



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 section 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. 4

August 13, 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 the Applicants' pre-filed evidence, Exhibit A, Tab 3, Schedule 1, Attachment 6 (the "Attachment") was redacted by the Applicants on the basis that in their view the information is not relevant to the proceeding, and/or that the information is confidential.

On August 1, 2013, Procedural Order No. 2 was issued, in which the Board stated that subject to any objections by the Applicants, the Board will allow qualified parties access to the Confidential Version (as the term is defined in Procedural Order No.2) of the Attachment and made relevant provisions. The Board provided parties wishing access to the Confidential Version of the Attachment the opportunity to file Declarations and Undertakings as to Confidentiality with the Board. The Board received Declarations and Undertakings from the following:

- Giuseppe Barile, counsel of record for Essex Powerlines Corporation ("Essex");
- Jay Shepherd, counsel of record for School Energy Coalition ("SEC"); and
- Lawrence Wilde, counsel of record for Horizon Utilities Corporation ("Horizon").

By letter dated August 8, 2013, counsel for NPDI and Norfolk County ("Norfolk") indicated that Norfolk does not object to these individuals having access to the Confidential Version of the Attachment for the intended purpose. However, also by letter dated August 8, 2013, counsel for HONI and Hydro One Inc. ("Hydro One") indicated that Hydro One objects to providing Mr. Barile and Mr. Wilde with access to the Confidential Version of the Attachment based on the view that all electricity distributors including those represented by these two counsel, have a competitive interest in seeing the confidential material. On August 9, 2013, Horizon responded to Hydro One's objection submitting that Hydro One's position presupposes that counsel for the electricity distributors will violate the obligations imposed by the Declaration and Undertaking. Horizon also stated that Hydro One's submission on competitive interest is premature and that it should be made when the Board considers whether the information should be placed on the public record.

The Board has reviewed the Declarations and Undertakings as to Confidentiality filed by the above named individuals and considered the parties' submissions. The Board will

allow Mr. Jay Shepherd, counsel for SEC and Mr. Lawrence Wilde, counsel for Horizon access to the Confidential Version of the Attachment for the purpose of making submissions on the Applicants' claims for confidentiality and/or relevance. The Board, however, will not allow Mr. Barile, counsel for Essex such access. In reaching this decision, the Board took guidance from section 6.1.2 of the Board's *Practice Direction on Confidential Filings* (the "Practice Direction") which states:

Subject to section 6.1.4, the Board will, except where there are compelling reasons for not doing so, accept a Declaration and Undertaking from the following:

- (a) counsel for a party; and
- (b) an expert or consultant for a party.

As a general rule, such counsel, expert or consultant cannot be a director or employee of a party. (emphases added)

The Board notes that while Mr. Barile is not an employee of Essex, an intervenor in this proceeding, he is an employee of Essex's parent company, Essex Power Corporation. Given this employment arrangement, the Board considers it appropriate to follow the approach in the Practice Direction for employees of parties and does not find it appropriate to allow Mr. Barile access to the Confidential Version of the Attachment.

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

THE BOARD ORDERS THAT:

1. The Applicants shall serve the Confidential Version of the Attachment on Mr. Jay Shepherd, counsel for SEC and Mr. Lawrence Wilde, counsel for Horizon on or before **August 14, 2013**. Electronic service is acceptable to the Board.
2. The date in Paragraph 3 of Procedural Order No.2 is extended to **August 21, 2013**.
3. The date in Paragraph 4 of Procedural Order No.2 is extended to **August 28, 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 13, 2013

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary