



# **ONTARIO ENERGY BOARD**

## **DECISION AND PROCEDURAL ORDER NO. 4**

**HYDRO ONE INC.  
WOODSTOCK HYDRO SERVICES INC.**

**EB-2014-0213**

**May 8, 2015**



**EB-2014-0213**

**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 Inc. for leave to purchase all of the issued and outstanding shares of Woodstock Hydro Holdings Inc. under section 86(2)(b) of the *Ontario Energy Board Act*, 1998.

**AND IN THE MATTER OF** an application by Woodstock Hydro Services Inc. seeking to include a rate rider in its 2014 Ontario Energy Board approved rate schedule to give effect to a 1% reduction relative to 2014 base electricity delivery rates (exclusive of rate riders) under section 78 of the *Ontario Energy Board Act*, 1998.

**AND IN THE MATTER OF** an application by Woodstock Hydro Services Inc. for leave to dispose of its distribution system to Hydro One Networks Inc. under section 86(1)(a) of the *Ontario Energy Board Act*, 1998.

**AND IN THE MATTER OF** an application by Woodstock Hydro Services Inc. for leave to transfer Woodstock Hydro Services Inc.'s distribution licence and rate order to Hydro One Networks Inc. under section 18 of the *Ontario Energy Board Act*, 1998.

**BEFORE:** Christine Long  
Presiding Member

Ellen Fry  
Member

Cathy Spoel  
Member

**DECISION and PROCEDURAL ORDER No. 4**  
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**Introduction and Summary**

This is the Decision of the Ontario Energy Board (OEB) on a preliminary matter regarding four related applications filed by Hydro One Inc. and Woodstock Hydro Services Inc. (Woodstock). The preliminary matter relates to the relevance of documents provided on a confidential basis by Woodstock to the OEB Members hearing the case

The primary application asks the OEB to approve the purchase by Hydro One of all of the shares of Woodstock Hydro Holdings Inc., which owns Woodstock. As part of this purchase, the OEB is also asked to approve: (a) a one percent reduction in Woodstock's 2014 electricity distribution rates, frozen for five years, until rates are harmonized in 2020; (b) the transfer of Woodstock's distribution system to Hydro One Networks Inc. (Hydro One); and (c) the transfer of Woodstock's electricity distribution licence and rate order to Hydro One.

The following sections of the *Ontario Energy Board Act, 1998* (the Act) provide the OEB with authority to decide these applications:

- Section 86, which requires OEB approval for a merger, acquisition of shares, divestiture or amalgamation that results in a change of ownership or control of an electricity transmitter or distributor.
- Section 78, which allows the OEB to set rates, including the rate reduction that Woodstock is proposing for electricity distribution service until 2020.
- Section 18, by which the OEB may transfer an authority or a licence given by the OEB.

The OEB's decision in RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2005-0257 established the scope of issues that the OEB considers in deciding section 86 applications and ruled that the relevant test is "no harm". Under the "no harm" test, the OEB considers whether the proposed transaction would have an adverse effect relative to the status quo in relation to the OEB's statutory objectives set out in section 1 of the

Act. If the proposed transaction would have a positive or neutral effect on the attainment of the statutory objectives, then the OEB should grant the application.

Intervenors raised a preliminary matter at the commencement of the oral hearing held on January 15, 2015 regarding the production of certain documents by Woodstock. In reaching its decision on this preliminary matter, the OEB was aided by the participation of intervenors and OEB staff.

## **The Process**

The OEB issued its Notice of Application and Hearing on July 31, 2014. The OEB granted intervenor status to School Energy Coalition (SEC), to the Corporation of the Township of Zorra, and to a group named Concerned Citizens Against the Sale of Woodstock Hydro (Concerned Citizens). In accordance with Procedural Order No. 1, interrogatories were filed by OEB staff and intervenors on September 11, 2014 and were answered by Hydro One on September 22, 2014.

On October 17, 2014 the OEB issued Procedural Order No. 2 providing intervenors with an opportunity to request an oral hearing and to file evidence. SEC and Concerned Citizens requested an oral hearing but did not file evidence. Counsel for Hydro One Inc., Hydro One and Woodstock opposed the requests for an oral hearing arguing that no justification for an oral hearing had been demonstrated.

On November 28, 2014, the OEB issued Procedural Order No. 3 notifying parties that it was proceeding by way of oral hearing, as it considered that cross-examination might assist in addressing issues raised by the intervenors. An oral hearing date of January 15, 2015 was set by the OEB.

On January 6, 2015, SEC sent a letter to Hydro One requesting the following:

- Production of Appendix A to the letter of Ross Macmillan, President and CEO of Woodstock, dated November 5, 2013, a White Paper prepared on behalf of the Board of Directors of Woodstock (White Paper).
- The provision of documents previously requested in SEC interrogatories designated as Exhibits I/2/26 and I/2/27.
- That Mr. David Creery, who was copied on the November 5, 2013 letter, be produced at the oral hearing so that if required, he could be cross-examined on the above-listed documents.

