



EB-2016-0255

Milton Hydro Distribution Inc.

**Motion to Review and Vary the Ontario Energy Board's
Decision and Order dated July 28, 2016 re Milton Hydro
Distribution Inc.'s 2016 Distribution Rate Application
(EB-2015-0089)**

**NOTICE OF HEARING AND PROCEDURAL ORDER NO. 1
September 1, 2016**

Background

On August 17, 2016, Milton Hydro Distribution Inc. (Milton Hydro) filed a notice of motion to review and vary the July 28, 2016 Decision and Order of the Ontario Energy Board (OEB) in the EB-2015-0089 proceeding on Milton Hydro's application for electricity distribution rates effective May 1, 2016 (the Decision). Milton Hydro takes issue with the way the Decision dealt with the proceeds of the sale of a property at Fifth Line and Main Street which Milton Hydro no longer required.

The Process for Hearing this Motion

The OEB has assigned this motion file number EB-2016-0255. It will be heard by a differently constituted panel than the one that issued the Decision.

Every party to the EB-2015-0089 proceeding is deemed to be a party to this motion. Any party that was determined to be eligible for costs in the EB-2015-0089 proceeding will be eligible for costs in this motion.

Under Rule 43.01 of the OEB's *Rules of Practice and Procedure*, the OEB may determine, with or without a hearing, a threshold question of whether the matter should

be reviewed before conducting any review on the merits. The OEB has determined that the threshold in this case has been met. Milton Hydro's notice of motion raises questions concerning the correctness of the Decision insofar as it relates to the disposition of the property at Fifth Line and Main Street; it would appear that Milton Hydro does not seek merely to reargue its case. The OEB will therefore proceed with the review on the merits.

Milton Hydro has proposed that the motion be heard in writing. Unless any other party satisfies the OEB that there is good reason for proceeding with an oral hearing instead of a written hearing, the OEB will receive written submissions from the parties in accordance with the schedule set out below. After reviewing the submissions, the OEB may provide further procedural directions.

Milton Hydro's Request for a Stay or a Declaration of Interim Rates

In its notice of motion, Milton Hydro asks for a stay of the Decision, "including any Rate Order that may flow from the Decision", until the outcome of the motion, or alternatively, a declaration that any such rate order be interim until the outcome of the motion.

On August 25, 2016, the initial panel issued a final rate order, effective May 1, 2016 but implemented September 1, 2016. The OEB denied Milton Hydro's request (in its submissions on the draft rate order) to refrain from finalizing rates until the outcome of the motion to review. The OEB explained that even if Milton Hydro were successful in its motion, the impact on 2016 rates would be small, and unlikely to cause customer confusion. The OEB further noted that "Milton Hydro will not be prejudiced by the issuance of a final 2016 rate order at this time. The OEB panel assigned to consider the motion for review will be fully empowered to grant any variance relief related to the 2016 rates that might be necessary to keep Milton Hydro whole for 2016."

The present panel agrees that if it were to determine that a variance of the Decision is warranted, it would have the authority it needs to make Milton Hydro whole for 2016. This might include, as proposed by Milton Hydro in its notice of motion, the issuance of an amended rate order with a rate rider through which Milton Hydro would recover any forgone revenue going back to May 1, 2016. Such authority is part and parcel of the OEB's power to review and vary a final decision under Rules 40 to 43 of the *Rules of Practice and Procedure* and section 21.2 of the *Statutory Powers Procedure Act*. The rule against retroactive ratemaking would not be offended.

There is therefore no need to declare rates interim prior to the September 1, 2016 implementation date. Nevertheless, if Milton Hydro still intends to seek some form of

interlocutory relief, it may include submissions to that effect in its submissions due on September 15, 2016.

Order

The OEB considers it necessary to make provision for the following matters related to this proceeding.

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Any party that wishes to request that the motion be heard orally instead of in writing shall file its request with the OEB, and serve it on all parties, by **September 6, 2016**.
2. Milton Hydro may file any further written submissions in support of the motion, and serve them on all parties, by **September 15, 2016**.
3. Intervenors and OEB staff shall file any written submissions, and serve them on all parties, by **September 22, 2016**.

All filings to the OEB must quote the file number, EB-2016-0255, 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, Harold Thiessen at harold.thiessen@ontarioenergyboard.ca and OEB Counsel, Ian Richler at ian.richler@ontarioenergyboard.ca.

ADDRESS

Ontario Energy Board
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Fax: 416-440-7656

DATED at Toronto, **September 1, 2016**

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

Schedule A
Notice of Hearing & Procedural Order No. 1
List of Applicant and Parties
EB-2016-0255
Dated: September 1, 2016

**Milton Hydro Distribution Inc.
EB-2016-0255**

APPLICANT & LIST OF INTERVENORS

September 01, 2016

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September 01, 2016

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September 01, 2016

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September 01, 2016

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