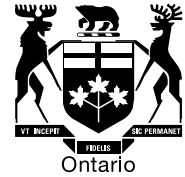


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BY E-MAIL

January 22, 2018

Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Anwaatin Inc. Notice of Motion for Review and Variance, EB-2016-0160
Hydro One Networks Inc. 2017-2018 Transmission Revenue Requirement
and Charge Determinant Application
Board File Number: EB-2017-0335
OEB Staff Submission**

In accordance with Procedural Order No. 1, please find attached the submission of OEB staff. Hydro One Networks Inc. and all intervenors have been copied on this filing.

Yours truly,

Original Signed By

Harold Thiessen
Ontario Energy Board staff
Case Manager, EB-2017-0335

cc All Parties, EB-2017-0335

ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF an application by Hydro One Networks Inc. for electricity transmission revenue requirement and related changes to the Uniform Transmission Rates beginning January 1, 2017 and January 1, 2018;

AND IN THE MATTER OF the Decision of the Ontario Energy Board on the Application dated September 28, 2017;

AND IN THE MATTER OF Rules 40, 42 and 43 of the *Rules of Practice and Procedure* of the Ontario Energy Board.

Submission of Ontario Energy Board Staff

Anwaatin Inc. (Anwaatin), an intervenor in the Ontario Energy Board (OEB) proceeding that considered the application of Hydro One Networks Inc. (Hydro One) for transmission revenue requirements for 2017 and 2018¹, filed a motion seeking a review and variance of the OEB decision issued September 28, 2017 and revised October 11, 2017 and November 1, 2017 (the Decision). Anwaatin filed a factum, motion record and book of authorities on January 15, 2018 in accordance with Procedural Order No. 1 on the motion. The following are OEB staff's submission on the motion by Anwaatin.

1. No Error in Law

Anwaatin argues in its factum that the OEB erred in law by failing to consider and provide reasons in its Decision on the transmission reliability evidence called by Anwaatin and on the relief requested by Anwaatin in its final submission. The specific relief Anwaatin sought that the OEB did not address was a request to require Hydro One to earmark a portion of its approved capital budget to invest in certain transmission assets serving Anwaatin communities. OEB staff submits that the OEB did not err in law

¹ EB-2016-0160

on either of the grounds cited by Anwaatin in its factum: failure to discharge its statutory duty or a breach of its duty of procedural fairness to Anwaatin.

a) No failure to exercise statutory duty

The OEB clearly exercised its statutory mandate under sections 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Sched. B (the OEB Act). The OEB heard and decided Hydro One Networks Inc.'s application to set transmission revenue requirements for 2017 and 2018, and issued an order setting the amounts of the revenue requirements and the charge determinants to be included in the calculation of the Uniform Transmission Rates for the province. The OEB issued a lengthy Decision giving its reasons for the type and amount of costs it would permit to be included in the revenue requirements.

OEB staff submits that the OEB did not have to specifically address the relief sought by Anwaatin to properly exercise its mandate to set just and reasonable transmission rates under section 78 of the OEB Act. OEB staff submits that it was not necessary for the exercise of that mandate to consider whether to require Hydro One to earmark a specific level of expenditure to invest in transmission feeders serving Anwaatin communities. As OEB staff understands the relief sought by Anwaatin, the revenue requirements and transmission rates would not have been affected by the granting or denial of the requested relief. The OEB provided adequate reasons for the findings relevant to the exercise of its powers under section 78 of the OEB Act.

b) No breach of procedural fairness

With respect to procedural fairness, as Anwaatin itself points out, the OEB granted Anwaatin intervenor status, and permitted Anwaatin to cross-examine Hydro One witnesses, call expert evidence and file argument in the case. Further, the OEB agreed that Anwaatin's reasonable costs of participation in the hearing would be funded, consistent with the OEB's rules and practice direction regarding cost awards. Despite these opportunities to participate and be heard, Anwaatin argues that the procedural fairness owed to Anwaatin was breached by the OEB through a failure to specifically address in its Decision certain aspects of the Anwaatin evidence and one item of the relief requested by Anwaatin in its final argument.