Hydro One responded to SEC on January 7, 2015 stating that it was not in possession of the White Paper and that this document was not relevant to the Board in its determination of the application. Hydro One stated that a witness from Woodstock would not be testifying at the hearing.

Concerned Citizens filed a letter on January 13, 2015 requesting the following documents:

- The White Paper that was requested by SEC as indicated above.
- A letter and attachments, dated February 10, 2014, from Ross Macmillan, President and CEO of Woodstock to the City of Woodstock. This is supplementary correspondence to the White Paper . (the Macmillan Letter)
- A letter from Elizabeth Carswell, Manager of Internal Services and Board Secretary, Woodstock dated June 6, 2014 to the City of Woodstock believed to report errors and omissions and questions stemming from the receipt of the Share Purchase Agreement dated May 21, 2014.
- A letter dated June 6, 2014 from Ross McMillan to the City of Woodstock and minutes of the Woodstock Board meeting June 4, 2014 covering a variety of matters, including the sale of Woodstock to Hydro One

Woodstock responded on January 14, 2015 stating it would not provide the documents requested by SEC and Concerned Citizens as in its view these materials are not relevant to the OEB's determination of the application.

## The Evidence

At the commencement of the oral hearing on January 15, 2015, the intervenors requested the documents noted above.

SEC stated that the White Paper is described in the McMillan Letter as an information source to provide the shareholder with an assortment of information pertinent to the negotiations with Hydro One" and that it may contain an analysis of information relating to reliability, customer service, or future rates and the harm to ratepayers and is therefore relevant to the OEB's consideration in this proceeding.

In response to these submissions, Woodstock argued that the White Paper was a confidential information source to the shareholder and the municipality, to deal with negotiations. Woodstock further argued that the White Paper was never intended to be public information, but rather was information about the negotiations between a business and its shareholder. Woodstock and Hydro One submitted that matters

concerning the process leading up to a transaction are outside the scope of a section 86 proceeding.

During the oral hearing, the OEB determined that in view of the confidentiality concerns raised by Woodstock, the Macmillan Letter and the White Paper would be provided solely to the Panel so that the Panel could make a determination as to their relevance. The OEB also determined at that time that the other two documents referred to above were not relevant and therefore that it would not require them to be produced.

On March 20, 2015, the OEB advised parties that it was appointing an additional OEB Member for the purpose of adjudicating the applications, starting with the determination on the relevance of the Macmillan Letter and White Paper.

## Findings

The OEB has previously determined that the appropriate test to be used in considering a MAAD application is the no harm test. In applying the no-harm test, the OEB has determined that the negotiating strategies of the parties to the transaction are beyond the scope of its review. The OEB will make its determination based on the impact of the proposed transaction by considering the effect of the final transaction in comparison to the status quo. The OEB will not consider negotiating strategies, nor positions taken leading up to the final transaction.

The OEB will now outline its decision in respect of the Macmillan Letter and the White Paper.

In making its decision, the OEB must determine whether the factual information contained in the two documents is relevant to the OEB's consideration of the no-harm test. The OEB will deal with each document in turn.

### 1. The Macmillan Letter

After reviewing the Macmillan Letter in the context of the no-harm test, the OEB has determined that the information contained in the Macmillan Letter is not relevant because it is solely related to negotiating strategy. As a result, the OEB will not order that it be produced.

## 2. The White Paper

The factual information contained in the White Paper deals with various subject areas. However, only three of these areas relate to the OEB's consideration under the no-harm test. These three subject areas are service reliability, conservation and demand management and current rates. The OEB finds that this information is already before the OEB as a result of the OEB's requirements (SAIDI, SAIFI and CDM) or in the case of rates, by taking notice of the rates that have been approved by the OEB. The OEB has the discretion to determine what evidence it will admit, and the OEB need not admit evidence that duplicates information already known to it. In this instance, the OEB is confident that the information contained in the White Paper does not provide any additional information that is relevant to its determination under the no-harm test.

### General

The OEB notes that at the time of the oral hearing, no individual was able to speak to the specific contents of the Macmillan Letter and the White Paper. As a result, the Panel was required to take the additional procedural step of reviewing the documents in order to understand their contents. Parties should consider having witnesses available who can speak to the contents of documents which they may reasonably expect to be discussed within the context of the proceeding.

### The OEB orders that:

1. The oral hearing shall be reconvened on **May 27, 2015** starting at 9:30 a.m. in the OEB's North Hearing Room at 2300 Yonge Street, 25th Floor, Toronto.

All filings to the Board must quote the file number EB-2014-0213 and be made electronically through the Board's web portal at

[www.pes.ontarioenergyboard.ca/eservice/](http://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 [www.ontarioenergyboard.ca/OEB/Industry](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.

**ADDRESS**

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P.O. Box 2319  
2300 Yonge Street, 27th Floor  
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free) Fax: 416-440-7656

**DATED** at Toronto, May 8, 2015

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary