



EB-2016-0050

Hydro One Inc.

**Application for approval to purchase Great Lakes
Power Transmission Inc.**

**PROCEDURAL ORDER NO. 1
May 18, 2016**

Hydro One Inc. (Hydro One) filed a complete application with the Ontario Energy Board (OEB) on March 18, 2016 under section 86(2)(b) of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B), seeking approval to purchase the voting shares of Great Lakes Power Transmission Inc.

A Notice of Hearing was issued on April 7, 2016. Each of School Energy Coalition (SEC), Power Workers' Union (PWU), Algoma Coalition and Vulnerable Energy Consumers Coalition (VECC) applied for intervenor status. Late intervention requests were filed by Energy Probe Research Foundation (Energy Probe) and Association of Major Power Consumers in Ontario (AMPCO). Algoma Coalition requested an oral hearing but did not provide reasons for its request.

SEC, Algoma Coalition, VECC, Energy Probe and AMPCO also applied for cost eligibility. No objection was received from Hydro One.

SEC, PWU, Algoma Coalition, VECC, Energy Probe and AMPCO are approved as intervenors. The list of parties in this proceeding is attached as Schedule A to this Procedural Order. I have also determined that SEC, VECC, Energy Probe and AMPCO are eligible to apply for an award of costs under the OEB's Practice Direction on Cost Awards (Practice Direction).

The request for cost eligibility of Algoma Coalition is denied. The OEB notes that the burden of establishing eligibility for a cost award is on the party applying for such

eligibility, in this case, Algoma Coalition. The request for cost eligibility must include the reasons as to why the party believes that it is eligible for an award of costs and address the OEB's cost eligibility criteria.

Section 3.03 of the Practice Direction states that a party is eligible to apply for a cost award where the party:

- (a) primarily represents the direct interests of consumers (i.e., ratepayers in relation to services that are regulated by the Board);
- (b) primarily represents an interest or policy perspective relevant to the Board's mandate and to the proceeding for which cost award eligibility is sought; or
- (c) is a person with an interest in land that is affected by the process.

Section 3.05 (i) of the Practice Direction states that despite section 3.03, a municipality in Ontario, individually or in a group, is not eligible for a cost award.

Algoma Coalition's Notice of Intervention does not provide a list of its members. It does state that the intervention will focus on representation of the interests of Northern Ontario Municipalities and their ratepayers and Mr. Christopher Wray, the CAO/Clerk-Treasurer of the Municipality of Wawa is listed as Algoma Coalition's member liaison. Algoma Coalition's submissions in previous OEB proceedings have indicated that its members are small Northern Ontario municipalities.

Algoma Coalition says in its Notice of Intervention that its members are direct customers of the applicant or are beneficiaries of its services. In so doing, Algoma Coalition has addressed section 3.03 of the Practice Direction; however, it has not provided any persuasive information as to why section 3.05(i) of the Practice Direction should not apply.

The OEB finds that it would be both inconsistent and inappropriate to allow Algoma Coalition cost eligibility on the basis that the municipalities that it represents are customers and not afford all Ontario municipalities the same treatment. To do this would be to circumvent the clear language of section 3.05(i) of the Practice Direction so as to render the section ineffective.

Algoma Coalition also states in its Notice of Intervention that its ability to intervene in OEB proceedings depends entirely upon its ability to recover its associated costs. The OEB has, however, previously addressed this issue in EB-2012-0383 wherein it stated:

Until recently, the Board has considered applications for cost eligibility from municipalities on a case-by-case basis, and has found municipalities

to generally be ineligible for costs. This is, in part, because municipalities and their associations have access to a revenue stream from their own constituent taxpayers and the Board has therefore found that they should not be funded by ratepayers.

The Algoma Coalition, as an association of member municipalities, has access to funding from each of its constituent member taxpayer revenue streams and should not therefore, be eligible to recover costs from the ratepayers.

Finally, the OEB has considered whether, under section 3.07 of the Practice Direction, special circumstances exist and concludes that no circumstances exist that are special or unique in this particular case.

Algoma Coalition cites in its Notice of Intervention a list of previous OEB proceedings in which it has intervened and for which it has been found eligible for an award of costs. The OEB does not, however, find this to be persuasive, for the following reasons. First, the Practice Direction was amended in March of 2012 to, in part, specifically include section 3.05(i) and, with limited exceptions, the proceedings cited by Algoma Coalition for which it was found to be cost eligible pre-date that amendment. Second, in relation to proceedings subsequent to the amendment for which Algoma Coalition was found to be cost eligible, those decisions were made in the context of the applications being heard in those proceedings.

Cost eligible intervenors should be aware that the OEB will not generally allow the recovery of costs for the attendance of more than one representative of any party, unless a compelling reason is provided when cost claims are filed.

The OEB will determine later in the process whether an oral hearing is required in this case.

Confidentiality Requests

Hydro One has made two requests for confidentiality.

In accordance with section 5.1.4 of the OEB's Practice Direction on Confidential Filings, Hydro One filed a request for confidentiality relating to information that it says is commercially sensitive contained in the Share Purchase Agreement (SPA), filed as part of the application. Hydro One also seeks confirmation, in accordance with section 4.3.1 of the Practice Direction on Confidential Filings, that certain identified personal information also contained in the SPA will not be disclosed in this proceeding. Hydro

One filed a non-confidential redacted version of the SPA and a cover letter setting out its reasons for the confidentiality requests. Hydro One also filed two confidential unredacted versions of the SPA - one reflecting the commercially sensitive information and another fully unredacted version, reflecting both the commercially sensitive information and the personal information.

As an interim measure, the OEB will allow any parties that wish to review the confidential information that Hydro One says is commercially sensitive to do so after signing a copy of the OEB's Declaration and Undertaking, and filing it with the OEB. The OEB will not allow any parties to review the identified personal information filed in confidence until the OEB has determined whether the disclosure of the personal information is permitted under the *Freedom of Information and Protection of Privacy Act*.

The Practice Direction on Confidential Filings permits any party to a proceeding to object to the requests for confidentiality by filing a written objection. This Procedural Order addresses the process for receiving such objections. Subsequent to any and all submissions received pursuant to this Procedural Order, the OEB will make its findings with respect to Hydro One's claims for confidentiality.

Interrogatories

At this time, I am making provision for written interrogatories.

Parties should not engage in detailed exploration of items that do not appear to be relevant and material to the OEB's review of a consolidation application. Parties should refer to the OEB's Handbook to Electricity Distributor and Transmitter Consolidations, for what the OEB considers in its review, in developing interrogatories. In making its decision on cost awards, the OEB will consider whether intervenors made reasonable efforts to ensure that their participation in the hearing was focused on material issues.

Parties should consult sections 26 and 27 of the OEB's Rules of Practice and Procedure regarding required naming and numbering conventions and other matters related to interrogatories.

I consider it necessary to make provision for the following matters related to this proceeding.

IT IS THEREFORE ORDERED THAT:

1. OEB staff and intervenors may make written submissions concerning Hydro One's confidentiality requests. Any such submissions must be filed with the OEB and delivered to Hydro One and all intervenors by **May 25, 2016**.
2. Hydro One shall file with the OEB and deliver to all intervenors any reply submissions relating to the confidentiality requests by **June 1, 2016**.
3. OEB staff and intervenors shall request any relevant information and documentation from Hydro One that is in addition to the evidence already filed, by written interrogatories filed with the OEB and served on all parties by **June 6, 2016**.
4. Hydro One shall file with the OEB complete written responses to all interrogatories and serve them on all intervenors and OEB staff by **June 20, 2016**.

All filings to the OEB must quote the file number, EB-2016-0050, be made in searchable/ unrestricted PDF format electronically through the OEB's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>. Two paper copies must also be filed at the OEB'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, Judith Fernandes at judith.fernandes@ontarioenergyboard.ca and Maureen Helt at maureen.helt@ontarioenergyboard.ca.

ADDRESS

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Fax: 416-440-7656

DATED at Toronto, May 18, 2016

ONTARIO ENERGY BOARD

By delegation, before: Kristi Sebalj

Original signed by

Kristi Sebalj
Registrar

SCHEDULE A
PROCEDURAL ORDER NO. 1
LIST OF PARTIES
HYDRO ONE INC.
EB-2016-0050
May 18, 2016

APPLICANT & LIST OF INTERVENORS

May 18, 2016

APPLICANT

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APPLICANT & LIST OF INTERVENORS

May 18, 2016

INTERVENORS

Rep. and Address for Service

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APPLICANT & LIST OF INTERVENORS

May 18, 2016

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APPLICANT & LIST OF INTERVENORS

May 18, 2016

Algoma Coalition

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APPLICANT & LIST OF INTERVENORS

May 18, 2016

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May 18, 2016

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