



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 Norfolk Power Distribution 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. 7

November 27, 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 (the “Original Applications”) 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.

As part of their pre-filed evidence, the Applicants filed the Share Purchase Agreement for the transaction referred to in item 1 above, (the “SPA”). Certain information was redacted from the Schedules to the SPA based on the Applicants’ assertion that the information is not relevant to the proceeding, and/or that the information is confidential. A confidential, un-redacted version of the SPA was not filed with the Board in accordance with the Board’s Practice Direction on Confidential Filings (the “Practice Direction”).

The Board issued Procedural Order No. 1 on July 3, 2013 in which the Board ordered the Applicants to file a complete and un-redacted version of the SPA with the Board in accordance with the Practice Direction, and made provision for submissions on the Applicants’ claims for confidentiality and relevance. The Board received submissions from the Applicants, Essex Powerlines Corporation, School Energy Coalition (“SEC”) and Board staff. Most of these parties argued that it was not possible to make full submissions without viewing the information that the Applicants redacted.

After reviewing the un-redacted version of the SPA and considering the submissions, the Board issued Procedural Order No. 2 on August 1, 2013. In Procedural Order No. 2 the Board ordered the Applicants to produce a version of the SPA where only portions of the originally redacted information, as specified by the Board, would remain redacted (the “Confidential Version”). The Board further ordered the Applicants to provide the Confidential Version of the SPA to those counsel and external consultants that executed the Board’s form of confidentiality Declaration and Undertaking, to enable them to make further submissions. The Board received written submissions from Essex Powerlines Corporation, Bluewater Power Distribution Corporation, and Niagara-on-the Lake Hydro Inc. (collectively “EBN”),

SEC and Board staff. Norfolk County and NPDI (“Norfolk”) and Hydro One Inc. and HONI (“Hydro One”) filed reply submissions on August 28, 2013.

The Board’s Decision on Confidentiality Request and Procedural Order No. 5 (“PO No.5”) dated September 27, 2013, set out a schedule for the procedural steps in this proceeding. In accordance with PO NO.5, Board staff and a number of intervenors filed interrogatories (“IRs”). On October 25, 2013, the Applicants filed their responses to the IRs. The Applicants amended the relief sought in the Original Applications through a response to Board staff interrogatory No. 7.1 (the “First Amended Applications”). HONI provided the Applicants’ summarization of the amended requested relief as follows:

- Hydro One Inc. continues to seek approval from the Board for leave to purchase all of the issued and outstanding shares of Norfolk Power Inc. made pursuant to section 86(2)(b) of the *Ontario Energy Board Act, 1998*;
- Norfolk Power Distribution Inc. is no longer seeking approval from the Board, as was originally applied-for, for leave to transfer its distribution system to Hydro One Networks Inc. made pursuant to section 86(1)(a) of the *Ontario Energy Board Act, 1998*;
- Norfolk Power Distribution Inc. is no longer seeking cancellation of its distribution licence as was originally applied-for pursuant to section 77(5) of the *Ontario Energy Board Act, 1998*;
- Hydro One Networks Inc. is no longer seeking an order to amend its distribution licence made pursuant to section 74 of the *Ontario Energy Board Act, 1998*; and
- Norfolk Power Distribution Inc., not Hydro One Networks Inc., is now the party now seeking to include a rate rider in the 2013 OEB-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), made pursuant to section 78 of the *Ontario Energy Board Act, 1998*. The rate order amendment would take effect following the successful closing of the proposed transaction.

The Applicants refused to respond to certain IRs submitting that the IRs posed were outside the scope of the proceeding. On October 30, 2013, SEC filed a Notice of Motion (the “Motion”) with the Board. The Motion requested an order of the Board requiring HONI and/or NPDI to provide information sought in IRs posed by SEC and

other parties to the proceeding, and an extension of the time periods set out in PO No. 5.

By way of Procedural Order No. 6 ("PO No.6") dated November 5, 2013, the Board ordered the Applicants to file amended applications with the Board clarifying the relief sought in the First Amended Applications and indicating the applicability of the original pre-filed evidence to the Applicants' new requests. PO No. 6 also provided parties with the opportunity to file submissions with the Board on whether, as a result of the amended applications, provision for a further process of IRs is necessary. SEC was also ordered to indicate the impact, if any, on its Motion, of the change to the relief sought.

