

BOARD STAFF SUBMISSION

**Motion to Review Board Decision
Nishnawbe Aski Nation**

**Hydro One Remote Communities Inc.
2013 Electricity Distribution Rates**

EB-2013-0331

October 7, 2013

Hydro One Remote Communities Inc. ("Remotes") is an integrated generation and distribution company which currently serves 21 communities that are not connected to the provincial transmission grid and has approximately 3,400 residential and general service customers. Remotes filed its application with the Board on September 17, 2012 under section 78 of the Ontario Energy Board Act, 1998, S.O. 1998, c. 15, (Schedule B), seeking approval for changes to the rates that Remotes charges for electricity distribution, to be effective May 1, 2013. Additional evidence was filed on November 12, 2012 to complete the application.

The Board issued Procedural Order No. 1 on February 28, 2013. The Board approved requests for intervenor status by Cat Lake First Nation ("CLFN"), Energy Probe Research Foundation ("Energy Probe"), Nishnawbe Aski Nation ("NAN"), and the Vulnerable Energy Consumers Coalition ("VECC").

On May 28 and 29, 2013, a settlement conference was held with the assistance of a facilitator. As a result of the settlement conference, Remotes and the parties filed a Partial Proposed Settlement Agreement (the "Partial Agreement"), dated June 17, 2013. A settlement was reached on most of the issues in the proceeding. On June 28, 2013 the Board issued its Decision accepting the Partial Agreement.

There were two issues on which agreement was not reached:

- Remotes' request for approval to increase rates by 3.45%; and
- Remotes' proposal that the Standard A rates for the non-grid-connected communities would be applicable in the geographically remote grid-connected communities.

NAN, CLFN and Board staff filed written submissions on July 12, 2013. Remotes filed a reply submission on July 18, 2013. The Board issued its Decision and Order on August 22, 2013 (the "Decision").

NAN filed a Motion to Review (the "Motion") of the Decision on September 11, 2013. In its Motion, NAN asked that the Board revise its Decision by restricting the rate increase for residential customers served by Remotes to 2.0% rather than the 3.45% increase confirmed by the Board in its Decision. NAN proposed that the record to be reviewed would include the evidentiary record of the EB-2012-0137 proceeding, and the Board's Rules of Practice and Procedure. NAN also noted in its Motion that there might be additional evidence filed during the review.

NAN requested that the Board hear the Motion orally rather than in writing.

The Board issued an acknowledgement of the Motion on September 23, 2013, which was distributed to all parties in the EB-2012-0137 proceeding. The Board requested submissions from parties on whether to proceed with an oral or written hearing.

Submissions

Remotes filed a letter dated September 24, 2013 wherein it submitted that a review of the Decision would be redundant. Remotes also submitted that, if a hearing is held, submissions should be made in writing as it would be more efficient and cost effective.

Board staff agrees with the submission of Remotes. It notes that NAN has not raised any new facts as a ground for review. Further, Board staff submits that the Board's Rules of Practice and Procedure provide, under Rule 34 that in any proceeding the Board may hold an oral or written hearing subject to the *Statutory Powers Procedure Act* ("SPPA"). The SPPA provides:

Section 5 (1) A tribunal whose rules made under section 25.1 deal with written hearings may hold a written hearing in a proceeding".

Section 5 (2) The tribunal shall not hold a written hearing if a party satisfies the tribunal that there is good reason for not doing so.

In determining whether a party has provided sufficient ground to satisfy a tribunal that an oral hearing is required, Board staff submits that guidance can be found from the decision of the Supreme Court of Canada, in *Baker v. Canada (Minister of Citizenship and Immigration)* (1999), 174 D.L.R. (4th) 193. In this case the Supreme Court confirmed that there is no obligation for an administrative tribunal such as the Board to hold an oral hearing in order to comply with the rules of natural justice. At paragraph 33 of that decision, the Court stated as follows:

...it cannot be said that an oral hearing is always necessary to ensure a fair hearing and consideration of the issues involved. The flexible nature of the duty of fairness recognizes that meaningful participation can occur in different ways in different situations.

Board staff submits that in deciding this issue, the main consideration for the Board is whether the parties will be afforded the opportunity to present their cases in a full and fair manner, taking into account the evidence on the record, the issues raised, and the opportunity for parties to ask questions on the evidence.

Board staff submits that the evidence to be considered is already on the record and as such there is no need for an oral hearing.

- All of which is respectfully submitted -