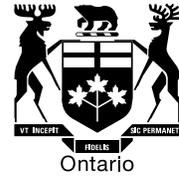


Ontario Energy Board
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto ON M4P 1E4
Telephone: 416- 481-1967
Facsimile: 416- 440-7656
Toll free: 1-888-632-6273

Commission de l'énergie de l'Ontario
C.P. 2319
27e étage
2300, rue Yonge
Toronto ON M4P 1E4
Téléphone: 416- 481-1967
Télécopieur: 416- 440-7656
Numéro sans frais: 1-888-632-6273



BY E-MAIL

July 19, 2013

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4

Dear Ms. Walli:

Re: Board Staff Submission on Confidentiality and Relevance

Application by Hydro One Inc. for Leave to Purchase all of the Issued and Outstanding Shares of Norfolk Power Inc. - EB-2013-0196

Application by Norfolk Power Distribution Inc. for Leave to Dispose of its Distribution System to Hydro One Networks Inc. - EB-2013-0187

Application by Hydro One Networks Inc. for Inclusion of a Rate Rider in the 2013 Approved Rate Schedule of Norfolk Power Distribution Inc. to give Effect to a 1% Reduction Relative to 2012 Base Electricity Delivery Rates (Exclusive of Rate Riders) - EB-2013-0198

In accordance with Procedural Order No. 1, please find attached Board staff's submission on claims for confidentiality and relevance.

Yours truly,

Original signed by

Gona Jaff
Project Advisor, Applications and Regulatory Audit

Attachment

cc: All Parties to the Proceeding



Board Staff Submission on Confidentiality and Relevance

**APPLICATION BY HYDRO ONE INC. FOR LEAVE TO PURCHASE ALL OF THE ISSUED
AND OUTSTANDING SHARES OF NORFOLK POWER INC. - EB-2013-0196**

**APPLICATION BY NORFOLK POWER DISTRIBUTION INC. FOR LEAVE TO DISPOSE OF
ITS DISTRIBUTION SYSTEM TO HYDRO ONE NETWORKS INC. - EB-2013-0187**

**APPLICATION BY HYDRO ONE NETWORKS INC. FOR INCLUSION OF A RATE RIDER IN
THE 2013 APPROVED RATE SCHEDULE OF NORFOLK POWER DISTRIBUTION INC. TO
GIVE EFFECT TO A 1% REDUCTION RELATIVE TO 2012 BASE ELECTRICITY DELIVERY
RATES (EXCLUSIVE OF RATE RIDERS) - EB-2013-0198**

July 19, 2013

INTRODUCTION

Hydro One Inc., Hydro One Networks Inc. (“HONI”) and Norfolk Power Distribution Inc. (“NPDI”) (collectively the “Applicants”), filed three related applications dated April 26, 2013 (the “Applications”) with the Ontario Energy Board (the “Board”). Specifically:

1. Hydro One Inc. applied for leave to purchase all of the issued and outstanding shares of Norfolk Power Inc. under section 86(2)(b) of the *Ontario Energy Board Act, 1998* (the “Act”);
2. NPDI applied for leave to dispose of its distribution system to HONI under section 86(1)(a) of the Act; and
3. HONI applied for inclusion of a rate rider in the 2013 Board approved rate schedule of NPDI to give effect to a 1% reduction relative to 2012 base electricity delivery rates (exclusive of rate riders) under section 78 of the Act.

Pursuant to its authority under section 21(5) of the Act, the Board decided to consider these applications together in a consolidated proceeding and issued its Notice of Applications and Hearing on May 31, 2013.

Certain information in Exhibit A, Tab 3, Schedule 1, Attachment 6 of the Applicants’ pre-filed evidence (the “Share Purchase Agreement”) was redacted by the Applicants due to claims of confidentiality and/or claims that the information is not relevant to this proceeding.

On July 3, 2013, the Board issued Procedural Order No. 1, in which, among other things, it ordered the Applicants to file a complete and un-redacted version of the Share Purchase Agreement with the Board in accordance with the Board’s Practice Direction on Confidential Filings (the “Practice Direction”). The Board also required submissions from the Applicants with respect to confidentiality and relevance claims and invited submissions from all other parties. Board staff is making this submission pursuant to Procedural Order No. 1.

SUBMISSION

The Applicants have redacted certain information in a number of schedules to the Share Purchase Agreement; specifically, Schedules 3.1(L), 3.1(N), 3.1(O), 3.1(R), 3.1(T), 3.1(V), 3.1(X), 3.1(AA), and 5.2.

In determining applications under section 86 of the Act, the Board applies the “no harm” test which consists of a consideration as to whether the proposed transaction would have an adverse effect relative to the status quo of the applicants and their customers in relation to the Board’s statutory objectives as set out in section 1 of the Act. If the proposed transaction would have a positive or neutral effect on the attainment of the statutory objectives, the application should be granted. Board staff submits that when assessing the relevance of the redacted information in this case, the Board should have regard to the “no harm test”. Specifically, Board staff is of the view that if the redacted information is relevant to the Board’s assessment of the no harm test, the information should be disclosed unless the information is determined to be confidential.

Based on the general description of the redacted information provided by the Applicants¹, Board staff submits that the redacted information in Schedules 3.1(L), 3.1(R), 3.1(V), 3.1(X), 3.1(AA), and Schedule 5.2 of the Share Purchase Agreement appear, based on context and the submissions of the applicants, to reasonably qualify for confidential treatment under the Practice Direction and should be treated as such.

Board staff is unable to adequately assess the Applicants’ confidentiality claim or the relevance of the redacted information in Schedules 3.1(N), 3.1(O) and 3.1(T).

In its submission of July 12, 2013, NPDI asserts that there is no probative value to adding the information from Schedule 3.1(T) and that it will not assist the Board in its assessment of the “no harm” test. NPDI further claims that disclosing the information could result in frivolous litigation claims. While it may be the case that the environmental disclosure is of a nature that is not probative and that it may not assist the Board in applying the requisite test for this proceeding, there is no way for Board staff to make an independent assessment as the schedule is fully redacted. It is conceivable that environmental disclosure could, under certain circumstances, have probative value in relation to the “no harm” test.

NPDI has raised concerns related to public disclosure of this information, but has not indicated whether it would be willing to provide this information to those parties involved in the current proceeding that agree to be bound by the provisions of the Board’s form of Declaration and Undertaking in Appendix C of the Practice Direction. This may be a circumstance in which the Board should consider allowing parties to see the information so that they may test the assertions made by NPDI related to the information.

¹ See Hydro One Networks Inc.’s submission dated July 11, 2013 and Norfolk Power Distribution Inc.’s submission dated July 12, 2013.

Similarly for Schedules 3.1(N) and (O), in Board staff's view, the Applicants have not provided sufficient information to allow parties to properly assess the claims for confidentiality and/or relevance. While it may be the case that disclosing this information publicly is not appropriate, it is not possible for Board staff to determine to what extent the information may be probative.

Board staff suggests that if parties to the proceeding are not permitted to review the unredacted version of each of these schedules in accordance with the provisions of the Board's form of Declaration and Undertaking, then the Board must assess the relevance of the redacted information in these schedules based on the degree of their relevance to the "no harm test". Board staff therefore submits that if the Board determines that the information has probative value, it should go on to determine whether the information should remain confidential taking guidance from the Practice Direction.

All of which is respectfully submitted.