

August 9, 2013

**By RESS and Courier**

Ms. Kirsten Walli,  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, Ontario. M4P 1E4

Dear Ms. Walli,

**Re: Re: EB-2013-0187/196/198 - Hydro One Norfolk MAADs**

On April 26, 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 with the Ontario Energy Board (“OEB” or 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”) (EB-2013-0196);
2. NPDI applied for leave to dispose of its distribution system to HONI under section 86(1)(a) of the Act (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 (EB-2013-0198).

Horizon Utilities Corporation (“Horizon Utilities”) filed for intervener status in this proceeding. In Procedural Order No. 2, the Board confirmed Horizon Utilities’ status.

In its Application, as filed, HONI and NPDI filed a portion of their materials with a claim for confidentiality. Through Procedural Order No. 2, the Board permitted interveners to file the Board’s Declaration and Undertaking. Lawrence Wilde, counsel for Horizon Utilities, filed such Declaration and Undertaking with the Board on August 7, 2013. On August 8, 2013, counsel for NPDI filed a submission with the Board confirming that NPDI did not object to Horizon Utilities’ counsel or others who had filed the Board’s Declaration and Undertaking having access to the confidential material for purposes of making submissions on confidentiality and/ or relevance.

However, also on August 8, 2013, counsel for HONI filed a submission with the Board objecting to providing any LDC counsel with access to the Confidential Version of the Attachment. HONI’s objection was based on the fact that it asserted that all LDCs, including the LDCs represented by the said two

counsels, were either active or potential bidders for the acquisition of LDCs and therefore had a competitive interest in seeing the confidential material.

In Procedural Order No. 2, the Board was clear that the point at issue was not whether the information should be made available to the public at large, but rather whether the interveners should have access to the information for the sole purpose of preparing submissions as to whether the information should remain confidential from the public at large.

*“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 NPDI 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.” (p.3)*

In order to allow for informed and reasoned submissions to be made, the Board was of the view that the information should be made available for review prior to making the submissions. However, it was mindful of the fact that it had to be done in such a manner that the information was not made available to the interveners themselves. To preclude this, the Board determined that the information would not be made available to the interveners but rather to counsel for the interveners who signed a Declaration and Undertaking in the form prescribed by the Board. Such form imposed an obligation on them not to disclose the information.

Horizon Utilities submits that the Board’s Practice Direction on Confidential Filings (the “Guidelines”) is clear regarding the binding commitment that signing the Declaration and Undertaking imposes on counsel.

*“6.1.1. The Board may determine that confidential information should, in whole or in part, be disclosed to one or more persons that have signed a Declaration and Undertaking in the form set out in Appendix C. The Declaration and Undertaking is a binding commitment by the person: (i) not to disclose the confidential information except as permitted by the Board; (ii) to treat the confidential information in confidence; (iii) to return or destroy the confidential information following completion of the proceeding; and (iv) in the case of confidential information in electronic media, to expunge the confidential information from all electronic apparatus and data storage media under the person’s direction or control, and to continue to abide by the terms of the Declaration and Undertaking in relation to such confidential information to the extent that it subsists in an electronic form and cannot reasonably be expunged in a manner that ensures that it cannot be retrieved. A signed Declaration and Undertaking must be filed with the Board and will be placed on the public record. (p.10-11)”*

The Guidelines also make it clear that the information will not be made available to the interveners by confirming that counsel cannot be a director or employee of the company.

Horizon Utilities, through its counsel, Mr. Lawrence Wilde, has followed the Guidelines. He has filed the Declaration and Undertaking and therefore agreed to all of its conditions which include keeping the information he views confidential. Thus, it is clear that Mr. Wilde cannot disclose any of the information to someone at the LDC without breaching his obligations under the Declaration and Undertaking.

Horizon Utilities submits that HONI's position that the LDCs would have a competitive interest in seeing the information presupposes that counsel for the LDCs will violate the obligations imposed by the Declaration and Undertaking. However, because of the Declaration and Undertaking, no one at the LDC will ever have knowledge about the details of the information unless the Board, after receiving the submissions, subsequently decides that the information is to be made available to the public at large.

Horizon Utilities would also submit that the argument which is being raised by HONI regarding competitive interests is premature and is, in fact, one that should be made to the Board in the next step of the proceedings when the Board considers whether the information should be made available to the public at large. Since the point of this step in the proceeding is to give counsel for the interveners access to the information so they can make informed and reasoned submissions to counter HONI's position that the information must be kept from the public at large, to preclude counsel for the LDCs from seeing the information at this stage would defeat the whole concept of enabling them to make informed and reasoned submissions.

HONI has identified the OEB's treatment of confidential material in EB-2007-0063, which dealt, in part, with smart meter prices. HONI identified that in that proceeding, a portion of the oral hearing take place in camera, with the exclusion of competitors and certain of the LDCs, on the basis that information of benefit to competitors should not be heard by competitors.

Horizon Utilities submits that EB-2007-0063 is clearly distinguishable from the present case in that the issue under debate in that proceeding was whether the information should be made available to the LDCs generally and not whether it should be made available for a specific purpose to counsel for the LDCs, who were under an obligation to keep the information confidential from everyone including the LDCs for which they were counsel.

Horizon Utilities therefore respectfully submits that its counsel should have access to the confidential materials under the conditions defined in the Board's Declaration and Undertaking.

Please do not hesitate to contact me if you require anything further.

Yours truly,

***[Original signed by Indy Butany-DeSouza]***

Indy J. Butany-DeSouza, MBA  
Vice-President, Regulatory Affairs  
Horizon Utilities Corporation