer capability that exists between each subsection of the KWCG area. Environmental Defence acknowledged that its request was not part of the original interrogatory.

The OPA stated that notwithstanding the fact that Environmental Defence's request for information was not part of the original interrogatory, the answer has been provided in response to the original interrogatory and should be looked at in conjunction with the response to interrogatory no. 39.

Board Finding

The Board is satisfied with the responses that have been provided by the OPA and will not require further disclosure. The original interrogatory was answered, and the OPA has stated that there is insufficient load transfer capability to address the issue.

The Board considers it necessary to make provision for the following matters related to this proceeding. The Board may issue further procedural orders from time to time.

THE BOARD ORDERS THAT:

1. Hydro One and/or the OPA shall file with the Board and copy all intervenors, any additional information as required by this Decision in relation to interrogatory no. 5 (a) and interrogatories no. 26 (a) and (b) by **July 15, 2013**.
2. Hydro One shall, on or before **July 22, 2013**, file with the Board and deliver to all intervenors and Board staff its Argument-in-Chief.
3. Board staff and Intervenors who wish to do so shall file their argument on or before **July 26, 2013**
4. Hydro One shall file with the Board and copy to all intervenors its reply argument by **August 2, 2013**.

All filings to the Board must quote the file number, EB-2013-0053, be made through the Board's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>, and 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.ontarioenergyboard.ca. If the web portal is not available you may email your document to the address below.

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

ADDRESS

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DATED at Toronto, July 08, 2013

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary