

November 26, 2014

VIA RESS AND COURIER

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Dear Ms. Walli:

Re: EB-2013-0421: Hydro One Networks' (Hydro One) Leave to Construct Supply to Essex County Transmission Reinforcement (SECTR) Project (Project).

Co-operating Interventions and Cost Eligibility Request – Entegrus/Essex Powerlines/E.L.K.

We have been retained to represent E.L.K. Energy Inc. (E.L.K.), Entegrus Powerlines Inc. (Entegrus) and Essex Powerlines Corporation (Essex) in the captioned application, to the extent of their common interests as outlined below.

Each of E.L.K., Entegrus and Essex has been granted individual intervenor status in the application, and each intends to retain that individual intervenor status in order to make separate submissions to the extent warranted. In general, all 3 of these distributors support the Project.

Study of the application and further discussions with Hydro One since the filing of the application has, however, led these intervenors to conclude that they have common concerns regarding Hydro One's proposal for allocation of the costs of the Project. Having so determined, these 3 intervenors have formed a coalition (E3 Coalition) to pursue that common interest. That coalition has retained us to act as counsel and has retained Elenchus Research Associates to provide technical support.

This letter is written to: i) advise the Board of the formation of the E3 Coalition; ii) outline the E3 Coalition's interest in the proceeding and its anticipated active intervention in respect of this interest, to assist the Board in considering the subsequent procedural scheduling of this matter; and iii) request that the E3 Coalition be determined eligible for recovery of its reasonably incurred costs of its intervention.

Description of Common Interests

Hydro One's application anticipates approval of a methodology for allocation of the costs of the proposed Project to, and among, *inter alia*, the members of the E3 Coalition. Paragraph 8 of Hydro One's Application¹ sets out the following prayer for relief:

In regard to the customer benefits and consistent with the OEB's "beneficiary pays" principle, Hydro One has proposed an allocation of costs at the distribution level for the transmission investments associated with the SECTR Project. This methodology ensures fairness in the allocation of upstream transmission costs and avoids cross-subsidization at the distribution level among beneficiaries. Commencement of the SECTR Project is contingent upon the Board endorsing the methodology as described in Exhibit B, Tab 4, Schedule 5. [Emphasis added.]

The methodology described in the foregoing excerpt from Hydro One's prayer for relief proposes a methodology which involves:

1. The allocation of costs of the proposed Project as between transmission cost pools and Hydro One Distribution;
2. The allocation of costs from Hydro One Distribution to its customers, including in particular E.L.K., Entegrus and Essex²; and
3. The allocation of costs from each of E.L.K., Entegrus and Essex to their respective customers;

all in accord with a proposed interpretation by Hydro One and the Ontario Power Authority (OPA)³ of certain recent amendments to the Board's *Transmission System Code (TSC)* to support regional planning. The evidence refers to a "beneficiary pays" principle which Hydro One and the OPA are of the view is codified through these TSC amendments. Hydro One and the OPA proceed to propose a methodology based on that principle for allocating the Project costs.

The principle referenced by Hydro One and the OPA was developed to provide that while a generator might trigger upstream reinforcement through an application to connect, to the extent that such reinforcement benefits other customers the costs of that reinforcement should be allocated among those who benefit rather than being absorbed entirely by the generator. In the instant circumstances, while not entirely clear from the material filed to date, it appears that the "triggering" customers are, or perhaps include, the Leamington area greenhouse customers served primarily by Hydro One Distribution. The application of the principle as proposed by Hydro One and the OPA may, in the full

¹ ExA/T1/S1, page 3, lines 5 through 11

² ExB/T4/S5, page.3, lines 1 through 17

³ ExB/T4/S4

circumstances of this application, be determined to be completely appropriate. Nevertheless, such application of the principle, and the nature and extent of the relative benefits and burdens to the various stakeholders, including the E3 Coalition members, merits proper review.

Under the proposed methodology for allocating the Project costs, 77.5% of the costs (\$40.4 million), would be allocated to distributors.⁴ Detailed information on the financial impacts of the proposed methodology for allocating the Project costs has not to date been provided. Based on the material filed and preliminary discussions between the E3 Coalition members and Hydro One, it appears that the rate base increases resulting from Hydro One's proposed methodology for direct allocation of the Project costs on the respective E3 Coalition members, calculated on the most recently approved rate bases, could be, in order of magnitude, as follows:

E.L.K.: 110% - 115%
Entegrus Powerlines: 1% - 1.5%
Essex Powerlines: 10% - 15%

These impacts are independent of the rate impact on the E3 Coalition members as embedded distribution customers of Hydro One, which rate impact would significantly increase the overall costs allocated to these distributors and their own customers. The E3 Coalition members are also uncertain, and concerned, about the timing of recovery of allocated costs relative to the timing of the proposed requirement to pay, and therefore finance, these costs. Given that each of the E3 Coalition members are under ongoing IRM rate plans, absent ownership of the assets or predetermined cost recovery, the required borrowing would be more complicated and potentially more expensive than it would otherwise need to be.

