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BY EMAIL and RESS

October 25, 2016
Our File: EB20160160

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

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2016-0160– Hydro One Transmission 2017-2018 – Motion Reply Submissions

We are counsel to the School Energy Coalition (“SEC”). Enclosed, please find SEC’s motion reply submissions.

Yours very truly,
Jay Shepherd P.C.

Original signed by

Mark Rubenstein

cc: Wayne McNally, SEC (by email)
Applicant and intervenors (by email)

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IN THE MATTER OF the *Ontario Energy Board Act 1998*, Schedule B to the *Energy Competition Act*, 1998, S.O. 1998, c.15;

AND IN THE MATTER OF an Application by Hydro One Networks Inc. for an Order or Orders approving or fixing just and reasonable rates and other service charges for the transmission of electricity as of January 1, 2017.

AND IN THE MATTER OF Rule 27 of the Board's *Rules of Practice and Procedure*.

REPLY SUBMISSIONS

1. We are counsel to the School Energy Coalition ("SEC"). Pursuant to *Procedural Order No. 3*, these are SEC's reply submissions on its motion.

General Comments

2. SEC submits the motion should be granted in full. Hydro One has taken the position that the requested information subject to this motion is inappropriate since the "only purpose served by having this additional information placed on the evidentiary record is to promote granular level examination and debate regarding the suitability and substitution of the utility's decision with respect to costs".¹ This view that the information is not in the public interest, nor can it assist the Board in assessing the evidence, is simply incorrect and is based on a misunderstanding of the role of the Board in setting just and reasonable rates.

3. Hydro One's view, that the level of information on the record should reflect the principle of business judgment and that "placing information on the record in order to question or substitute management's judgement breaches this principle"², is a proposition that is completely at odds with the Board's role in rate-setting. The purpose of the regulatory proceeding is to ensure that the costs that Hydro One seeks to pass on to ratepayers through rates are just and reasonable. While it is not the role of the Board to manage the utility, it has to determine if its planning decisions and proposed costs are appropriate. There is no presumption of prudence. As the Supreme Court has recently stated, "[it] would thus seem inconsistent with the statutory scheme to presume that utility decisions to incur costs were

¹ Submissions of Hydro One Networks Inc. (October 21 2016) ["Hydro One Submissions"], p.2

² Hydro One Submissions, p.3

prudent.”³ At some level this may involve the second guessing of a utility’s decisions and plans, if after a review of the evidence and the proposals the Board determines that they are not reasonable and the costs should not be passed on to customers. The discovery process, which includes interrogatories and the technical conference, is there for parties to test the applicant’s evidence so that it can determine if the proposals are reasonable.⁴

4. While it is appropriate for the Board to consider the amount of evidence on the record in a proceeding that is needed; it must be balanced by the resources required to produce it, and the magnitude of the requested revenue requirement. The information SEC is requesting is far from voluminous and all relate to material aspects of the application. None of the requests require significant Hydro One resources to produce it as to make it disproportionate. With the exception of forecast 2016 ROE, none of the disputed requests require any work to gather information from different sources or to undertake detailed calculations. All the other information are documents that currently exist and can easily be provided. The requested revenue requirement of \$3.3 billion for 2017 and 2018⁵ in this application is second only to Ontario Power Generation for the largest annual electricity rate approval that has ever been requested. This significant amount should militate towards more not less information on the record.

NATF Reports (SEC #6)

5. Hydro One’s objection to providing these two reports is on the basis of the confidentiality restrictions that have been imposed on members of the North American Transmission Forum (“NATF”) organization. The Board has repeatedly and consistently stated that confidentiality arrangements with third-parties are not reasons for non-production of relevant information.⁶

6. In EB-2013-0115, the Board stated in ordering Burlington Hydro Inc. to produce MEARIE benchmarking report on a similar motion:

Distributors cannot limit or exclude the Board’s jurisdiction by private agreements amongst themselves or with third parties. The Board has often stated that distributors must be cognizant of this when entering into confidentiality agreements with third parties that extend

³ *Ontario (Energy Board) v. Ontario Power Generation Inc.*, 2015 SCC 44, para. 79

⁴ *Filing Requirements For Electricity Distribution Rate Applications - 2016 Edition for 2017 Rate Applications*, p.2

⁵ Exhibit A, Tab 2, Schedule 1, p.1

⁶ See for example see: *Decision and Order on Confidentiality and Motion* (EB-2013-0416), August 25 2014 , p.5; *Decision on Phase 1 Partial Decision and Order: Production of Documents* (EB-2011-0140), June 14 2012, p.3; *Motion Hearing Transcript*, October 23 2012 (EB-2012-0031), p. 28; *Procedural Order No. 4* (EB-2013-0115), March 19 2014 , p.4; *Procedural Order No. 4* (EB-2013-0174) February 25 2014, p.2

to the provision of information and documents that the utility knows or ought to know may be reasonably required to be produced as part of the regulatory process.⁷

7. The Board has made these comments to Hydro One specifically on multiple occasions⁸, and yet it appears to continue to flout the direction, by refusing to produce the NATF reports, necessitating the need for SEC to bring this motion..

8. Hydro One's statement in its submissions that "production of the information will cause it to no longer be able to participate in the NATF organization" should be treated with significant skepticism. It is not even supported by its own evidence on the motion.⁹ Neither the Affidavit of Mr. Penstone (Hydro One), nor the letter from Mr. McLachlin (NATF), say that production of the information will result in Hydro One being removed from the organization.

9. The Board has heard these types of dire warnings before and appropriately put them in the proper context. For example, in EB-2012-0031, Hydro One told the Board that as the result of an order of production of CEA benchmarking information, "its participation in other future benchmarking activities would be terminated".¹⁰ The Board still ordered production recognizing the importance of the information. Years later, Hydro One still participates in these CEA benchmarking activities that were at issue in that proceeding, and the most recent reports have been filed in evidence on a confidential basis.¹¹

10. But more importantly, the letter from Mr. McLachlin and the Affidavit of Mr. Penstone speak more to the potential harm of public disclosure rather than any form of disclosure. They are arguments for confidentiality, not for non-production. It may very well be that the NATF reports meet the requirements of the Board's *Practice Direction on Confidentiality* as the Board has ordered for various CEA benchmarking reports in this proceeding.¹²

11. Hydro One cannot also hide behind the fact that it is not explicitly relying on these reports to support its requested relief as a reason to deny production of relevant information.¹³ Hydro One by

⁷ *Procedural Order No. 4* (EB-2013-0115), March 19 2014 , p.4

⁸ *Decision and Order on Confidentiality and Motion* (EB-2013-0416); *Decision on Phase 1 Partial Decision and Order: Production of Documents* (EB-2011-0140);

⁹ Hydro One Submissions, p.4

¹⁰ Motion Hearing Transcript, October 23 2012 (EB-2012-0031), p.19

¹¹ CEA 2014 Annual Report, Forced Outage Performance of Transmission Equipment; CEA 2014 Bulk Electricity System Delivery Point Interruptions & Significant Power Interruptions (See attachments to Interrogatory Response Exhibit I, Tab 3, Schedule 11)

¹² *Decision on Confidentiality Request*, p.5

¹³ Hydro One Submissions, p.5

undertaking the NATF benchmarking and peer review process recognizes its benefit to its transmission operations. It is for the same reason this information is important for parties and the Board to review.

12. The NATF reports are clearly relevant to the issues in this proceeding, and should be produced.

2016 ROE Forecast (follow-up to BOMA #30)

13. Hydro One's objection to providing the requested information has shifted from its position at the technical conference, from that of its status as a reporting issuer¹⁴ to now the relevance of the information itself.¹⁵ Understanding Hydro One's forecast actual bridge year ROE is important to testing how accurate its test year forecasts are. If Hydro One is earning in excess of its allowed ROE in the bridge year, depending on the cause, it must provide value information for the testing of the applied 2017 and 2018 forecast. This is especially important in this proceeding where Hydro One's transmission business has over-earned in every year between 2012 and 2015. In some of those years, it has done so by more than 300 basis points.¹⁶

14. The publically available corporate-wide information that Hydro One references is of limited use since it does not provide a breakdown between distribution, transmission, and unregulated business. Further, the return on equity information is also not provided on the same basis as how regulated ROE is calculated, so that it can be compared to the approved ROE in its 2016 rates.

15. Hydro One should be more than able to easily provide an updated year-end forecast transmission ROE calculation, based on its year-end transmission costs and revenue forecasts. Forecast bridge year regulated ROE is provided regularly by other utilities when asked in interrogatories.¹⁷

16. The 2016 year-end transmission forecasted ROE information is an easy calculation for Hydro One to undertake, is relevant to the application, and should be produced.

¹⁴ Technical Conference Transcript Day 1, p.22

¹⁵ Hydro One Submissions, p.6

¹⁶ See Exhibit 1, Tab 2, Schedule 3 (BOMA 30). Variance between approved and actual ROE (2012=2.99%, 2013 4.29%, 2014=3.76%, 2015=1.63%)

¹⁷ For example seeing the following proceeding from the past year alone EB-2015-0061 (Entegrus Power Inc.), Response to Interrogatory 5-SEC-26; EB-2015-0062 (Grimsby Power Inc), Response to Interrogatory 1-Energy Probe-1; EB-2015-0089 (Milton Hydro Distribution Inc.), Response to Interrogatory, 1-SEC-21;

Individual Business Plans (follow up to SEC #2)

17. SEC requested the individual division or group business plans after interrogatory responses revealed that surprisingly, Hydro One has not yet developed a company-wide business¹⁸ or strategic plan.¹⁹ It has only developed business plans at the division or group level. In fact, Hydro One does not even produce an organizational chart of operations.²⁰ Since there is neither a Hydro One business nor strategic plan, SEC requested the individual group business plans.

18. Hydro One has misrepresented the basis for SEC's request for the information. The reference to the Corporate Common Functions and Services ("CCF&S") forecast costs in the technical conference transcript was not the basis for the request for the documents but was raised between Hydro One and counsel for SEC as a clarification of what was meant by division or group. The CCF&S chart was used as an example of the level of detail. There is nothing specific about the CCF&S group or division as compared to all the others that relate to transmission expenditures. SEC is not only seeking the CCF&S division or group business plans.

19. The documents are relevant to the proceeding for much more than simply understanding a breakdown of the individual budgets and scrutiny of the methodology to prepare their forecasts. It provides parties and the Board an understanding of how each business group approaches its operations, to determine if it is properly aligned with the outcomes approach of the RRFE.

20. A business plan and/or strategic plan is a fundamentally important part of any rate application. The Board's recently released Handbook for Utility Rate Applications considers a business plan of central elements.²¹ Since Hydro One does not have an overall corporate business or strategic plan, let alone one that has been approved by its Board of Directors or senior management, the best information that can be produced are the individual business plans.

21. Hydro One in its reply submission, does not actually provide any rationale for why it would be in anyway prejudiced by providing the documents as requested nor do they dispute that they relate to material aspects of the revenue requirement requests.

¹⁸ Technical Conference Transcript Day 1, p.33

¹⁹ Exhibit I, Tab 6, Schedule 3 (SEC #3), Exhibit I, Tab 13, Schedule 6 (CCC #6)

²⁰ Exhibit I, Tab 6, Schedule 9 (SEC #9)

²¹ *Handbook For Utility Rate Applications* (October 13 2016), p.10

22. Hydro One appears to be suggesting that the information is unnecessary since Mr. Vels will be able to testify about the budgeting process and about each individual division or group budget. SEC submits it would be a huge waste of the Board's time to require Mr. Vels to have to be asked about every division or group, and how their budget, that underlies and promotes efficiency and productivity, leads to outcomes for customers, and how that derives value for money consistent with the RRFE. If it is not included in the business plans, that itself is important to see and to understand the implication on its planning process. SEC is interested in seeing the source document to test the overall application and the new approach it appears to have taken, especially considering there is no corporate business or strategic plan.

23. For the same reason Hydro One has recognized that se division or group "high level" business plans are useful to its own Board of Directors²², it will be useful to parties and the Board.²³ SEC submits these business plans are relevant and should be provided.

Replace v. Refurbish Economic Assessment (Board Staff #28/SEC #29)

24. SEC's motion seeks the evaluation of economic risk between replacing and refurbishing all proposed capital investments over \$20M, an amount significantly above Hydro One's materiality threshold.²⁴

25. Based on Hydro One's submission, it is not exactly clear what the objection to providing this information is anymore. At the technical conference, it objected "on the basis of its granularity" of the information.²⁵ Now it appears to have changed to taking the position that "requiring all supporting documents of the investment described in Exhibit B1-3-11 is unreasonable and inconsistent with the balance and purpose described in the Board's prior decision".²⁶

26. SEC is not seeking all supporting documents of each investment proposed, nor has it ever sought that information. It is seeking one specific set of information (the replace versus repair economic analysis), for a subset of material capital projects (over \$20M). This is information it has admitted it has.²⁷ It provided an example of it by way of a single graph for one of the projects in response to Board Staff

²² Technical Conference Transcript Day 1, p.24 [See Appendix 3]

²³ Exhibit I, Tab 6, Schedule 2, Attach 1, p.5 (SEC #2) [See Appendix 5]

²⁴ Hydro One's materiality threshold is \$3M (Hydro One confirms this at Technical Conference Transcript Day 1, p.60).

²⁵ Technical Conference Transcript Day 1, p.136 [See Appendix 3]

²⁶ Hydro One Submissions , p.9

²⁷ Technical Conference Transcript Day 1, p.136 [See Appendix 3]

interrogatory at issue (Board Staff #28, parts a(i)).²⁸ Hydro One's response to the undertaking JT1.33 to Board Staff provides a few examples of the underlying business case for its capital projects and is helpful to the understanding of the entire capital planning process, but it is not the same information SEC is seeking. The individual repair versus replace analysis for the major material capital projects is important to testing the underlying assumptions made more generally. JT1.33 is a self-selected sample of a couple of capital projects that may or may not be represented.

27. Hydro One's position that there is "no valid reason for this rates proceeding to become a forum for second guessing technical information and decisions made by business professions with relevant expertise" is troubling.²⁹ Hydro One is seeking approval of \$2.2B in capital projects in 2017 and 2018, approximately 13% more than in 2015 and 2016.³⁰ The purpose of the Board requiring comprehensive Transmission System Plans is so that ratepayers and the Board can test the information that Hydro One, a monopoly business with captive customers to its service, ensures that it is making investment decisions that provide benefits to its customers and that these are reasonably made. Testing that information involves reviewing the underlying economic information. Hydro One's position appears to be the Board should simply trust its judgement. The Board's statutory mandate under section 78(2) of the *Ontario Energy Board Act* is to test Hydro One's judgment to ensure that the cost consequences of its decisions that make up its rates are just and reasonable.

28. The information requested is clearly relevant, reasonable, and should be provided.

Audit Reports (follow-up to AMPCO #1)

29. SEC has requested 2 specific internal audit reports of the 40 transmission-related reports undertaken in the past two years. Those reports, i) Audit of Investment Planning #2014-29 (January 30, 2015); ii) Transmission Lines Preventive Maintenance Optimization #2015-33 (April 7, 2016), relate to very specific and important aspects of this application that warrant production.

30. As SEC noted in its Notice of Motion, it understands past Board decisions in this area but notes this specific situation is different. In past cases noted by Hydro One, the Board has upheld utility refusals for blanket requests for all internal audit reports instead of requiring the production of summaries of those reports.

²⁸ Exhibit I, Tab 6, Schedule 28 (SEC #29) [See Appendix 7]

²⁹ Hydro One Submissions, p.10

³⁰ Exhibit A, Tab 3, Schedule 1, p.13

31. SEC has not requested all internal audit reports, but two specific reports that provide necessary context to important areas of concern to the Board relevant to the issues in this proceeding. The Board has never been asked to require production of specific audit reports. As AMPCO also pointed out, the summaries provide very little understanding of the issues that were raised in the internal audits and the recommendations. The Board needs that context as it has said it is “interested in understanding the recommendations made and actions taken in areas of Hydro One’s business relevant to their application”.³¹

32. The Audit of Investment Planning relates to arguably the most important part of this application, Hydro One’s investment planning process. The importance of understanding the entirety of the audit, and its context, is important considering the issue was an important part by the Auditor General of Ontario in its 2015 report on Hydro One’s asset management.³² The Transmission Lines Preventive Maintenance Optimization report relates to one of the largest proposed capital programs and into the broader transmission investment plan.

33. As noted in its Notice of Motion, SEC was hopeful that it would be able to withdraw this part of its motion. Hydro One agreed in undertaking JT1.28 to see what further information it could provide to be helpful regarding these internal audit reports. In its response to the undertaking, Hydro One has decided to take the opposite approach, and is refusing to provide any further information and has claimed that the recommendations are “self-evident”.³³

34. It is clear from a reading of the recommendations that they are far from self-evident. The summaries provide no context about the findings that led to the recommendations, are replete with undefined acronyms, and more importantly, do not allow parties to determine if the recommendations actually solve the underlying findings which are not identified.

35. If there is an issue about confidentiality of the internal audit reports, then they can be dealt with pursuant to the *Practice Direction on Confidential Filings*.

³¹ *Decision and Order on Confidentiality and Motion* (EB-2013-0416), August 24 2014, p.7

³² Auditor General of Ontario, 2015 Annual Report, Chapter 3.06 - Hydro One - Management of Electricity Transmission and Distribution Assets

³³ JT1.28

36. SEC submits the limited request of 2 of the 40 internal audit reports, relevant to two major areas of the application, should be produced.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Original signed by

Mark Rubenstein
Counsel for the School Energy Coalition