

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
Remote Communities Inc. for an order approving just and
reasonable rates and other charges for electricity distribution
to be effective May 1, 2013

NOTICE OF MOTION OF THE NISHNAWBE ASKI NATION (“NAN”)

Pursuant to the Ontario Energy Board’s *Rules of Practice and Procedure* (“Rules”),
make a motion to the Board for the matter described herein on a date and at a time to be
determined by the Board at the Board’s office located at 2300 Yonge Street, Toronto,
Ontario. NAN requests that the motion be held orally:

THIS MOTION IS FOR:

1. An order or orders:
 - a. that the Board review the correctness of its decision, dated 22 August 2013 (“Decision”);
 - b. that the Board revise its Decision by restricting the rate increase for residential customers served by the Applicant, Hydro One Remote Communities Inc., to two per cent (2%) rather than the 3.45% increase confirmed in the Decision;
 - c. that the Board change or vary its Decision by increasing the 2013 Revenue Requirement of the Applicant as is necessary to restrict the residential rate increase to two per cent (2%);
 - d. that the Board provide proper and detailed reasons to support its decision, dated 22 August 2013, and any revisions thereto; and
 - e. that NAN be granted its costs on this motion in accordance with the tariff, policies, and practices of the Board.

THE GROUNDS FOR THIS MOTION:

2. Rules 8.02, 42, 43, 44, and 45 of the *Rules*.
3. The Board erred in rejecting NAN's submission that the residential rate increase be limited to 2% rather than 3.45% on the grounds that "the Board is bound by Regulation 442/01" and that it "requires that forecast revenues incorporate a level of increase that is the average for all distributors in the same year." If the Board were correct in such a conclusion, the rate increase application process would be rendered moot. The Board would have no alternative but to sanction a proposed rate increase by Hydro One Remote Communities Inc. ("Remotes") simply because a similar rate increase had been approved for other distributors in Ontario. Any proceeding before the Board to scrutinize and make decisions on Remotes' proposed rate increases would thus be rendered unnecessary.
4. The Board has failed to identify the specific provision in Regulation 442/01 that allegedly mandates the Board to incorporate into Remotes' forecasted revenues a level of rate increase that is the "average for all distributors in the same year" and to approve the proposed rate increase by Remotes on that basis.
5. In *Advocacy Centre for Tenants-Ontario v. Ontario Energy Board* (Ontario Divisional Court, 25 February 2008), the Divisional Court confirmed that the Board's mandate to fix just and reasonable rates "is unconditioned by directed criteria and is broad: the board is expressly allowed to adopt any method it considers appropriate". As such, the Board is not constrained by Regulation 442/01 as stated by the Board.
6. During the proceeding before the Board, Remotes confirmed to the other parties in answer to one of NAN's interrogatories that it did not build its annual budget

around the proposed 3.45% increase to customer rates to ensure that it had sufficient revenue to service its customers. Remotes simply advised that the 3.45% figure had been adopted on the basis that a similar rate had been approved for distributors elsewhere in Ontario. Thus, Remotes had clearly not taken into account any criteria or factors relating to the “ability to pay” of its customers in remote communities.

7. The decision in *Advocacy Centre* confirms that the Board has the jurisdiction to take into account the “ability to pay” of customers in setting utility rates. As such, the Board-- rather than being fettered by Regulation 442/01 --can and should take into account the “ability to pay” of residential customers in remote communities in determining acceptable rate increases. In this proceeding, the Board should have restricted the rate increase for residential customers to two per cent (2%) as requested by NAN.
8. The Board erred in concluding that the legislature had already taken “ability to pay” into account directly through the framework of the RRRP. The legislature has done no such thing and there is nothing in Regulation 442/01 indicating that the RRRP subsidy is intended to address “ability to pay” issues on the part of individual customers or certain classes of customers. The sixteen Schedules to Regulation 442/01 initially set monthly rate protection on the basis certain towns, townships, municipalities, and other geographical areas.
9. Regulation 442/01 provides revenue subsidies to distributors who are serving customers in “rural” and “remote” communities. The status of being a “rural” or “remote” community is the qualifying criterion for the subsidy under Regulation 442/01. There is no indication in Regulation 442/01, nor has the Board identified any other evidentiary or legal sources, showing that “ability to pay” criteria have

been scrutinized and satisfied by way of the subsidy provided for in Regulation 442/01.

10. There is nothing in the *Advocacy Centre* decision suggesting that customers eligible for rate protection under the RRRP are to be exempted from the principles in that decision or that the Board is prohibited from taking into the account the “ability to pay” of customers in rural or remote communities in setting rate increases for particular classes of customers.
11. The Board erred in concluding that if it were to restrict the residential rate increase to 2%, as requested by NAN, that “there would be a gap between the approved revenue requirement, which Hydro One Remotes is entitled to recover, and the combined funding achieved through consumer rates and the RRRP” such that the “gap would result in a shortfall for the utility which would not be justified.”
12. The Board has failed to provide any reasons to support such a conclusion. It has stated a conclusion without providing any explanation or reasons to support that conclusion.
13. The Board clearly has jurisdiction to approve, reject, alter, or vary the proposed annual revenue requirements (i.e. “budget”) of Remotes and that would include the jurisdiction to increase the revenue of the Applicant under the RRRP to the extent required to restrict the residential rate increase to 2% as requested by NAN. The Board approved a budget for Remotes in this proceeding which was \$2,232,000 lower than the \$53,143,000 initially requested by Remotes in the Application. The Board certainly enjoys the discretion to modestly increase that *revised* budget to enable residential rates in remote communities to be restricted to 2%.

14. Such other grounds as NAN may advise and the Board may consider and permit.


MATERIALS TO BE RELIED ON

NAN will rely on the following materials:

- A. The evidence in the proceeding filed by the parties, including the Interrogatories and Answers to Interrogatories of the parties;
- B. The *Rules*; and
- C. Such other materials as counsel may advise and the Board may permit.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

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Douglas Cunningham, Legal
Counsel to NAN