Anticipated Participation

Given the materiality of the anticipated impact of Hydro One's cost allocation proposal on each of the E3 Coalition members, and given the newness of the cost allocation principle cited and of the methodology proposed to implement that principle, the E3 Coalition anticipates the following procedural scope of intervention:

1. Written interrogatories for the applicant. (Depending on the nature of the interrogatories and responses thereto, a technical conference might also be expeditious.)
2. Depending on the interrogatory responses, and the expert technical advice provided to the E3 Coalition, the possibility of filing evidence on behalf of the E3 Coalition addressing; i) the proposed allocation principles and methodology; ii)

⁴ ExB/T4/S3, page 2, line 22

the impacts on the coalition members of application of that methodology; and iii) alternatives thereto.

3. Cross-examination of Hydro One witnesses.
4. Active participation in final argument.

The E3 Coalition requests that the Board consider this input in developing its scheduling procedural order herein.

Request for Eligibility for Recovery of Shared Costs

The E3 Coalition members, each of whom has accepted responsibility for 1/3rd of the costs of external advisors (our fees and those of Elenchus), anticipate incurring expenses far beyond their respective approved regulatory budgets. Given the material impacts on each of them, and their customers, of Hydro One's proposed methodology for allocating the costs of the Project, the E3 Coalition members feel it necessary to take an active role in this proceeding. The significant costs of such an active intervention are unanticipated, uncontrollable and not already included in the coalition members' approved IRM rates. These expenses are also outside of the ordinary course of the operation by the E3 Coalition members of their respective distribution businesses. Accordingly, the E3 Coalition hereby requests that it be determined eligible for recovery of its reasonably incurred costs of intervention.

Section 30 of the *Ontario Energy Board Act, 1998* provides the Board with a broad power to order an applicant to pay a party's costs of participating in a Board proceeding.

The Board's *Practice Direction on Cost Awards* indicates that the Board will generally not award costs to an electricity distributor⁵. However, exceptions to this policy are provided for in the case that the distributor is a customer of the applicant⁶, or in "*special circumstances*".⁷ The E3 Coalition members respectfully submit that in the circumstances of the instant application and in respect of the concerns outlined above, the E3 Coalition:

- (a) represents the interests of customers of the applicant (those of its 3 members as embedded distributors, and in turn those of their own customers); and
- (b) qualifies for eligibility for recovery of its reasonably incurred costs pursuant to the "*special circumstances*" provision in the OEB's practice direction.

⁵ OEB *Practice Direction on Cost Awards*, Section 3.05(b)

⁶ OEB *Practice Direction on Cost Awards*, Section 3.06

⁷ OEB *Practice Direction on Cost Awards*, Section 3.07

In respect of the first head of cost eligibility qualification noted above, the Board recently found that, while normally ineligible for cost recovery as an Ontario municipality, the City of Hamilton was qualified for cost recovery as a customer of a rate order applicant and given the City's interest relevant to the Board's determinations in the subject proceeding.⁸ Similar findings by the Board have been made in appropriate circumstances in the past in respect of eligibility of electrical generator representatives. It is respectfully submitted that the same principles apply to a determination that the E3 Coalition is eligible for cost recovery.

In respect of the second head of cost eligibility qualification noted above, while the Board's practice direction does not define "*special circumstances*", it does provide for eligibility for cost recovery in instances where:

- (a) The applicant for eligibility "*primarily represents an interest or policy perspective relevant to the Board's mandate and to the proceeding for which cost award eligibility is sought*".⁹
- (b) The Board considers it appropriate in regard to "*any other factor the Board considers to be relevant to the public interest*".¹⁰

In the circumstances outlined above, the E3 Coalition represents both distributors and ratepayers in respect of a new transmission reinforcement cost allocation policy advanced by Hydro One. While the E3 Coalition members are the distributors impacted by the current Project, the methodology adopted for allocation of the costs of the Project will ultimately impact a much broader group of stakeholders across the province. The interest of the E3 Coalition members is thus relevant to the Board's mandate both in the instant proceeding and in respect of the broader cost allocation policy in support of regional planning proposed by Hydro One and the OPA.

Absent eligibility of the E3 Coalition for recovery of its reasonably incurred costs, the coalition members will be unable to participate in this proceeding in a fully active and informed way. Informed consideration by the Board of whether to socialize the Project costs, and if so whether more or less broadly, is "*relevant to the public interest*". The E3 Coalition members are uniquely positioned in the current circumstances to inform the Board's deliberations on the matter.

By combining in their interventions for these purposes and agreeing to share costs, Entegrus, E.L.K. and Essex are taking a responsible approach to bringing these issues forward for proper review and consideration, while working to minimize ratepayer costs and facilitate an efficient review process.

The E3 Coalition thus requests that it be determined to be eligible for recovery of its reasonably incurred costs of intervention herein.

⁸ EB-2013-0416, Procedural Order No. 1, page 2

⁹ OEB *Practice Direction on Cost Awards*, section 3.03(b)

¹⁰ OEB *Practice Direction on Cost Awards*, section 3.04(d)

Conclusion

We hope that the information provided in this letter is of assistance to the Board as it considers the upcoming procedural steps for review of Hydro One's application.

Going forward, we would appreciate it if the Board would add the following contacts to the List of Intervenor, to receive, on behalf of the E3 Coalition, copies of communications and other filings herein:

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Yours truly,



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