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March 11, 2014

Delivered by Email and REES Filing

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
Suite 2701
Toronto, ON M4P 1E4

Dear Ms. Walli:

Re: OEB File No.: EB-2013-0196/EB-2013-0187/EB-2013-0198

Interrogatories of Norfolk Power Inc. to Essex Powerlines Corporation, Bluewater Power Distribution Corporation, and Niagara-On-The-Lake Hydro

We enclose the Interrogatories of Norfolk Power Inc. with respect to the report filed by BDR Energy.

Yours truly,

BORDEN LADNER GERVAIS LLP

J. Mark Rodger
Incorporated Partner*
*Mark Rodger Professional Corporation

JMR/ld
Encl.

TOR01: 5523025: v1

Interrogatories of Norfolk Power Inc. to Essex Powerlines Corporation,
Bluewater Power Distribution Corporation,
And Niagara-On-The-Lake Hydro ("EBN")

In the Matter of
Application by Hydro One Inc. EB-2013-0196
Application by Norfolk Power Inc. EB-2013-0187
Application by Hydro One Networks Inc. EB-2013-0198

EB-2013-0196/0187/0198

J. Mark Rodger
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Counsel to Norfolk County and
Norfolk Power Inc.

March 11, 2014

Question 1

Reference:

BDR Report, Appendix A, page 27.

Preamble:

Norfolk would like to understand BDR's understanding of and ability to comply with the obligations pursuant to Rule 13A of the Rules of Practice and Procedure of the Ontario Energy Board.

Questions:

Rule 13A.02 states that:

An expert shall assist the Board impartially by giving evidence that is fair and objective.

a) Please confirm that Ms. Zarnett's report complies with Rule 13A.02 as stated above.

b) Please confirm the date that BDR was retained by EBN?

c) Please include details of the retainer including:

   i. Specific instructions provided to Ms. Zarnett upon retainer; and
   ii. Any revisions to these instructions throughout the production of the BDR report.

d) Please confirm whether Ms. Zarnett or Mr. McNeil have been involved with or are currently in the process of entering any other retainers with any of the utilities that are part of the EBN group.

e) Please provide copies of all prior drafts of Ms. Zarnett's report which was ultimately filed with the Board.

f) Please provide copies of all correspondence between BDR and any member of the EBN group in connection with the report Ms. Zarnett filed in this proceeding.

Question 2

Reference:

CV of Paula Zarnett filed February 26, 2013, page 3.

Preamble:

Norfolk would like to confirm the relevance of Ms. Zarnett's experience to the matter currently before the Board. As the named author of the Report, Ms. Zarnett indicates on page 4 of her CV that she has testified before regulators in the following matters:

Toronto Hydro-Electric System
Saint John Energy
ICG Utilities
Rogers Cable and Communication Inc.

Written testimony:

Greater Sudbury Hydro
Bluewater Power
Kingston Hydro
FortisOntario
EnWin Utilities
Ontario Power Authority
City of Summerside

Questions:

a) Please confirm that none of these matters contained or involved a MAAD application.

Question 3

Reference:

BDR Report, Executive Summary, Introduction and Scope, page 2.

Preamble:

Norfolk would like specifics on what informs the review performed by BDR as described on page 2 of the BDR report where it states that EBN requested it to:

- Review evidence as to cost structures to determine whether they are likely to increase or decrease as a result of the intended transaction;
- To comment on non-financial impacts, such as quality of service; and
- To consider and comment on whether the purchase price is set at a level that would create a financial burden on the acquiring utility; and
- To develop and present a possible scenario for estimation of the impacts of harmonization of rates, once the proposed rate freeze period expires.

Questions:

a) Please provide all notes and documentation that BDR relied upon to form the conclusions documented throughout the BDR report; including but not limited to:

   i. Cost structures;
   ii. Non-financial impacts;
   iii. Purchase price and expected financial burdens;
   iv. Scenarios for estimating impact on harmonization of rates; and
   v. Operating and Capital expenditure costs in relation to associated benefits.

b) Please confirm whether each of the items identified in response to part (a) was provided to BDR by EBN or obtained from public sources (as identified on Page 2 of the BDR report). If obtained from public sources, please provide a full and complete reference to such source so that it can be verified.

Question 4

Reference:

BDR Report, Section 2.1, page 9.

Preamble:

Norfolk would like specifics on what informs the considerations BDR made as described on page 9 where, in its "test" of the evidence before the Board in this proceeding, BDR states that it considered:

> "whether it appears consistent with what we know of the way business is generally carried on by electricity distributors. Here we drew on our own sector experience and ***our consultation with senior management with EBN on facts and experience related to current operations of LDCs. (italics added)***

Questions:

a) Please identify and describe all "facts and experience related to current operations of LDCs" which Essex, Bluewater and/or Niagara-on-the-Lake senior management provided to you. Please provide copies of all correspondence with EBN related to the same.

Question 5

Reference:

BDR Report, Section 3.2 page 20 and Toronto Star, February 10, 2010 "The Push for the Privatization of Toronto Hydro" (attached).

Preamble:

Norfolk wants to clarify Section 3.2 as the Table found on page 21 of the BDR report indicates that from June 2000 to September 2005 "the average premium paid by publically owned distribution companies including Hydro One was about 30% to 40%."

In the attached Toronto Star article, Mr. McNeil is quoting as saying "the city (Toronto) should look at dealing Toronto Hydro. It would command a feeding frenzy in terms of investor interest".

Questions:

a) To what extent are premium levels paid on LDC sales a function of competitive market forces where multiple buyers compete against each other?

b) Does BDR believe that only a utility the size of Toronto Hydro would generate, in Mr. McNeil's words, "a feeding frenzy of investor interest" or does BDR believe that smaller LDCs, like Norfolk Power, could also attract significant premium offers from multiple, competing investors?

Question 6

Reference:

BDR report, Section 3.2, pages 20 to 22, "The Ontario LDC M&A Market", December 12, 2013 Schools Motion, Norfolk Exhibit and May 21, 2013 email from Joe Barile to multiple recipients entitled "LDC MADD Intervention (HONI purchase of Norfolk)" (attached).

Preamble:

The BDR report includes a Table on page 21 showing the outcome of various LDC sales solicitation processes. Mr. Barile's email, in the Background section, states that "HONI was the successful proponent in the RFP process initiated by Norfolk Power Distribution Inc."

Questions:

a) Please confirm that Essex Power Corporation signed a Confidentiality Agreement with Norfolk County dated December 3, 2012 which entitled Essex to receive, and which Essex subsequently did receive, the RFP package pertaining to the sale of Norfolk Hydro?

The push for the privatization of Toronto Hydro

10 fevrier, 2010 - 08:31

The *Toronto Star* reports today that, "John McNeil, president of BDR NorthAmerica Inc., doesn't shy away from saying some city assets should be sold. His firm advises players in the electricity and natural gas sectors on mergers and acquisitions, regulatory issues and planning."

"(McNeil says) the city should look at dealing Toronto Hydro. 'It would command a feeding frenzy in terms of investor interest.'"

"There's a tax problem to be solved, he conceded. The province levies a 33 per cent tax on the sale of municipal electric utilities if they're sold to private operators. That makes them much less attractive — and he thinks the city should be pressing the province to change the rule. But McNeil said the city could try selling a modest 10 per cent stake through public offering. He figured it could bring the city up to $150 million, and get the public used to private involvement in the utility. The federal government eased into the sale of Petro-Canada in much the same way."

CAW economist Jim Stanford counters McNeil's Toronto Hydro privatization argument by saying, "The city typically earns an annual profit of about 10 per cent on its equity investment. Some of that (but not all) is paid to the city as a cash dividend; but even the profits that are retained inside Toronto Hydro are still new wealth for the City. If you sell off an asset that earns 10 per cent, in order to pay down debt (or avoid new debt, which is equivalent) on which you pay 5 or 6 per cent interest, have you made a good decision? Obviously not. Your balance sheet is no stronger: debt is lower, but so are your assets."

"There are also public policy considerations, said Stanford. Toronto Hydro is more willing to subsidize energy conservation or long-run investments in green energy than a private firm, he said."

The *Toronto Star* article also highlights that Dana Levenson — "the man who put management of some of Chicago's prized (public) assets under private management — comes to town on Thursday to share his perspective with the Toronto Board of Trade."