The OEB Decision addressed three of the four items of relief requested by Anwaatin in its final argument, all three of which related to the adequacy of First Nations' consultation during the preparation of the application by Hydro One. The Decision addressed these concerns in section 4.2 of the Decision, specifically referring to the Anwaatin evidence². The OEB found that Hydro One's customer engagement process could be improved and required that: "Hydro One should seek timely and meaningful input from First Nation representatives"³.

c) Failure to address one aspect of submission does not constitute error in law

OEB staff agrees that the OEB did not make a specific finding with regard to the fourth item of relief requested by Anwaatin: the earmarking of part of the approved capital expenditures for investment in certain transmission assets serving Anwaatin communities. However, OEB staff submits that the absence of a specific finding on this one item does not render the Decision incorrect in law, as Anwaatin argues.

OEB staff acknowledges the duty of tribunals, including the OEB, to give adequate reasons for their decisions. However, the Courts have made it clear that not every argument nor every piece of evidence that was raised in a case must be addressed in the tribunal's reasons⁴. OEB staff submits that the OEB provided ample reasons for the findings it was required to make in order to determine the revenue requirements for Hydro One.

The OEB issued a lengthy Decision giving its reasons for the type and amount of costs it would permit to be included in the transmission revenue requirements for 2017 and 2018. The Decision provided guiding principles that informed the findings, and addressed all the elements of the application necessary to set just and reasonable transmission rates. For example, the Decision addressed the transmission system plan filed by the applicant and the capital expenditures proposed by the applicant, providing

² EB-2016-0160 Decision and Order, revised November 1, 2017, pages 20 and 22

³ EB-2016-0160 Decision and Order, revised November 1, 2017, page 24

⁴ *Clifford v. Ontario Municipal Employees Retirement System*, 2009 ONCA 670, paragraph 29

Lake v. Canada (Minister of Justice), 2008 SCC 23, paragraph 46

N.L.N.U. v. Newfoundland and Labrador (Treasury Board), 2011 SCC 62, paragraph 16

R. v. Dinardo, 2008 SCC 24, paragraph 30

findings on six sub-issues relevant to its determination of the level of capital spending that would be included in the transmission revenue requirements.

OEB staff submits that the OEB did not have to specifically address the relief sought by Anwaatin to provide adequate reasons for its determination of the 2017 and 2018 transmission revenue requirements of Hydro One.

2. Proposed Requirement to Prepare and File Evidence

Although OEB staff does not agree that the OEB erred in its Decision, OEB staff proposes that the OEB, under section 21(1) of the OEB Act, require Hydro One to file evidence to enable the OEB to consider the issues raised by Anwaatin in future.

OEB staff agrees that the evidence called by Anwaatin (and in part by Hydro One) established that reliability in the radial transmission system of Hydro One serving northern Ontario is worse than the reliability of the southern Ontario multi-circuit transmission system, and that reliability in some First Nation communities is worse than the average reliability of the northern transmission system. Further, OEB staff acknowledges that the impacts to First Nation communities of electricity unreliability can be particularly severe.

However, OEB staff does not agree that the Decision should be varied to require Hydro One to earmark part of its capital expenditures for investment in transmission feeders serving the Anwaatin communities. Staff submits that the evidence on the record in this application is not sufficient for such an order to be made. Specifically, OEB staff submits that there is insufficient evidence of the causes of such unreliability in Anwaatin and other First Nation communities (for example, the contribution of distribution assets to the level of unreliability), the costs to improve reliability and the benefit to be anticipated from various levels of investment. There is insufficient evidence to enable the OEB to quantify how much of the capital budget of Hydro One should be set aside for investment in feeders serving Anwaatin communities.

Rather, OEB staff recommends that the OEB require Hydro One, as part of the evidence in its next transmission revenue requirement case, to prepare and file:

- More complete and understandable data regarding the reliability of its transmission assets that serve First Nation communities in northern Ontario,

including a comparison to reliability data from other transmission utilities serving reasonably comparable areas.

- A strategy for addressing unreliability in First Nation communities, particularly unreliability due to transmission feeders that are service outliers. The strategy should include the expected benefits of proposed investments and the estimated cost of achieving those benefits.

OEB staff submits that as Hydro One's revenue requirement has been set only for 2017 and 2018, the requirement proposed by OEB staff will ensure that the OEB has the data it needs to consider specific investments by Hydro One in transmission reliability for the Anwaatin and other First Nation communities within a reasonable time.

All of which is respectfully submitted.