The Applicants filed their amended applications on November 8, 2013. The amended applications (the "Second Amended Applications") were a further change to the relief set out in Board staff interrogatory No. 7.1. The relief sought in the Second Amended Applications was:

- an application made by Hydro One Inc. for leave to purchase all of the issued and outstanding shares of Norfolk Power Inc. made pursuant to section 86(2)(b) of the *Ontario Energy Board Act, 1998*.
- an application made by Norfolk Power Distribution Inc. seeking to include a rate rider in the 2013 OEB-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), made pursuant to section 78 of the *Ontario Energy Board Act, 1998*.

If the Board grants approval to section 86(2)(b) as stated above, upon filing notice to the Board of completion of integration of Norfolk Power Distribution Inc. operations into Hydro One Networks Inc., Hydro One further requests:

- an application made by Norfolk Power Distribution Inc. for leave to transfer its distribution system to Hydro One Networks Inc. made pursuant to section 86(1)(a) of the *Ontario Energy Board Act, 1998*.
- an application made by Norfolk Power Distribution Inc. seeking cancellation of its distribution licence made pursuant to section 77(5) of the *Ontario Energy Board Act, 1998*.

- an application made by Hydro One Networks Inc. seeking an order to amend its distribution licence made pursuant to section 74 of the *Ontario Energy Board Act, 1998* to serve the customers of the former Norfolk Power Distribution Inc., or alternatively;
- an application made by Hydro One Networks Inc. seeking an order to issue a separate distribution licence made pursuant to section 60 of the *Ontario Energy Board Act, 1998* to serve the customers of the former Norfolk Power Distribution Inc.

The following parties filed submissions with the Board on whether a second IR process is necessary as a result of the amended applications: SEC, EBN, Board staff, Norfolk and Hydro One.

SEC filed correspondence on November 13, 2013 indicating that in its view with one exception, all of the relief sought in its Motion remains necessary, and no amendments to the Notice of Motion are required.

Board staff submitted that in the Second Amended Applications the Applicants have generally reverted back to the relief sought in the Original Applications. Board staff submitted that they do not have substantial new IRs as a result of the amended applications. Board staff did however indicate that they have a few clarifying questions in relation to the amended relief sought and requested that they be permitted to ask those clarifying questions at the outset of the hearing of SEC's Motion¹.

SEC's submission supported Board staff's submission on whether, as a result of the amended applications, a further round of IRs is necessary. SEC submitted, however, that further discovery will "almost certainly" be required in this proceeding either through a technical conference or in an oral hearing, but that it is not possible to determine that until the Motion is heard.

EBN submitted that a second IR process is necessary as the original IR process was based on the Original Applications. In its view many of the original IRs need to be amended to ask questions which relate to the specifics of what the Applicants are now seeking, and about the Applicant's current plans in respect of any future rate harmonization. EBN further submitted that the second IR process should be conducted prior to hearing the Motion.

¹ Board staff's questions were attached to their submission dated November 18, 2013.

Both Norfolk and Hydro One submitted that the changes in the relief sought are minor and do not justify a second IR process. In its submission, Hydro One provided responses to Board staff's clarifying questions.

At this time the Board is not persuaded that a second IR process, as a result of the changes in the Second Amended Applications, is necessarily required. After determination of the Motion, the Board will be in a better position to decide whether further discovery is necessary.

The Board finds it appropriate to hear SEC's Motion orally. The Board notes that Hydro One has answered in writing the clarifying questions that Board staff sought to have answered at the hearing of the Motion. The Board recognizes that the intervenors may also have clarifying questions in relation to the changes in relief sought in the Second Amended Applications. The Board will therefore allow parties to ask clarifying questions in relation to the relief now sought at the hearing of the Motion.

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

THE BOARD ORDERS THAT:

1. The Board will hear oral argument on the Motion on **December 12, 2013**. The oral hearing will commence at **9:30 am** in the Board's hearing room at 2300 Yonge St., 25th floor, Toronto, Ontario. The Board will hear oral response to the clarifying questions prior to hearing the Motion.
2. Intervenors wishing to ask clarifying questions, in addition to the questions asked by Board staff for which answers were provided in HONI's submission dated November 22, 2013, shall file such questions with the Board and serve them on the Applicants on or before **December 4, 2013**. The subject matter of these questions shall be limited to clarification of the changes to the relief now sought by the Applicants, as indicated in the Second Amended Applications.

All filings to the Board must quote file numbers, **EB-2013-0196, EB-2013-0187 and 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 November 27, 2013

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary