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BY EMAIL and RESS

March 9, 2014
Our File: EB20130416

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
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Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2013-0416 – Hydro One Networks Inc. 2015-2019 Distribution Application

We are counsel to the School Energy Coalition ("SEC"). SEC has become aware of a letter dated February 18th 2014, from Hydro One Networks Inc. ("HONI") to the Board, which was not provided to any parties who had filed Notices of Intervention, regarding its proposal for certain procedural steps that differ from the normal course. SEC has reviewed the letter and wishes to provide comments regarding the procedural suggestions made by HONI.

HONI's 2015-19 Distribution rate application is the first Custom IR application as envisioned by the *Renewed Regulatory Framework for Electricity* ("RRFE"). It is an important application, made by Ontario's largest distributor, which includes significant rate impacts over the five year term. These factors make it imperative that the Board's review be particularly thorough. Thus, while SEC shares HONI's interest in enhancing the "efficiency and effectiveness of the review of the application", that should not come at the expense of a full and transparent review of the application by the Board and all parties. Procedural fairness and openness cannot and should not be sacrificed in the name of efficiency.

1. Technical conference

HONI has suggested that it undertake a series of technical conference sessions for participants in the Distribution application, beginning in late March. If these proposed sessions are intended to be similar in type and intent to the stakeholder information sessions than have been held by HONI in the past, SEC would have no objection.

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On the other hand, if these proposed sessions are technical conferences in the usual sense of the term, i.e. methods of clarifying and enhancing the evidentiary record in the proceeding, then SEC has a concern. It is SEC's experience that technical conferences are only truly useful if they are used after an initial round of written discovery through interrogatories. That is when the record can be most efficiently improved. At the stage envisioned by HONI, a technical conference would not be very meaningful or the best use of resources.

2. Senior executive team available to answer clarifying questions

HONI has suggested that a team of senior executives could be made available to the Board panel to answer clarifying questions. HONI indicates this would happen before the the issues list is even finalized.

SEC submits that HONI's senior executives should be strongly encouraged to appear before the Board. When a utility is seeking a substantial rate increase, as here, it is proper that those charged with the responsibility to manage the utility should attend to justify the additional resources they are asking the Board to approve. In the past, utility executives have appeared as a kind of overview witness panel, and that has been valuable.

That does not appear to be what is being suggested here. HONI appears to be suggesting that their executives would appear, not as witnesses under oath, not in support of evidence that has been tested through a discovery process, and not subject to cross-examination.

There is a reason oral evidence is provided after the written discovery process is complete. That is the point at which the oral evidence is truly useful. Similarly, there is a reason that oral evidence is subject to cross-examination. Untested evidence is simply speeches, and the Board's time would be wasted hearing speeches. Further, refusal to allow parties to test oral evidence through cross-examination would deny the ratepayers, who are the ones who have to pay the increased rates amounts HONI is requesting, the most basic procedural fairness.

HONI's executives should be witnesses, but not witnesses with special privileges, giving untested evidence of limited value. There is no reason the normal rules for witnesses should apply any differently to HONI executives, and there is no reason why their evidence should be given before the discovery process has been completed.

3. Constraints on the interrogatory process

HONI suggests that the Board, i) impose materiality constraints on interrogatory process, permitting only those interrogatories that clarify evidence related to the approved issues list, and ii) assign each approved issue to a single intervenor, who would take the "lead" on that issue.

SEC has no concerns with the first suggestion, as it is already the Board's practice. It is one of the reasons the Board approves an issues list. That list sets out the scope of the proceeding, which includes the areas in respect of which parties can ask interrogatories.

With regard to the second suggestion, SEC believes that this is inappropriate.

The Board is well aware that intervenors work together already, relying on each other to a greater or lesser extent depending on the interests of their clients, and the particular expertise of each lawyer or consultant. Especially in major cases, intervenors cannot try to do everything themselves. There is too much to be done, so relying on each other is essential. Usually it is

not on the entirety of an issue, but on some parts of the issue that one person is known to handle well. So, for example, three intervenors will ask questions of capital projects, but Intervenor A will focus on benchmarking the overall levels of spending, while Intervenor B will ask questions on the engineering judgments being used, and Intervenor C will review the IT plan. Each may ask a few questions in the other parts of the issue, but their main focus will be known and relied upon. This works efficiently and there are rarely more than a handful of interrogatories that are in any meaningful way duplicative. The goal that HONI purports to seek with its lead intervenor proposal is already being achieved.

The only difference between what happens now, and what HONI is proposing, is that HONI would deny ratepayer groups the right to ask questions, in areas of interest to those ratepayers, and force those groups to rely on someone else arbitrarily designated to represent their interests in those areas. They would turn what works as a voluntary practice into a mandatory rule. SEC believes that denying parties the right to pursue issues in which they have a legitimate interest is not in the public interest, and inconsistent with the Board's mandate. That is particularly true when the "benefit" to be achieved is likely to be minimal, if there is one at all.

If the problem being addressed is duplicative interrogatories, the Board already polices that quite effectively through the cost awards process. Intervenors who waste the time of other parties and the Board with duplicative or irrelevant questions know that their cost claim is at risk. That is one of the reasons why duplicative questions are, today, increasingly rare.

SEC submits this is a non-issue, and it should not be used as a pretense to limit the procedural rights of parties who seek to scrutinize HONI's application.

4. Common Elements Between the Distribution and Transmission Application

HONI has suggested that since there are common areas of evidence in their upcoming 2015-16 Transmission application, and the Custom IR Distribution application, there could be some streamlining of the review of those common costs. HONI has suggested two potential options for hearing the common elements of both applications: i) the Board panel hearing one application could adopt the findings made by the panel hearing the other application, or ii) the oral component on these issues could be heard by both panels sitting together.

SEC agrees with the intent behind HONI's proposal. This year the Board has an opportunity that it does not always have to review the entirety of HONI's common costs, for the same test year, at roughly the same time.

The problem with HONI's first proposal is it would not be legally possible for a Board panel to adopt the findings of another Board panel. First, it well established that a panel of the Board cannot bind another panel of the Board. By setting a process where one panel will adopt the findings of another panel, even before that panel has made any findings would be fettering the discretion of the second panel. Second, past experience has shown that not all of the same parties intervene in both the Transmission and Distribution applications. Parties who intervene in any specific proceeding must be able to explore and present arguments on all relevant aspects of that application. They should not be forced to intervene in the other proceeding to protect their rights on those issues being determined in that other proceeding.

SEC does believe that the second suggestion warrants consideration by the Board. It could be more efficient for the two Board panels to hear the common costs elements at the same time. In

fact, one idea may be for both Board panels to hear the common cost issues jointly, and then release a joint ruling or set of findings on that common aspect of the applications.

For the joint consideration of common issues to work, SEC notes that the scope of those common issues must be determined with considerable care. It may not be just a question of common costs. It may also include common HR policies such as target compensation levels, or common work management practices, or approaches to union negotiations, etc. Simply designating an area of costs that are shared between the utilities, and restricting the joint panel to that, would be of little value, because the many common overall issues would still have to be dealt with in both proceedings, and they would likely affect any joint ruling on the shared costs.

All of which is respectfully submitted.

Yours very truly,
Jay Shepherd P.C.

Original signed by

Mark Rubenstein

cc: Wayne McNally, SEC (by email)
Applicant and interested parties (by email)