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April 24, 2014

VIA RESS, EMAIL AND COURIER

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, Ontario M4P 1E4

Dear Ms. Walli:

**RE: Applications by Hydro One Inc., Norfolk Power Distribution Inc. and Hydro One Networks Inc.
EB-2013-0196, EB-2013-0187 and EB-2013-0198**

In accordance with the Directions set out with the Board's Procedural Order No. 9, please find enclosed the joint written reply submissions of Hydro One Inc. and Hydro One Networks Inc..

Yours truly,

McCarthy Tétrault LLP

(Original Signed By)

Gordon M. Nettleton

GMN/mpf

IN THE MATTER OF 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*;

AND IN THE MATTER OF 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*;

AND IN THE MATTER OF an application made by Norfolk Power Distribution Inc. for leave to transfer Norfolk Power Distribution Inc.'s distribution system to Hydro One Networks Inc. made pursuant to section 86(1)(a) of the *Ontario Energy Board Act, 1998*;

AND IN THE MATTER OF an application made by Norfolk Power Distribution Inc. for leave to transfer/assign Norfolk Power Distribution Inc.'s distribution licence and rate order to Hydro One Networks Inc. made pursuant to section 18 of the *Ontario Energy Board Act, 1998*.

HYDRO ONE INC. AND HYDRO ONE NETWORKS INC.

REPLY ARGUMENT

April 24, 2014

A. INTRODUCTION

In accordance with Procedural Order No. 9, Hydro One Inc. ("HOI") and Hydro One Networks Inc. ("HONI") (HOI and HONI, collectively, "Hydro One") provide Reply Submissions to arguments made by the following intervenors: Essex Powerlines Corporation, Bluewater Power Distribution Corporation and Niagara-on-the Lake Hydro Inc., (collectively "EBN"); School Energy Coalition ("SEC"); Consumers Council of Canada ("CCC"); Vulnerable Energy Consumers Coalition ("VECC") and Board Staff.

School Energy Coalition (“SEC”)

1. SEC’s Procedural Issues

At pages 1 and 2 of its argument, SEC raise concerns over the content of NPDI’s argument as well as the belief that the Board ought to have convened an oral hearing so that intervenors would have had the ability to test evidence through oral cross-examination. Hydro One leaves the issue of NPDI’s alleged argument deficiency to NPDI. With respect to concerns over the Board’s process, Hydro One submits that SEC has in no way demonstrated that the Board’s choice of process has caused the evidentiary record to somehow be tainted or unreliable for purposes of making an informed decision. If SEC had substantive concerns, as opposed to a mere procedural preference, then it should have taken the necessary steps to raise such matters well before final argument. SEC is well aware of how matters may be raised and proceed by way of interlocutory motion. Allegations of procedural unfairness are to be raised at the time in which the impugned conduct occurs – well before final argument. The law is clear on this point.¹ No explanation is provided by SEC as to why such steps did not take place or could not have reasonably taken place. Hydro One therefore, submits that SEC’s procedural issue lacks merit and should be rejected.

2. SEC’s “Basic Facts on Rates”

At pages 4 and 5 of its argument, SEC provides a discussion of its views on how past transactions involving Hydro One and the accompanying rate implications should be considered in the context of the present application. SEC states that “it doesn’t matter”² that: (1) this information was not placed on the record of this proceeding by SEC filing it as evidence; and thus, conveniently, it does not matter that SEC’s interpretation of that information comes before this Board as final argument; (2) had these interpretations been provided as SEC evidence, parties to this proceeding would have had the benefit of testing these interpretations through the interrogatory process. Hydro One submits that it does matter. The fact is that none of the rate

¹ *ECWU, Local 916 v Atomic Energy of Canada Ltd*, [1985] FCJ No 189, (sub nom *In Re Human Rights Tribunal and Atomic Energy of Canada Ltd*) [1986] 1 FC 103 at 112-113 (Fed CA) (QL), leave to appeal refused [1986] SCCA No 79; *Mohammadian v Canada (Minister of Citizenship and Immigration)*, [2000] 3 FC 371 at para 25, [2000] FCJ No 309 (FC TD)(QL), aff’d [2001] 4 FC 85 (CA); *Alberta Teachers’ Association v Alberta (Information and Privacy Commissioner)*, 2010 ABCA 26 at paras 15-16, rev’d on other grounds 2011 SCC 61; and *Liu v Canada (Citizenship and Immigration)*, 2012 FC 244 at para 32.

² SEC Final Argument, page 2.

1 interpretations provided by SEC have been adduced through evidence. More importantly, all of
2 the information concerns historical transactions, the subject matter of which has been
3 determined by this Board to be an area that is not relevant for inquiry in this proceeding. In
4 addition, all of the transactions occurred before development of the “no harm test”. Therefore,
5 SEC’s perspectives should not be given any weight to the question of whether the current
6 transaction should be approved.

7 Hydro One’s final point in reply to this section concerns the propriety of the extrapolations SEC
8 has made from the information set out in Hydro One’s current rate application (EB-2013-0416).
9 SEC’s interpretations and assertions that unreasonable rate increases are in store for NPDI
10 customers in the period post harmonization are ill guided. The basis for such assertions is
11 information that does not relate to NPDI’s current rates. The current application (EB-2013-
12 0416) is an application pertaining only to Hydro One’s legacy customers and does not concern
13 the transaction at all. How then can SEC assert that this information is relevant to NPDI’s
14 current rates let alone its future rates? The assertions simply ignore Hydro One’s evidence that
15 future rate determinations arising from a rate harmonization process have not been determined.
16 Mere speculation by SEC of what it believes Hydro One will do in the future is not a reasonable
17 basis for the Board to fairly assess the merits of the application now before it. SEC may be
18 frustrated by not knowing the future, namely, what Hydro One’s rate application may be for in a
19 time period more than five years from now. However, this does not invalidate the relief that
20 Hydro One is seeking. SEC provides no explanation as to why it cannot participate in future
21 applications and raise, at such future time, any concerns it may have. Therefore, SEC’s
22 complaint has not been demonstrated to have applicability to the issues and considerations
23 currently before the Board.

24 **3. SEC’s Re-defined “No Harm Test”**

25 At page 5 of its argument, SEC challenges whether the “no harm test” should be interpreted so
26 as to take into account overall or aggregate ratepayer impacts, as opposed to the focus being
27 on specific impacts to specific ratepayer groups. SEC suggests that even if the Board were to
28 determine that aggregate ratepayer considerations are relevant, then the “no harm test” should
29 be modified to exclude these considerations since that approach would allow for a netting out of
30 impacts and benefits as between different groups.

Hydro One submits that the “no harm test” is clear and that the additional refinements proposed by SEC are not required to assess the merits of the present application. The refinements proposed by SEC are intended to force the Board’s consideration of the MAAD application by ignoring an important perspective – overall rate impacts. The Motion Day process was an appropriate forum for parties to debate how the “no harm test” should apply to the present circumstances. That debate has concluded. The Motion Decision³ resolved how the Board intends to consider the “no harm test” in the present circumstances.

SEC goes on to discuss Hydro One’s projections of the cost savings that are likely to result from this transaction. While SEC admits that savings are likely, it challenges Hydro One’s rationale for such conclusions (stating the evidence is “pretty sparse”)⁴ and that in any event the savings will be offset by the costs SEC claims are likely to fall upon NPDI customers based on its extrapolative results. Hydro One disagrees with SEC’s assertions. The propriety of SEC’s extrapolations is misguided. Hydro One has made no decision regarding future rates for NPDI customers following rate harmonization. The record in this proceeding is sufficient for the Board to make an informed decision that grants the relief requested.

4. Hydro One’s Productivity Statistics and the Propriety of “Averaging Down”

A common theme found in SEC’s argument, is the view taken that SEC’s assessment of Hydro One’s productivity levels should be held out as a valid reason to deny approval of the transaction.⁵ Hydro One does not view the statistics that SEC and others have relied on as a proper basis to assess productivity of this transaction and specifically in the context of NPDI’s geographical context and types of customers. By SEC relying on published statistics about Hydro One’s overall distribution performance, no adjustments or regard is ever given to the significant differences associated with the composition of Hydro One’s overall distribution system, relative to the features associated with the NPDI service territory. The result is an apples to oranges comparison with results that have not been shown to have any particular value or meaning.

SEC also takes issue with the view that achieving cost savings and benefits through an “averaging down” of costs from consolidation and obtaining economies of scale should be

³ OEB Procedural Order No. 8 dated January 24, 2014 (the “Motion Decision”).

⁴ SEC Final Argument, page 5.

⁵ SEC Final Argument, see for example pages 1, 5, 6 and 7.

1 ignored when assessing whether cost savings and benefits are likely to accrue from the
2 proposed transaction. SEC goes on to justify this broad assertion by suggesting it applies only
3 to Hydro One and that Hydro One should be focused on improving its overall productivity levels
4 but do so, without being permitted to participate in consolidation activities – now or in the future.
5 SEC's reasons defy logic. SEC's productivity statistics are not representative of fair
6 comparisons. SEC has provided no cogent basis why achieving such efficiencies through
7 economies of scale and thus reducing overall average costs can reasonably be said to be an
8 inappropriate consideration. There is no merit to the suggestion that Hydro One should be
9 singled out and denied the opportunities that are likely to benefit ratepayers through the
10 conclusion of this transaction or others.

11 **Consumers Council of Canada ("CCC")**

12 Hydro One's provides reply to four areas of CCC's Final Argument.⁶

13 **1. Consideration of the Premium Paid by Hydro One**

14 At page 4 of its argument, CCC has properly summarized the Board's Motion Decision by
15 stating that the Board has determined that the selling price of the utility is only relevant if the
16 price paid is so high as to create a financial burden on the acquiring company, which adversely
17 affects its economic viability to provide service, as any premium that is paid in excess of the
18 book value of assets is not normally recoverable through rates.⁷

19 However, CCC then goes on to assert that in this proceeding the level of the premium paid by
20 Hydro One is a primary reason why the Board should not approve the requested relief. Yet it
21 does so without any regard to the very reasons set out by the Board. CCC provides no
22 reference to any evidence on the record in this proceeding to suggest Hydro One's financial
23 ability will in some way be impaired in providing reliable and quality service. Moreover, CCC
24 takes no steps to address how Hydro One's specific response to Board Staff is in some way
25 deficient in demonstrating that its financial ability will not be impaired. The evidence and facts in
26 this proceeding have simply been ignored by CCC. Hydro One's evidence remains
27 uncontroverted. The premium amount paid must be considered in light of Hydro One's overall
28 financial health as objectively set out in its financial statements. Hydro One's evidence in this

⁶ CCC Final Argument filed on April 14, 2014.

⁷ CCC Argument page 4; Motion Decision, page 7.

1 proceeding is that the premium paid will not be recovered in rates and it will not impact the
2 financial viability of Hydro One. In light of this, it is simply not reasonable for CCC to claim
3 otherwise.

4 CCC's desire to have the premium considered in this proceeding is inconsistent with the Board's
5 Motion Decision. By raising this matter without any explanation as to how Hydro One's financial
6 health would be impaired is akin to ignoring the Board's Motion Decision or perhaps an indirect
7 request for the Board to reconsider its Motion Decision. Hydro One respectfully submits the
8 Board should not follow CCC's logic. The Motion Decision was clear. Argument is not the time,
9 nor the place, for an intervenor to request a revisit or reconsideration of a settled matter.

10 **2. The Relevance of Hydro One's Historical Transactions**

11 The next reason CCC uses to advocate rejection of the relief sought, concerns Hydro One's
12 past conduct, and in particular, concerns over how prior transactions involving Hydro One have
13 proceeded forward. Yet by raising this matter in argument, CCC selectively ignores the Board's
14 pronouncements found in the Motion Decision. At page 5 of the Motion Decision the Board
15 stated that in this proceeding, it will not require the applicants to respond to interrogatory
16 requests ("Interrogatory") related to Hydro One's past acquisitions and mergers, noting that
17 these consolidations occurred prior to the Board's articulation of the "no harm" test and its
18 *Report on Rate-making Associated with Distributor Consolidation*.⁸

19 Hydro One again submits that the Motion Decision was clear - that information related to Hydro
20 One's past acquisitions and mergers is not relevant to this proceeding. There is no reasonable
21 basis for CCC to make such arguments.

22 **3. Lack of Commitment Regarding Rates 6 Years from Now**

23 CCC's third rationale for denying the requested relief relates to Hydro One's inability to provide
24 a definitive commitment as to what rates will apply to NPDI customers following the 5 year rate
25 freeze period. While CCC acknowledges Hydro One's position that such matters have yet to be
26 determined, CCC in any event cites Hydro One's current rate application – that is rates to be
27 charged for the 2015-2019 period (i.e. what would be the rate freeze period for NPDI's
28 customers) as "evidence" that rates beyond 2019 for NPDI customers will increase and at

⁸ OEB Decision and Order and Procedural Order No. 8, January 24, 2014, page 5.

1 unacceptable levels. How such conclusions are reached is at best confusing. The confusion
2 lies with CCC's understanding of what the Hydro One current rate case is for and what it is not
3 for. It is for the rates to be charged to Hydro One's existing customers. It does not apply to
4 NPDI. Rates under that application will not be affected by this transaction should it be
5 approved. Rates to NPDI customers during the 2015-2019 timeframe will be frozen. Rates for
6 the period after 2019 are not the subject-matter of Hydro One's existing rate application. The
7 EB-2013-0416 rate filing is for the period 2015-2019. It therefore, cannot be fairly described as
8 being "evidence" as to what rates will be charged for NPDI customers in 2020 and beyond.

9 CCC's belief seemingly is that the MAAD Applicants should be required to provide rate certainty
10 for all future rates charged to customers affected by consolidation transactions. In so doing,
11 CCC dismisses the notion of prospective cost structure information as having any value and that
12 the Board must have perfect certainty around whether a transaction will provide benefits relative
13 to the status quo.

14 The evidentiary burden that would be associated with CCC's position is extreme and would not
15 be practical. Future expected cost structures must be based on forecasts. It is reasonable and
16 appropriate for the "no harm test" to take into account prospective forecast information. What is
17 mystifying is why CCC has simply ignored Hydro One's forecast cost structure responses set
18 out in its Interrogatory responses or why such information should not be used to allow the Board
19 to make reasonable and informed decisions.

20 **4. Await Completion of Proceeding EB-2014-0138**

21 CCC's argument concludes with a discussion about its views on Proceeding EB-2014-0138.
22 CCC's position is that the application should at least be deferred until after the Board completes
23 Proceeding EB-2014-0138. Hydro One submits that CCC's position should fail. There is
24 nothing to suggest that Proceeding EB-2014-0138 is intended as a hard stop that prevents the
25 processing MAAD applications that are presently before the Board. EB-2014-0138 is a
26 comment process on specific issues raised in a Board Staff Discussion Paper.⁹ This Discussion
27 Paper requests comments on specific questions, none of which have to do with a revamp of the
28 "no harm test". Indeed, there is nothing to suggest that MAAD applications now underway

⁹ Ontario Energy Board, *Review of the Board's Policies and Processes to Facilitate Electricity Distributor Efficiency: Service Area Amendments and Rate-Making Associated with Distributor Consolidation*, EB-2014-0138 (31 March 2014) (the "Discussion Paper").

1 should face some type of unexplained moratorium. Yet that would be the effect of CCC's
2 proposal. In Hydro One's submission, the current proceeding and EB-2014-0138 can and
3 should proceed concurrently.

4 **Vulnerable Energy Consumers Coalition ("VECC")**

5 **1. Applying a Long-Term Perspective to the "No Harm Test"**

6 At page 5 of its argument,¹⁰ VECC advocates having the Board "include" what it calls a
7 "long-term perspective" as part of the "no harm test". The long-term perspective VECC believes
8 to be important is an assessment of impacts out beyond what it considers to be immediately
9 following the transaction. VECC then challenges Hydro One as not having adopted this
10 approach and instead raises criticisms about the evidence before the Board being limited only to
11 the 5 year "rate freeze" period.

12 VECC however has recognized that Hydro One's evidence includes projections of cost
13 structures and savings that extend well beyond the 5 year period.¹¹ VECC characterizes this
14 information as a "general terms" discussion and without a "detailed work up" of these savings or
15 how they will arise. VECC's position is summarized at page 8 of its argument: "while the
16 transaction may satisfy the No Harm Test in terms of Hydro One Networks' legacy customers
17 VECC submits it has not been clearly demonstrated and documented."¹²

18 VECC's concerns are in the same vein as CCC's views about requiring the MAAD Applicants to
19 move forward with seemingly perfect certainty regarding future cost savings and future rates for
20 some undetermined period of time. The lack of "detailed work ups" of cost saving values
21 projected to take place periods beyond the first five years has not been shown by VECC as to
22 have any incremental value. All that VECC says is that it ought to have been done. Perhaps, if
23 VECC had presented evidence about the incremental value that would be gained by an
24 Applicant engaging in a "detailed work up" of cost savings projections for periods beyond five
25 years from when a transaction is intended to close, there would at least be some objective basis
26 to justify such remarks. However, that is not the case.

¹⁰ Final Argument of VECC filed April 14, 2014.

¹¹ Final Argument of VECC, page 7.

¹² Final Argument of VECC, page 8 [emphasis added].

1 What VECC and others fail to appreciate is that the cost savings information presented in the
2 Table 1 Analysis¹³ is a long-term cost *forecast*. The Table 1 Analysis has properly addressed
3 the challenges of long-term predictability and certainty by aggregating functional cost categories
4 and assessing these at a higher level and including appropriate sensitivity analysis. That
5 approach is sensible when one takes into account the exercise at hand – a long-term
6 assessment of cost structures, as opposed to a long-term assessment of detailed individual cost
7 items.

8 **2. NPD I Long-Term Rates: Imposition of an Approval Condition to “Acknowledge**
9 **this as an Outstanding Issue”**

10 At pages 8 and 9 of its argument, VECC mischaracterizes Hydro One's evidence by
11 extrapolating Hydro One's response to SEC Interrogatory #4 to suggest that NPD I customer
12 rates in the future will increase by 50%. In so doing, VECC totally ignores Hydro One's other
13 evidence that is directly on point where Hydro One has stated that rate matters beyond the 5
14 year freeze period have not been determined and are therefore, not matters that can be
15 examined in this proceeding. Instead, those matters would be the subject-matter of a future rate
16 harmonization process.

17 VECC then curiously goes on to suggest that if the applications are in fact approved, an
18 unspecified condition be imposed on the approval to note determination of NPD I's future rates
19 as an unresolved matter.¹⁴ VECC provides no details as to what exactly this condition would be
20 and how this would work. Conditioning an approval to declare “an outstanding issue” is no
21 condition at all. If VECC really means that any approval granted now could be withdrawn in the
22 event Hydro One proposes rate increases upon NPD I customers, then the fairness of such a
23 proposition must be considered. On the one hand, this would mean that the transaction could
24 be “unwound” five years from now. It would mean that the transaction would remain in escrow,
25 unable to close. Integration efficiencies could not result during the next five years as all
26 activities would need to revert to what the world looked like before the transaction took effect.

27 On the other hand, the only way forward for the transaction to close would be for Hydro One to
28 effectively agree now to not raise rates that may be charged to NPD I customers following the

¹³ Hydro One's amended responses to VECC Interrogatory #2, Exhibit I, Tab 2, Schedule 2 (“Table 1 Analysis”).

¹⁴ VECC Final Argument, page 9.

1 five year period. Such a condition would be tantamount to rejecting the applications. Hydro
2 One's position is and remains that rate harmonization matters have not been determined.
3 Imposing conditions that restrict what Hydro One may seek in the form of rate harmonization
4 approval places a level of undue risk upon a MAAD Applicant's abilities to consolidate and to
5 achieve actual integration savings. Imposition of such a condition would fundamentally alter the
6 "no harm" test. MAAD Applicants would be required to have perfect certainty regarding future
7 costs in order to reasonably accept such risks. Such a position is without merit. VECC's
8 condition should therefore be rejected outright.

9 **3. Reliability and Quality of Electric Service**

10 At page 9 of its argument, VECC raises concerns regarding the level of detail provided in Hydro
11 One's Table 1 Analysis to justify the expected 40% cost reduction in forecast capital spending
12 relative to NPDI's current 10 year forecast. What VECC does not take into account is the fact
13 that Hydro One's capital spending forecast for the NPDI assets is based upon the same
14 methods it uses for its existing distribution system assets. Given this, and given the task at
15 hand is the development of a forecast cost structure analysis, it is unclear why any further
16 detailed information is required? Additional information might be warranted if the circumstances
17 involved an acquiring party unfamiliar to the Board. But that's not the case. Hydro One's
18 existing distribution system and its capital asset programs are well known and have been used
19 to forecast its prospective cost structure. It is both reasonable and appropriate for the Table 1
20 Analysis to be based on these circumstances. Why any additional information is now necessary
21 to justify the reasonableness of the output shown in Hydro One's Table 1 Analysis has not been
22 explained by VECC or any other party.

23 **4. Applicability of Hydro One's Current Five Year Rate Application (EB-2013-0416)**

24 At page 10 of its argument, VECC is critical of Hydro One's decision to defer the rebasing of
25 rates until after the conclusion of the 5 year rate freeze period. At the same time, VECC
26 attempts to establish some nexus between this fact and the fact that Hydro One has sought to
27 increase rates to be charged to its legacy customers during the time period in which the NPDI
28 rates will be frozen. By doing so, VECC claims that a lack of clarity exists "making it difficult for
29 parties (including the Board) to determine if the proposed transaction is consistent with the "no
30 harm test", particularly in regards to NPDI's (former) customers."

Hydro One disagrees. VECC's criticism fails because there is no nexus between the five year rate period and the relief which Hydro One has sought in its EB-2013-0416 application. These are two mutually exclusive and distinct matters. EB-2013-0416 was developed without regard to the NPDI transaction. Rates applied for in EB-2013-0416 by definition do not have any connection to NPDI customers because NPDI customers are not subject to those rates. Conversely, the five year rate freeze period that has been applied-for in this application has no applicability or relevance to the relief sought in EB-2013-0416. That is because the rate freeze applies only to NPDI's existing customers. Those facts are clear on the face of this record. These applications are mutually exclusive and present no inordinate "difficulty" in assessing whether the transaction meets the "no harm test". It does.

5. VECC's Concluding Remarks

At page 11 of its argument, VECC suggests that if the Board finds that the transaction meets the "no harm test", a separate license should be issued to Hydro One Networks to serve the customers of the former NPDI. Likewise, it requests a further condition be imposed upon this license that Hydro One maintain a separate business unit where costs are tracked and rates are set separately until otherwise approved by the Board.

Hydro One has already indicated that it intends to maintain a separate business unit for the internal management of NPDI's costs. Hydro One does not see why the internal organizational decisions it decides to take to manage its affairs should properly become conditions to its distribution license, which would presumably remain in effect over the duration of the license.

Hydro One also questions why license conditions must be imposed for the separation and tracking of costs and "rates are set separately until otherwise approved by the Board." In this application, rates under the rate freeze period have been applied-for such that they only have effect upon NPDI. Future rates will be the subject-matter of a rate harmonization proceeding. In that proceeding, costs are anticipated to be examined and potentially presented in evidence. Hydro One does not see any merit to having such matters be included as distribution license conditions, or conditions that affect the relief associated with the rates arising under the five year rate freeze period. When future applications proceed, issues surrounding how cost information has been presented will no doubt be the subject-matter of the Board's consideration

1 and those of intervenors. That remains the proper forum that can and should be used for the
2 consideration of historical and future cost information.

3 **Essex Powerlines Corporation, Bluewater Power Distribution Corporation and**
4 **Niagara-on-the Lake Hydro Inc., (collectively “EBN”)¹⁵**

5 EBN's 43 page argument touches upon similar areas to those which Hydro One has replied to
6 above. While mindful of the need not to repeat these points in reply, EBN's interest in this
7 proceeding is different from the other intervenors. EBN's membership comprises of existing
8 distribution utilities whose affairs and rate payers have not in any way been demonstrated to be
9 affected by this transaction. EBN's interest in this proceeding is therefore, at best, indirect in
10 nature. Their perspectives are provided as existing and future competitors of Hydro One in this
11 transaction and potentially future consolidation transactions that cumulate with requests for
12 MAAD approvals. It is in this context that Hydro One provides reply to the EBN Argument and
13 does so by highlighting three specific areas.

14 **1. Adequacy of Hydro One's Evidence to Satisfy the “No Harm Test”**

15 At paragraphs 2 and 3 of its argument, EBN starts by suggesting that a higher evidentiary
16 standard should apply to Hydro One relative to other distribution entities when the Board
17 considers MAAD application requests. EBN adopts this view on the mistaken belief that Hydro
18 One is a higher costing utility relative to the target entity, and that in such circumstances the
19 Board must be “even more vigilant in its inquiry into the proposed transaction to determine the
20 real likelihood of the assertions made by the Applicant.”¹⁶ As noted in Hydro One's submissions
21 above, the assertion that Hydro One is a higher costing utility is flawed because EBN and others
22 refuse to adopt a fair, “apples to apples” comparison that takes into account the significant size
23 and geographical differences between Hydro One's existing overall system (which features are
24 embedded in the statistics EBN relies upon) and the service area and customer size attributes
25 of NPDI.

26 The notion that a different and indeed higher evidentiary threshold should apply to Hydro One
27 as opposed to distributors represented in the EBN camp should come as no surprise. Changing
28 the rules of engagement so that higher evidentiary standards must apply to your competition is

¹⁵ Final Argument of EBN filed on April 14, 2014.

¹⁶ EBN Final Argument, paragraph 2.

1 a natural competitive reaction, and is the only way left to overcome an adverse result
2 determined by market forces. Answering the question of why the creation of different
3 evidentiary expectations based upon the applicant's name and incumbent status is not
4 consistent with the underlying objectives of the "no harm test", namely, the promotion of market
5 based decisions and the promotion of regulatory thresholds that may be applied in a consistent
6 and predictable manner.

7 It is convenient to first assert that a higher evidentiary burden is necessary for Hydro One and to
8 then go onto assert that the evidence adduced by the Applicants is "wholly inadequate and
9 demonstrates that virtually no analysis or study was undertaken for purposes of determining
10 what synergies may realistically result."¹⁷

11 The connection of these two points in EBN's argument should not go un-noticed.

12 In any event, EBN's assertions regarding the adequacy and quality of Hydro One's evidence are
13 mischaracterized. Hydro One's analysis has taken into account the practical realities that it is a
14 well-known and well understood regulated entity. Why should Hydro One not be able to base its
15 analysis with that underlying knowledge in mind? Integration of a relatively small and similar
16 group of assets into its larger platform is a relatively straightforward exercise. Hydro One's
17 evidence is that similar programs and operational systems would apply and by doing so, there is
18 no need to venture into the level and type of detail that EBN and others are requesting.

19 Hydro One suspects that the real source of EBN's frustration is the fact that it has not been able
20 to mine the data that it may have hoped for so as to better understand how its competitor was
21 able to win the bid process for the NPDI assets and how that information could be used in the
22 future regarding other potential transactions. Those sources of frustration are the underlying
23 currents to EBN's submissions and quite frankly, they have no place in the context of
24 determining whether the present transaction meets the "no harm test".

25 Establishing different evidentiary thresholds based on incumbent status should not cause MAAD
26 proceedings to become inquiries into every element of every facet of an existing distribution
27 entity's operations, particularly when those areas have been considered by this regulator in
28 other proceedings. Hydro One submits it is reasonable for the analysis that it has presented to

¹⁷ EBN Final Argument, paragraph 3.

1 rely on facts, such as how existing systems are managed, assurances that acquired assets will
2 be managed under similar programs, and that those underlying assumptions may then be
3 applied to the cost structure analysis used to support the view that no harm to rate payers is
4 expected to result. To adopt the views proposed by EBN would cause MAAD proceedings to
5 take on a whole new and different life, resulting in undue delay to the completion of transactions
6 and the policy objectives associated with the consolidation exercise.

7 EBN's objectives of seeking to redefine the MAAD process and require an expansion of the
8 evidentiary record is described further at paragraph 9 of its argument. EBN claims that while
9 the Board has not set any limitations as to how it should go about fulfilling its statutory
10 obligations, EBN views that the mere allegation of an adverse effect should in some mandatory
11 way force the Board to "enquire further" and presumably by the expansion of the regulatory
12 process and evidentiary record, that EBN would seem to believe is necessary. Again, Hydro
13 One sees no merit to EBN's position. Appropriate steps were taken by the Board at the outset
14 of this proceeding to hear from and provide clarity regarding the information that it viewed was
15 needed to make a determination of the "no harm test". EBN's views are an indirect way to
16 circumvent those determinations and to request the Board to reconsider both its procedural
17 decision and the applicability of the "no harm test". There is no basis to EBN's implicit claim that
18 the Board has somehow failed, by not creating a sufficient evidentiary record, or by it not
19 "enquiring further" into the issues and evidence that is now before it on this record.

20 Starting at paragraph 12 of its argument, EBN next reviews other MAAD decisions in an attempt
21 to contrast whether similar positive approval conclusions can be reached in the present
22 circumstances and based on the record that is now before this Board. EBN's statements found
23 at paragraph 18 noticeably fail to take into account key points:

- 24 a) Hydro One's proposal provides rate certainty and predictability through the
25 adoption of a five year rate freeze at levels below existing rates charged to NPDI
26 customers. This provides level of certainty that exceeds that which was offered
27 in other MAAD applications referred to in EBN's argument.
- 28 b) EBN presumes that Hydro One's proposed rates for 2019 will "have a significant
29 impact on existing Norfolk ratepayers" yet, that is a statement made without any

1 foundation or support. It is not reflective of Hydro One's statements made on the
2 record in this proceeding.

3 c) EBN complains that Hydro One lacks commitment to provide service of equal or
4 higher quality than Norfolk's present service quality and reliability standards.
5 However, this criticism presumes the significant differences between Hydro
6 One's existing system and NPDI's can simply be assumed away. If one were to
7 factor out those differences, a more appropriate comparison of reliability would
8 be to use the feeders' performance within the Norfolk Power area, as provided in
9 Hydro One's response to EBN Interrogatory 10.¹⁸

10 d) Continuation of NPDI's Asset Management Plan presumes that NPDI's assets
11 can only be managed under that scheme. What EBN fails to account for is that
12 Hydro One's existing capital asset plans are employed for a far greater number
13 of similar type assets than those of NPDI. EBN fails to explain why NPDI's
14 assets must only be managed under NPDI's existing plan when the practical
15 reality is that Hydro One manages a far greater number of similar assets under
16 its own plan and that plan and system is what defines the cost structure savings
17 that are expected and shown in the record of this proceeding.

18 e) Cost structures are prospective in nature and by definition must reflect forecast
19 values. To accuse Hydro One of only putting forward "unsubstantiated forecasts"
20 is to suggest that Hydro One must possess the skills of a clairvoyant so that it
21 could have perfect certainty of what costs will actually be incurred in the future.

22 Based on the foregoing, Hydro One submits there is no merit to the conclusions that EBN has
23 made at paragraph 20 of its argument. An adequate evidentiary record is before the Board to
24 make an informed decision as to whether to approve the relief sought. The "no harm test" "in
25 virtually every application"¹⁹ has not involved the Board looking at detailed evidence about
26 current and future rate impact with an expectation of "perfect certainty". Future benefits in all
27 MAAD applications have been proposed based on expected outcomes. EBN's position is a

¹⁸ Exhibit I, Tab 5, Schedule 10.

¹⁹ EBN Final Argument, paragraph 19.

1 clear reflection of revisionist thinking intended for commercial and competitive gain, as opposed
2 to an objective assessment of the “no harm test” as it should be applied in these circumstances.

3 **2. EBN’s Application of Recent Jurisprudence**

4 Starting at page 21 of its argument, EBN suggests that the recent pronouncements by the
5 Ontario Court of Appeal in *Toronto Hydro-Electric System Limited v. Ontario Energy Board*²⁰ are
6 jurisprudence which the Board should take into account in its review of the current application.
7 The THESL Decision, however, was materially different from the facts and circumstances of a
8 MAAD approval application. The issue in the THESL Decision, as pointed out by EBN,
9 concerned the recovery of amounts earned by the parent company of a utility on loans which
10 the parent made to the utility in the face of that utility having an ongoing need for capital
11 expenditures. EBN claims that this fact pattern is no different than the circumstances of where
12 a premium has been negotiated and in respect of a MAAD transaction. With respect, there is an
13 obvious and material difference in those facts and the ones now before the Board.

14 In the present circumstances, the Board has been very clear that premiums are not relevant to
15 MAAD inquiries provided that the premium is not recovered in rates and that the premium
16 amount is not likely to affect the financial health of the acquiring entity’s ability to provide
17 regulated services. Those preconditions have not seriously been challenged. The Court of
18 Appeal’s THESL Decision in no way alters the merits of these preconditions or the manner in
19 which the Board has decided to take into account the payment of premiums in MAAD
20 proceedings.

21 **3. EBN’s Claims Regarding Future Rate Impacts and Cost Savings**

22 EBN’s argument is critical of the information Hydro One has submitted regarding future rate
23 impacts and costs savings. These accusations have included everything from a belief that
24 Hydro One did not fairly represent to NPD customers that there is “prospect” of future rates
25 increasing after the rate freeze period,²¹ to reductions in capital expenditures in the Norfolk
26 service area having a “negative impact on service reliability and quality in the service area”,²² to
27 operational cost savings and synergies included in Hydro One’s forecast as not being shown to

²⁰ 2010 ONCA 284 (the “THESL Decision”).

²¹ EBN Final Argument, paragraph 22.

²² EBN Final Argument, paragraph 27.

1 offset "other aspects of the transaction",²³ to the questionable nature of salary savings that
2 HONI expects to achieve.²⁴

3 Hydro One replies to these assertions in the same manner that it has to the other intervenors
4 that have raised similar points of contention. Rate certainty exists in the rate freeze period.
5 Rates in the period following the 5 year rate freeze are not matters that are before this Board
6 because Hydro One has not made any definitive conclusions regarding such matters. That is a
7 reasonable outcome because of the period of time between now and when such matters would
8 come before this Board.

9 EBN's members are themselves distribution utilities operating in this province. It is curious that
10 while EBN is prepared to make such critical statements, none of their members have offered
11 their own customers 5 year rate freezes, let alone "perfect certainty" regarding the rates they
12 intend to charge their customers in periods beyond five years.

13 It is curious indeed why the EBN utilities would launch such lofty criticisms about things like the
14 propriety of another utility's capital maintenance programs as being able to achieve reliability
15 and service quality requirements – especially when the impugned programs are in fact used
16 today and have been demonstrated to achieve those outcomes. Is it rationale behaviour for
17 other distribution utilities who have not shown or claimed any operational impacts to arise to
18 their systems from the proposed transaction to then launch criticisms about efforts of another
19 utility's intentions to achieve operational and scale efficiencies? And even if operational
20 concerns and resulting savings were of real concern, why would it not be reasonable to expect
21 those utilities, themselves, to come forward and go on the public record and put forward their
22 own experiences as a real basis to show some error of Hydro One's operational ways (i.e. that
23 Hydro One's operational assessments and analysis do not comport with their own experience
24 and professional judgment).

25 The reality again remains that EBN and other silent distributors²⁵ are Hydro One's future
26 competitors. The criticisms advanced must be taken in that light. The fact remains that Hydro
27 One's case shows that the terms and conditions upon which it seeks to move forward with the
28 transaction meet the "no harm test". While its competitors can claim that more is needed, that

²³ EBN Final Argument, paragraph 39.

²⁴ EBN Final Argument, paragraph 51.

²⁵ EBN Argument, paragraph 96.

doubt exists about whether cost savings will materialize and that greater rate commitments are necessary, these criticisms are all driven by competitive gain purposes. They are clearly to achieve one or both of the following objectives: (1) unwind the transaction to promote a “do over”; and/or (2) have the Board impose regulatory sanctions to prevent Hydro One from competing in the future in a way that overcomes the scale and efficiency savings that Hydro One can provide but those entities simply cannot.

Board Staff

Board Staff’s Submissions²⁶ are consistent with Hydro One and NPDI’s assessment of the “no harm test”. Board Staff believes that NPDI’s regulatory reporting and filing should continue to adopt the *Modified International Financial Reporting Standards* (“MIFRS”); and that a proposed condition concerning cost saving information and actual costs incurred in connection with the proposed transaction be included in the first rate application filing that includes NPDI. Hydro One makes the following comment on the adoption of MIFRS.

At page 9 of its submissions, Board Staff state that they do not support Hydro One’s request to use US GAAP for NPDI for regulatory filing and reporting purposes. Board Staff’s reasons are that NPDI’s regulatory reporting and filing should be consistent with the regulatory accounting basis used to set NPDI’s most recent base rates and since NPDI has done so using MIFRS, these standards should continue to apply.

HONI’s regulated entities report under US GAAP as well, HONI’s consolidated financial statements are also prepared under US GAAP. Efficiencies are dependent upon NPDI’s activities being integrated into HONI. By using one uniform standard of reporting, Hydro One seeks to achieve integration and scale efficiencies. Given the relative smaller size of the NPDI operations, Hydro One is concerned that having to maintain two equally robust yet distinct accounting systems would create unnecessary inefficiencies and creates added complexities in the integration of these assets into Hydro One’s operations. In light of these circumstances, Hydro One maintains its request to use a uniform standards platform, namely, US GAAP so that this standard may apply to all of its distribution system assets.

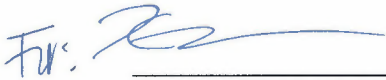
²⁶ Board Staff Submission dated April 14, 2014.

1 **D. CONCLUSIONS**

2 Based on the foregoing Hydro One maintains the view that the evidentiary record continues to
3 demonstrate that the "no harm test" is satisfied. The submissions of the intervenors in this
4 proceeding have not provided any reasonable basis to suggest otherwise. Hydro One
5 respectfully submits that the applied-for relief should therefore be granted.

6 All of which is respectfully submitted this 24th day of April 2014.

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