The full article is at http://www.thestar.com/mobile/business/article/763019.

From: Joe Barile
Sent: Tuesday, May 21, 2013 1:32 PM
To: 'dvaiciunas@sympatico.ca'; 'tvanderheide@bluewaterpower.com'; 'jkoosterhof@gmail.com'; 'jhoward@orangevillehydro.on.ca'; 'ajmaes@vanten.com'; 'gdick@orangevillehydro.on.ca'; 'marytrose@marytrose.com'; 'pmarley@midlandpuc.on.ca'; 'j.tackaberry@wasagadist.ca'; 'r.bucknall@wellingtonnorthpower.com'; 'rtyrrell@orangevillehydro.on.ca'; 'kmcallister@orilliapower.ca'; 'lisa.milne@westario.com'; 'sherwood@cwhydro.ca'; 'r.hayhurst@sympatico.ca'; 'jwilkinson@orpowercorp.com'; 'dfee@orpowercorp.com'; 'michelpoulin@hydrohawkesbury.ca'; 'aphydro@hawk.igs.net'; 'embrunhydro@magma.ca'; 'maryjocorkum@miltonhydro.com'; 'jalbert@hchydro.ca'; 'brian.eileensnyder@gmail.com'; 'jtheoret@lusi.on.ca'; 'proofspositive@yahoo.ca'; 'georges@innisfilhydro.com'; 'conrad@ntl.sympatico.ca'; 'rossmcm@woodstockhydro.com'; 'carswell@woodstockhydro.com'; 'dyce@cwhydro.ca'; 'jrosszuj@centrewellington.ca'; 'slhydro@tbaytel.net'; 'Jim Huntingdon'; 'slund@town.tillsonburg.on.ca'; 'brianm@shec.com'; 'JGuilbeault@peterboroughutilities.ca'; 'rosborne@ascent.ca'; 'sfilice@sttenergy.com'; 'bzehr@festivalhydro.com'; 'maston@wellingtonnorthpower.com'; 'imckenzie@brantcountypower.com'; 'eglasbergen@brantcountypower.com'; 'rpeever@wellandhydro.com'; 'aubreyford@live.ca'; 'gceksters@rogers.com'; 'cwhite@eriethamespower.com'; 'psmuk@aol.com'; 'dougt@nowire.ca'; 'nclement@erhydro.com'; 'twilcox@northbayhydro.com'; 'chec@onlink.net'; 'ldonivan@brokerlink.ca'; 'Miles Thompson'; 'apalimaka@bluewaterpower.com'; 'frankk@shec.com'; 'pferguson@nmhydro.ca'; 'clitschko@lakelandpower.on.ca'; 'jwalsh@rslu.ca'; 'westport@rideau.net'; 'Gord Eamer'; 'Dougc@grimsbypower.com'; 'lasowskif@miltonhydro.com'; 'jsanderson@whitbyhydro.on.ca'; 'askidmore@haltonhillshydro.com'; asasso@enwin.com; Jim.Hogan@entegrus.com; 'maudet@elkenergy.com'
Cc: Raymond Tracey; Richard Dimmel; Janis McVittie
Subject: LDC MADD Intervention (HONI purchase of Norfolk)

Essex Powerlines would like to gauge the level of interest of a group of like-minded LDC's to intervene in Hydro One's MADD application with respect to the purchase of Norfolk Power.

Background

As all of you may already be aware, Norfolk Power Distribution Inc. ("NPDI") was recently purchased by Hydro One Networks Inc. ("HONI"). HONI was the successful proponent in the RFP process initiated by NPDI.

HONI has agreed to pay approx. $93 million (inclusive of the assumption of NPDI debt) to purchase NPDI. HONI claims they intend to ONLY rate base $54 million and that a 1% rate reduction will be granted to Norfolk customers for the first five years.

HONI has indicated in their MAAD application that the acquisition of Norfolk aligns with the recommendation of the Sector Review report for consolidation.

