



Jay Shepherd

Professional Corporation
2300 Yonge Street,
Suite 806
Toronto, Ontario M4P 1E4

BY EMAIL and RESS

February 12, 2015
Our File No. 20140311

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
M4P 1E4

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2014-0311 – Hydro One Tx NWBTL Deferral Account

We are counsel for the School Energy Coalition (“SEC”). Pursuant to Procedural Order No. 1, these are SEC’s submissions in application by Hydro One Networks Inc. (“Hydro One”) for the establishment of a deferral account for the North West Bulk Transmission Line (“NWBTL”). SEC submits that the application should be dismissed.

Hydro One has requested the establishment of an accounting order that would implement a proposed deferral account, to capture costs for certain preliminary development activities for the NWBTL that are not included in the OM&A budgets approved by the Board recently in the EB-2014-0140 application. The Board’s approval of Hydro One’s 2015-2016 transmission application was based on a comprehensive settlement agreement reached between Hydro One and a broad range of ratepayer groups (including SEC). The settlement agreement that became the basis for Hydro One’s application was negotiated during the summer of 2014, after extensive information was provided to ratepayer groups, including thorough information requests and non-transcribed technical conferences.¹ All those materials were included in the EB-2014-0140 application filed with the Board.

Test For Establishment of a Deferral Account

The test for an accounting order to establish a new deferral account for a transmitter is set out in the Board’s *Filing Requirements for Electricity Transmission Applications*², and confirmed most

¹ EB-2014-0140, Hydro One Prefilled Evidence, Section I, Subsection ii

² *Filing Requirements for Electricity Transmission Applications*, p.25

recently in the *Decision and Order* in EB-2012-0180 (Application by Hydro One to Establish a Deferral Account Related to the East-West Tie Line Proceeding).³ An applicant must establish causation, materiality, and prudence of the forecasted expense.

Causation

Causation requires that “the forecasted expense must be clearly outside of the base upon which rates were derived”.⁴ This does not just mean that the forecasted costs were not included in the base rates approved by the Board previously, but that they were not reasonably foreseeable at the time those rates were set. A utility cannot withhold including forecasted costs that are reasonably foreseeable at the time of a cost of service application, and then bring an application during the rate term for a deferral account to record these new costs for later recovery.

The forecasted preliminary development costs were reasonably foreseeable when parties entered into the settlement agreement that is the basis of the 2015-2016 application.

While Hydro One points to the OPA’s letter advising Hydro One to initiate preliminary development work on October 1st, 2014 as the “trigger” for the need for the deferral account, it is simply not credible that this was the first time it knew that these preliminary development costs would likely need to be incurred during the 2015-2016 period.

First, as recognized by Hydro One, the NWBTL was first outlined in the Long-Term Energy Plan. One would expect that the OPA (now the IESO) had discussions with Hydro One long before the issuance of the October 1st letter regarding this project. In fact, ten months earlier, the Minister of Energy’s directive to amend Hydro One’s license, specifically required it to do so, and stated that Hydro One will “immediately work in co-operation with the Ontario Power Authority (“OPA”) to establish the scope and timing of the North West Bulk Transmission Line Project.”⁵

Second, Hydro One’s own 2015-2016 application material, which was provided to intervenors in early summer, indicates that there will be significant NWBTL costs undertaken during the test period.⁶ While it may or may not be correct that Hydro One did not include any OM&A costs for the development of the NWBTL, it was clearly evident in its application that such costs were reasonably foreseeable. In describing its forecast capital expenditures, Hydro One recognizes specifically that the NWBTL could require significant capital expenditures in the test years.

Overall Capital expenditures remain flat in 2015 and decline over the 2016 to 2019 period. The four large Development projects referred to above include the East-West Tie Expansion, TransCanada’s Energy East Pipeline project, the Northwest Bulk Transmission Line project and the GTA Reactors project. While these projects could require significant capital expenditures in the test years, the in-service dates for these projects will be beyond the test years so there will be no impact on the rates requested in this application [emphasis added].⁷

³ *Decision and Order* (EB-2012-0180- In the matter an application by Hydro One Networks Inc. to Establish a Deferral Account Related to the East-West Tie Line Proceeding), dated July 12 2012, at p.2

⁴ *Filing Requirements for Electricity Transmission Applications*, p.25

⁵ Minister’s Directive to the Ontario Energy Board, dated December 11 2013

⁶ SEC also notes the evidence also directly contradicts Hydro One’s response to SEC Interrogatory #6, which states there are no references to the NWBTL in its 2014-0140 application.

⁷ EB-2014-0140, Hydro One Prefilled Evidence, A-16-8, p.2



If Hydro One expected that it could incur significant capital expenditures for the NWBTL during the test period, then it would have known that preliminary development costs, which are a prerequisite, would also occur during the test period. Hydro One is seeking the deferral account for this very reason, since they are incurring costs for activities that would be done at a point in time too early to be able to include in CWIP.⁸ The fact that it may not have chosen to include those development costs in its test year budget is not a reason to now allow for that incremental recovery amount.

To allow a utility to do what Hydro One is seeking would create incentives to under forecast costs so as to hide the true extent of amounts that it will actually collect from ratepayers for activities undertaken during the rate-setting term. Utilities cannot hold back reasonably foreseeable expenditures, agree to rates for a period, and then come before the Board seeking to recover those costs through another mechanism.

As confirmed by Hydro One, at no point during the negotiation process were intervenors provided notice that Hydro One intended to bring this or a similar application.⁹ If during negotiations with parties, Hydro One had provided notice that it would bring forward this application, then that would have inevitably changed intervenors' positions. Settlement Agreements are a complex set of compromises on a number of interrelated issues. That is why they are almost always non-severable. If Hydro One had properly brought this information to the attention of parties during the settlement process, it would almost certainly have affected the final agreement, most likely changing the settled revenue requirement and corresponding rates.

Materiality

Materiality requires that the "forecasted amounts must exceed the Board-defined materiality threshold and have a significant influence on the operation of the transmitter otherwise they must be expensed in the normal course and addressed through organizational productivity improvements [emphasis added]."¹⁰

The test is not simply that the forecast costs are above the Board defined materiality threshold, but that in addition, the amounts will have a significant influence on the transmitter's operations. This recognizes that, for any given utility, materiality thresholds are not always set on a linear basis, and they affect different distributors differently. For Hydro One, the materiality threshold is \$3 million per year since it is a transmitter with revenue over \$200 million. Hydro One has not provided a precise estimate of the costs it expects to incur, or in which years it will incur them, so it is not even clear that the materiality threshold of \$3 million will be met. In Response to Board Staff Interrogatory No. 1, Hydro One states that it expects the cost will exceed \$5 million. SEC is not clear if that is an expected amount per year, in which case it would be above a \$3 million materiality threshold, or if it is a combined amount for 2015 and 2016, in which it could be under that materiality threshold since it would be an average forecast expense of only \$2.5 million a year.

Hydro One has also failed to provide evidence that without the deferral account, the amount will have a significant influence on its operations. It does not even address this requirement for meeting the materiality requirements in response to Board Staff Interrogatory No. 1.

⁸ Interrogatory Response Board Staff #2 (I-1-2,p.1)

⁹ Interrogatory Response SEC #3 (I-5-3,p.1)

¹⁰ *Filing Requirements for Transmission Applications*, p.25

While \$5 million dollars in each year (if that is the case) is a significant amount of money, it is not sufficiently material enough to have any significant influence on Hydro One's operations that cannot be addressed in "the normal course through organizational productivity improvements."¹¹ The high-level estimate of \$5 million dollars needs to be considered in light of the total revenue requirement of Hydro One. Its approved 2015 and 2016 revenue requirements are \$1,577 million and \$1,600 million respectively.¹² Its approved OM&A budgets for 2015 and 2016 are \$432 and \$437 million dollars respectively.¹³

Further, Hydro One admits there would be no risk to its financial risk profile, and at best, it "could impact" its business risk profile. Even such a business risk profile change is only to the extent that non-recovery is seen as a precedent for future requests by the financial community.¹⁴ The potential future implications of the decision on other applications, in SEC's submission, are not relevant to the Board's consideration of the current application. Regardless, since the Board would be making a decision in this proceeding based on sound regulatory principles that it has already articulated, there should be no business risk change.

Prudence

SEC agrees that the preliminary development activities for NWBTL are prudent for the purposes of establishing the proposed deferral account. A final determination of prudence, looking at the actual costs incurred, will occur when any approved deferral account is cleared.

Summary

SEC submits the requested accounting order to establish a deferral account should not be approved. Hydro One has not met the requirements of causation or materiality.

Consequences of Non-Approval

In responding to Board Staff Interrogatory #1, Hydro One states it will simply stop undertaking preliminary development activities if the application is not granted:

Without approval of this deferral account, Hydro One will cease predevelopment activities on the North West Bulk Transmission Line project, which will delay the in-service date that will ultimately impact ratepayers (i.e. Hydro One will not be able to timely address the electricity adequacy concerns the OPA identified in the West of Thunder Bay area).

Not only would such an act be wholly irresponsible, SEC disputes Hydro One's ability to simply refuse to do the work. Hydro One's license currently requires it to specifically develop the NWBTL and to do so based on the scope and timing of the recommendations of the OPA.¹⁵ It is not an optional activity. The question before the Board in this application is how these activities should be funded. SEC submits Hydro One does not meet the requirements to establish a deferral account and the costs should be funded out of existing approved rates.

All of which is respectfully submitted.

¹¹ *Filing Requirements for Transmission Applications*, p.25

¹² EB-2014-0140, Hydro One Prefilled Evidence, Section I, Subsection i, p.1

¹³ EB-2014-0140, Hydro One Prefilled Evidence, Section I, Subsection i, p.2

¹⁴ IRR Board Staff #8 (I-1-8, p1)

¹⁵ Hydro One Networks Inc. Electricity Transmission Licence (ET-2003-0035), section 19.6



Jay Shepherd Professional Corporation

Yours very truly,
JAY SHEPHERD P. C.

Original signed by

Mark Rubenstein

cc: Wayne McNally, SEC (email)
Interested Parties (email)