PUBLIC INTEREST ADVOCACY CENTRE
LE CENTRE POUR LA DÉFENSE DE L'INTÉRÊT PUBLIC

September 28, 2021 **VIA E-MAIL**

Christine E. Long
Board Secretary and Registrar
Ontario Energy Board
Toronto, ON

Dear Ms. Long:

Re: Hydro One Networks Inc. EB-2021-0110
2023 Distribution Rates and Transmission Revenue Requirement-UTR
Response to Procedural Order No. 1 – Comments on process and scheduling

On September 17, 2021 the Ontario Energy Board (OEB) issued Procedural Order No. 1 in the Hydro One Networks Inc. (Hydro One) proceeding EB-2021-0110. VECC has been granted intervenor status and cost eligibility in this proceeding. That Order provides for comments on (a) "blue page" updates; (b) reply to intervener evidence; (c) confidential filings. VECC has no submissions with respect to the matters of confidentiality

Blue Page Updates

VECC supports the provision for a comprehensive "blue page" update as this would provide the most recent historical data. This is especially critical in the case of the transmission business which has limited historical years of data since the last Board approval in EB-2019-0082. We would also suggest that reviewing 2021 actual results may be especially important due to the ongoing effects of the pandemic. Specifically, it is possible that the actual results of 2021 will be anomalous to past trends but indicative of future ones. In any event 2021 actual results will have been hard to forecast in the current circumstances and therefore open to larger forecast error than normally might be expected.

However, incorporating such an update into the schedule would, according to the scheduling scenarios provided in the Procedural Order, lead to proceeding going into a three-month abeyance between February 3 to April 25, 2025. In considering the schedule in its entirety we think better use could be made of this time.

If the Board were to choose to allow for the blue page update it is not clear to us the urgency of the prior steps of the proceeding. We would especially note that the filing of interrogatories (October 26) and their response (November 29) would, under the blue page scenario, be 5 months prior to the

settlement conference. At a minimum this will require more effort (cost) from all parties as they need to reacquaint themselves with the "second phase" of the proceeding. Simply put and in the colloquial – what is the hurry for interrogatories if we are all to wait three months doing nothing next year?

In the case of a blue page update it is not clear to us why the schedule would not better serve all parties better if the dates for interrogatories, responses, technical conferences etc., were expanded to allow for more time to review the evidence and answer the interrogatories. While not specific to this Application, VECC, like a number of other intervenors, is engaged in a number of other Board proceedings. This application is also exceptionally comprehensive and large (Exhibit B alone has over 3,500 pages of material). As it stands now, intervenors have less than 30 days to read all the material and Hydro One only 30 days to respond to what is likely to be an extraordinarily large number of interrogatories. That this should be the case when at a later date all participants will effectively stand down for 3 months is difficult to comprehend.

We also note that under the Illustrative blue page schedule there is a three-week delay between the filing of the update and the settlement conference. No allowance has been made for discovery on what will be a comprehensive update. In our view this will lead to a number of days at the settlement conference spent clarifying evidence. This may not be the most efficient manner to proceed. For example, a technical conference in the week before the settlement conference might allow parties to better understand better the changes to the evidence. Alternatively, the Board might consider allowing more time at the beginning of the settlement conference for clarifications of the blue page updates.

Reply on Expert Evidence

We do not support the ability of Hydro One to respond to the expert evidence. In our years of experience before this Board it is unusual for the Applicant to reply to intervenor evidence. The Applicant, like intervenors, is provided an opportunity to ask questions on this evidence and to respond to it in both in argument-in-chief and reply argument. We have noticed in some recent proceedings Applicants submitting such reply and without permission of the Board[1]. This is incorrect and for a number of reasons.

In our experience such reply tends to be, and notwithstanding the best of intentions, exactly that – reply aka- argument. As such it should be dealt with as part of the argument at the end of the proceeding and not piecemeal within the proceeding. Otherwise, objecting parties should have the ability to make their own submission. At this point things have devolved to arguments within the proceeding. In our view the "reply" to expert evidence is simply an attempt to find another forum for the positions taken by the Applicant. It also extents the proceeding unnecessarily. In sum it is a way to influence the decision maker by undermining expert evidence prior to the close of the proceeding when the matter is to be properly addressed.

To the extent that the reply of Hydro One is not argument it must then be evidence. In this case parties should be provided the opportunity to ask interrogatories on this new evidence (in the guise of "reply"). This procedural step, in our view, is unnecessary and simply adds more time and costs to the proceeding.

[1] In Toronto Hydro-Electric System Limited EB-2018-0165 the Utility informed the Board (May 10, 2019) that it intended to file a supplemental report to evidence filed by Board Staff in that proceeding.

More likely this “reply” will be a commingle of argument and evidence. If so, how should the Board proceed that is fair and impartial to all parties? A bit of interrogatory with a bit of sur-reply? In any event, how does the Board go about determining whether and which parts of the “reply” of Hydro One are evidence and which are argument?

Of course, it is within the discretion of the Board to decide for itself what it finds helpful. As such, in the interest of procedural fairness we would ask that if the Board allows for Hydro One “reply” it then should seek submissions of parties as to (a) allowing for discovery on this reply and (b) allowing for submissions on this reply. A better course, in our view, would be to nip this wannabe procedural bud as it offers no redeeming value to the process.

These are our respectful submissions on the procedural issues set out in the Board’s Procedural Order No. 1.

Yours truly,

Mark C Garner Digitally signed by Mark C Garner
Date: 2021.09.28 20:43:14 -04'00'

Mark Garner
Consultants for VECC/PIAC

Email copy:
Ms. Eryn Mackinnon, Senior Regulatory Coordinator, HONI
Regulatory@HydroOne.com