Initiative

While we support that the consolidation of LDCs in a given regional location may lead to lower cost of service and possible short-term rate decreases, we do not support the consolidation led by the highest cost of service LDC (HONI) paying significant premiums (almost 2x rate base) to purchase LDCs. We view this as basically forcing regionalization which will more than likely not result in any long-term savings to electricity ratepayers and possibly put Ontario taxpayers on the hook for further poor investment decisions.

Principles

We recognize that the OEB MAAD approval is based on a very narrow interpretation of the "no harm" test. That is, customers are no worse off after the transaction than they were prior to it. As such, the premium paid over rate base will likely be an excluded consideration. However, should the "no harm" test be applied with a broader interpretation in order to consider the likelihood of rates eventually being harmonized and former Norfolk customers seeing an increase in rates and a decrease in service levels?

We also recognize that OEB may look at the sale as a commercial transaction, so they may not concern themselves with the amount of the premium paid or the other commercial elements of the sale.

However there are still real and substantial issues that need to be brought to the forefront in this matter.

Many utilities have repeatedly raised alarm bells with respect to the huge investments they need to make for infrastructure renewal programs and their limited ability to secure funding for them.

The recent Ontario Distribution Sector Review Panel report also talks about "putting the consumer first".

This raises some very pertinent questions which include, but are not limited to, the following:

1. Why is it that Hydro One can very easily source the necessary funds for what appears to be a very over-inflated investment in Norfolk Power yet not have sufficient funds for proper re-capitalization on their current assets that impact the reliability of supply to many other LDCs and their customers in the Province?

2. With all the need for infrastructure investment (this includes Hydro One service territory) and the need to "put the consumer first" with respect to lowering electricity rates as noted in the recent Ontario Distribution Sector Review Panel Report, how can consolidation led by significant premiums meet the aforementioned Provincial objective?

3. How will this merger impact other LDCs? If artificially inflated values are paid for LDC assets by the Provincial LDC, this will naturally deter other consolidations from occurring among municipally controlled LDCs where real value for regionalized electricity customers would have occur.

4. HONI claims that its price for Norfolk is justified based on synergies and savings it will realize from the merger. HONI acquired 80 plus utilities in the first round of consolidation yet remains the highest cost LDC service provider in the province. In fact the OEB itself in previous rate filings have clearly stated that HONI has been unsuccessful in finding operational savings. In the purchase offer for Norfolk HONI guarantees jobs to all Norfolk employees as new HONI employees where job pay rates are significantly higher, this will add even more upward pressure to rates.

The Province is looking at new energy policy to "lower electricity rates" yet they are supporting that the highest cost LDC service provider acquire the lower cost LDCs at premiums significantly above rate base values. This approach and the numbers don't add up again and there is a need to assess whether this is the **"model of consolidation"** the **"electricity rate payers"** want to adopt.

Next Steps

This e-mail is being sent to you in order to canvass your possible interest in participating in seeking/making submissions as a group intervenor to HONI's MADD Application relating to its purchase of NPDI. Depending on the number of LDC's interested in participating, we will establish a budget for the cost and a methodology to assess this cost (likely based on number of customers).

The request for intervener status will be based on the following:

1) As an electricity distributor in Ontario, we have a vested interest in the approval of this MAAD application as further purchases by Hydro One will artificially inflate the value of LDCs and could adversely affect efforts to regionalize with the lowest cost distributors rather than the highest cost.
2) Continued Hydro One acquisitions will ultimately raise rates to acquired ratepayers due to harmonization with higher Hydro One tariffs in the long term.
3) The premium paid will ultimately affect Ontario taxpayers who for the most part are electricity ratepayers if synergies aren't realized.

These are just a few of the questions and issues that should be raised during this MAAD application and there will be others that we would like the opportunity to discuss. We are looking to raise the awareness of the long term effect of these types of purchase/consolidations to the Ontario Energy Board and the Government of Ontario. We think that this opportunity should not be missed as all of our futures could depend on the outcome.

To this end and for your review we have attached our response to the Ontario Minister of Energy with respect to the Ontario Sector Review Panel Report.

Your thoughts and suggestions with respect to the above initiative would be appreciated in order that we can move forward in this matter.

Regards,

Joe Barile,
Regulatory, Legal and Human Resources
Essex Power Corporation
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Oldcastle, Ontario
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