



EB-2013-0196
EB-2013-0187
EB-2013-0198

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 Inc. 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.

AND IN THE MATTER OF an application by Norfolk Power Distribution Inc. for leave to dispose of its distribution system to Hydro One Networks Inc. under 86(1)(a) of the *Ontario Energy Board Act*, 1998.

AND IN THE MATTER OF an application by Hydro One Networks Inc. seeking to include a rate rider in the 2013 Ontario Energy Board 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) under section 78 of the *Ontario Energy Board Act*, 1998.

PROCEDURAL ORDER NO. 2

August 1, 2013

Hydro One Networks Inc. ("HONI") and Norfolk Power Distribution Inc. ("NPDI"), both licensed electricity distributors, and Hydro One Inc., HONI's parent company (the "Applicants"), filed related applications dated April 26, 2013 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") – Board file number: **EB-2013-0196**;
2. NPDI applied for leave to dispose of its distribution system to HONI under section 86(1)(a) of the Act – Board file number: **EB-2013-0187**; 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 – Board file number: **EB-2013-0198**.

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.

Confidential Filing

Certain information in Exhibit A, Tab 3, Schedule 1, Attachment 6 of the Applicants' pre-filed evidence (the "Attachment") was redacted by the Applicants due to claims that the information is not relevant to the proceeding, and/or claims that the information is confidential. A confidential, un-redacted version of the document was not filed with the Board in accordance with the Board's *Practice Direction on Confidential Filings* (the "Practice Direction").

Procedural Order No. 1 was issued on July 3, 2013 in which the entities that requested intervenor status were granted such status, the Applicants were ordered to file a complete and un-redacted version of the Attachment with the Board in accordance with the Practice Direction, and provisions were made for submission on the Applicants' claims for confidentiality and relevance.

Pursuant to Procedural Order No. 1, the Attachment was filed with the Board. The Board received submissions from the Applicants, Essex Powerlines Corporation ("Essex"), School Energy Coalition ("SEC") and Board Staff.

It is the position of the Applicants that the redacted information is not relevant to the proceeding, and/or the information is confidential. It should be noted that HONI's position is not entirely consistent with NPDI's position with respect to the extent of information that needs to be redacted.

While both Board Staff and SEC expressed views on the confidential nature and relevance of the redacted information, they indicated that it is not possible to make full submissions without reviewing the unreacted version of the documents. Essex objected to the Applicants' request for confidentiality and requested access to the confidential version of the Attachment for the purpose of making a submission

pursuant to section 5.1.6 of the Practice Direction. In his reply submission, counsel to Norfolk County and NPDJ requested that the redacted information continue to be held in confidence and not be subject to disclosure in order to permit the regulatory process to move forward in a timely and cost efficient manner.

Board Observations and Findings

As indicated in the Practice Direction, the Board's general policy is that all records should be open for inspection by any person unless disclosure of the record is prohibited by law. This reflects the fact that Board proceedings are intended to be open, transparent, and accessible. The Board recognizes, however, that some information may be of a confidential nature and should be protected as such. The Practice Direction sets out procedures for the filing of confidential materials in relation to all proceedings that come before the Board. The Board notes that in this case, the Applicants did not follow the process set out in the Practice Direction for confidentiality requests. In fact, the Applicants were ordered to file the Attachment with the Board.

Generally, in determining confidentiality requests, the Board considers the full submissions of interested parties. In this case, however, parties have indicated that, without access to the redacted information, they have not been able to make a full submission. In his reply submission, counsel to Norfolk County and NPDJ stated that no party, including Essex requested that the Board allow access to the redacted information for the purpose of making submissions. The Board is of the view that Essex has specifically requested exactly that. As stated above, pursuant to section 5.1.6 of the Practice Direction, Essex requested access to the confidential version of the Attachment for the purpose of making a submission. It is not clear from the Applicants' submissions whether they object to the Board allowing interested and qualified parties access to the redacted information under suitable arrangements as to confidentiality for the purposes of making a submission.

In the interests of transparency and fairness and subject to any objections by the Applicants, the Board will allow qualified parties access to a confidential version of the Attachment. Specifically, the Board will order the Applicants to provide to qualified parties (i.e. counsel for a party and/or an expert or consultant for a party) who execute and file with the Board a Declaration and Undertaking in the form prescribed in the Practice Direction a version of the Attachment where only the information listed below is redacted (the "Confidential Version"):

- Schedule 3.1 (L): names of individuals (this only affect the Easements/Rights of Way)
- Schedule 3.1 (N): names of individuals and dates (this only affects the first 12 bullets, and the name at the end of the list under the **** end note)
- Schedule 3.1 (O): names of individual and date (this only affects the first bullet)
- Schedule 3.1 (R): position titles and dates (this only affects items 1 to 3)
- Schedule 3.1 (V): CRA Account/business numbers
- Schedule 3.1 (R): Bank Account numbers
- Schedule 5.2: name of individual

THE BOARD ORDERS THAT:

1. If the Applicants object to providing the Confidential Version of the Attachment to counsel or an expert or consultant for a party who execute and file with the Board a Declaration and Undertaking in the form set out in Appendix C of the Practice Direction, they shall file their written objection with the Board and serve it on all intervenors on or before **August 7, 2013**.
2. Intervenors wishing to have access to the Confidential Version of the Attachment for the purpose of making a submission, shall execute and file with the Board a Declaration and Undertaking in the form set out in Appendix C of the Practice Direction on or before **August 7, 2013**.
3. In the event the Board decides to allow qualified parties access to the Confidential Version of the Attachment, qualified parties approved by the Board to receive the Confidential Version of the Attachment or Board staff wishing to file a submission on the Applicants' claims for confidentiality and/or relevance shall file such submission with the Board and serve it on the Applicants on or before **August 14, 2013**.
4. If the Applicants wish to file a submission responding to submissions on the Applicants' claims for confidentiality and/or relevance, they shall file such reply submission with the Board and serve it on all intervenors on or before **August 21, 2013**.

All filings to the Board must quote file numbers, **EB-2013-0196, EB-2013-0187 or EB-2013-0198**, be made electronically through the Board's web portal at

www.pes.ontarioenergyboard.ca/eservice/ in searchable/unrestricted PDF format. Two paper copies must also be filed at the Board's address provided below. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca/OEB/Industry. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

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.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Gona Jaff at gona.jaff@ontarioenergyboard.ca and Board Counsel, Kristi Sebalj at kristi.sebalj@ontarioenergyboard.ca.

ADDRESS

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DATED at Toronto August 1, 2013

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary