



EB-2013-0416

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 Networks Inc. for an order approving just and reasonable rates and other charges for electricity distribution to be effective January 1, 2015, each year to December 31, 2019.

DECISION AND PROCEDURAL ORDER NO. 5

July 31, 2014

Hydro One Networks Inc. (“Hydro One”) filed a cost of service rate application with the Ontario Energy Board (the “Board”) on December 19, 2013 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 Hydro One charges for electricity distribution, to be effective January 1, 2015 and each year thereafter to December 31, 2019. The Board issued a Notice of Application and Hearing dated January 24, 2014. Hydro One supplemented its application with additional material filed January 31, 2014 and with an evidence update filed on May 30, 2014.

This decision and procedural order deals with two matters: Hydro One’s objection to the Board’s acceptance of a declaration and undertaking from counsel to the City of Hamilton, and procedure for a Notice of Motion filed by the School Energy Coalition (“SEC”) for full and adequate responses to certain interrogatories (the “Motion”).

1. Declaration and Undertaking

Hydro One requested confidential treatment for attachments to some of its interrogatory responses. Through Procedural Order No. 4, the Board established a process for receiving objections to that request, and indicated its intention to accept declaration and undertakings in the form prescribed by the Board from counsel or consultants for intervenors who wish to see the confidential attachments while awaiting the Board’s

ruling. The Board also provided Hydro One with an opportunity to object to the Board's acceptance of any declaration and undertakings.

Hydro One objected to the Board's acceptance of a declaration and undertaking filed on July 22, 2014 by Robert Warren, counsel to the City of Hamilton, an intervenor in this proceeding. Hydro One asked that the Board not permit Mr. Warren access to any confidential filings. Hydro One based its objection on the ground that the City of Hamilton's interest in the proceeding was limited to the discrete issue of the cost allocation model and its consequences for street lighting customers. Hydro One argued that the documents for which Hydro One has sought confidential treatment relate to Hydro One's future business plans and proprietary reports, and are not relevant to the limited interest of the City of Hamilton in the proceeding.

Mr. Warren, by letter dated July 25, 2014 responded that Hydro One's objection misstates the City of Hamilton's interest, and indicated that the rates for the street lighting class, to which the City of Hamilton belongs, are a function of virtually every aspect of Hydro One's costs. Mr. Warren stated that to protect his client's interests, he must be familiar with all the evidence Hydro One has filed. He indicated that while the City of Hamilton, for reasons of cost-effectiveness, has elected to allow other parties to take the lead on cost matters, this does not mean that the City of Hamilton is uninterested in those issues. Mr. Warren also objected to Hydro One's non-specific reference to previous incidents of mistaken disclosure, and submitted that the principles underlying the Board's *Practice Direction on Confidential Filings* (the "*Practice Direction*") generally support access to confidential information.

The Board will accept the declaration and undertaking from Mr. Warren, and instructs Hydro One to allow him access to the information for which confidential treatment has been sought. The test for denial of acceptance in section 6.1.2 of the *Practice Direction* is stringent: "... Board will, except where there are compelling reasons for not doing so, accept a Declaration and Undertaking..." from counsel or consultant for a party. The Board appreciates Hydro One's submission that where a party has no interest in an issue, there may be a compelling argument to deny counsel for that party access to confidential information that relates only to that issue. However, in this case the Board accepts Mr. Warren's description of his client's interests in the proceeding, and agrees that he will need to be familiar with the evidence on issues related to Hydro One's costs.

The Board wishes to remind Hydro One and other parties that it has not yet made a ruling on Hydro One's request for confidential treatment of the interrogatory responses and attachments.

2. Procedure for Motion

On July 29, 2014, the Board received SEC's Motion.

SEC brought the Motion under Rule 27.03 of the Board's *Rules of Practice and Procedure* which provides that a party may bring a motion seeking direction from the Board if it is not satisfied that a party has provided "full and adequate response to an interrogatory." SEC submitted that Hydro One has not provided full and adequate responses to a number of interrogatories and requested an Order requiring Hydro One to provide a full and adequate response to the following interrogatories:

- 2.6-Energy Probe-23(b);
- 3.1-SEC-21/4.2-Board Staff-63(a)/4.2-Energy Probe-33(a);
- 3.2-SEC-32;
- 4.2-SEC-35; and
- 6.1-SEC-48.

The Board will make provision for the hearing of the Motion in writing.

THE BOARD ORDERS THAT:

1. The Board has accepted the declaration and undertaking filed by Mr. Warren as counsel to the intervenor, City of Hamilton. Hydro One shall immediately provide access for Mr. Warren to the information for which Hydro One has sought confidential treatment.
2. Any party that wishes to support the School Energy Coalition Motion must do so by way of submission filed with the Board and copied to all parties no later than August 5, 2014.

3. If Hydro One chooses to respond to the Motion, it must do so by way of submission filed with the Board and copied to all parties no later than August 8, 2014.
4. If the School Energy Coalition wishes to file a reply to any response from Hydro One, it shall do so by way of submission filed with the Board and copied to all parties no later than August 13, 2014.

All filings to the Board must quote the file number, EB-2013-0416, be made electronically through the Board's web portal at <https://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 <http://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, Harold Thiessen at harold.thiessen@ontarioenergyboard.ca and Board Counsel, Jennifer Lea at jennifer.lea@ontarioenergyboard.ca.

ADDRESS

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DATED at Toronto, July 31, 2014

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary