



Hydro One Networks Inc.

Application for electricity transmission and distribution rates and other charges for the period from January 1, 2023 to December 31, 2027

**DECISION AND PROCEDURAL ORDER NO. 4 ON SETTLEMENT CONFERENCE
ADJOURNMENT
February 18, 2022**

Hydro One Networks Inc. (Hydro One) filed an application dated August 5, 2021, with the Ontario Energy Board (OEB) under section 78 of the *Ontario Energy Board Act, 1998*, seeking approval for changes to the rates that it charges for electricity transmission and distribution, beginning January 1, 2023 and for each following year through to December 31, 2027.

Procedural Order No. 1, dated September 17, 2021, set out a schedule of procedural steps including a settlement conference to be convened on February 7, 2022 and continuing until February 10, 2022, subject to the OEB's determination of the value of additional settlement time, based on the substance of a settlement progress letter to be filed by OEB staff by February 10, 2022.

On February 4, 2022, Hydro One sent a letter to the OEB advising that it was not able to proceed with the settlement conference on February 7, 2022. Hydro One explained that it was unable to enter into meaningful discussions at that time because of the requirement to amend its application to reflect material changes to OM&A and capital expenditures. Hydro One stated that these material changes had arisen as a result of unprecedented inflationary pressures that it was incurring and were expected to be incurred throughout 2022 and into the rate period.

Hydro One further stated that it was endeavouring to prepare the amendment in a timely manner and was willing to meet with parties at the time scheduled for the settlement conference to discuss any procedural matters arising from the amendment or any other related matters. Hydro One added that it would file further correspondence on February 7 setting out its timing for filing the amendment and any other scheduling considerations. The OEB will address Hydro One's comments in its February 7 and subsequent February 11 correspondence further below.

Following a meeting among the parties on February 7, 2022, Hydro One filed another letter with the OEB dated February 7, 2022, asking for a 5-week period to file its amended application (i.e., by March 14, 2022). In the February 7, 2022 letter, Hydro One suggested two illustrative schedules: one assuming a partial settlement and one assuming no settlement. Those illustrative schedules proposed one week for interrogatories on the new evidence and one week for interrogatory responses, followed by a settlement conference starting on April 4, 2022.

The OEB received letters from nine intervenors: Energy Probe Research Foundation, Consumers Council of Canada, School Energy Coalition, London Property Management Association, Canadian Manufacturers & Exporters, and Association of Major Power Consumers in Ontario, all dated February 8; VECC dated February 9; and Pollution Probe and Ontario Sustainable Energy Association dated February 10, 2022 commenting on Hydro One's request, expressing similar concerns, and proposing that any approval of such request should come with certain conditions. The main concerns and comments expressed by these intervenors were:

- The amendment proposed by Hydro One represents “selective updating” of its application. The amendment should not only focus on the inflationary impact on capital and OM&A expenditures (“at the envelope level”) and associated bill impacts but should also include comprehensive updates regarding any material impact on all other aspects of the proceeding that are already on the evidentiary record. The amendment should comply with the OEB’s filing requirements.
- The schedule proposed by Hydro One appears unrealistic and premature as it may require additional steps and more realistic durations after the application amendment is filed.
- Hydro One should file its actual 2021 financial results with the application amendment as these results should be available by then.
- Inflationary expectations and the central bank responses to those expectations have been widespread in the financial news well before the end of last year.
- The OEB should place the application in abeyance until the evidence update is filed.
- The OEB cannot be held accountable for the actions of Hydro One. Any detrimental consequences of the delay rest with the management and shareholders of Hydro One.

- The OEB has already considered and rejected Hydro One's request to file reply evidence from Clearspring regarding PEG's benchmarking studies and it is not clear what benefit this "selective update" would have.

Hydro One filed a letter with the OEB on February 11, 2022 responding to the intervenors. The key elements of Hydro One's response are summarized below:

- The combined nature of the current transmission and distribution application, as directed by the OEB, resulted in the entire business being exposed to external factors such as inflation over a single rate period.
- Unprecedented levels of inflation in recent months could not have been anticipated at the time of filing the application, including projections just released in February, 2022.
- In the application amendment, the 2021 inflationary assumption of 2.0% will be replaced with actual Ontario CPI of 3.5% and the 2022 inflationary assumption of 2.0% will be replaced with a forecast of Ontario's CPI.
- It is Hydro One's obligation to amend its evidence in an appropriate manner. It is not for the intervenors to stipulate the content or extent of the evidence which Hydro One will file.
- In the amendment, Hydro One will recognize the intervenors' comments while complying with OEB's *Rules of Practice and Procedure* (Rules).
- Hydro One will provide revised interrogatory and undertaking responses that are materially impacted by the amendment.
- Hydro One expects to meet the March 14, 2022 date for filing the amendment.
- Confirmation is required from the OEB if there is a change in its position regarding the blue page update.

Findings

The OEB is disappointed with the timing of Hydro One's notice to make a material amendment to its application, and with the associated disruption to the current process. The OEB repeatedly instructed Hydro One to provide the most up-to-date financial

information at each step of the process.^{1,2,3} The OEB also reiterated that this up-to-date financial information shall include, but is not limited to, the interrogatory responses, the technical conference undertakings, the results of any financial audits, as well as any other material updates in advance of the settlement conference.^{4,5}

Hydro One's letter of late-Friday afternoon February 4, 2022, informing the OEB that Hydro One is not able to proceed with the settlement conference, did not provide any compelling reason for why Hydro One announced it is planning to amend its application literally less than one business day before the settlement conference was scheduled to begin with many parties planning to participate. Hydro One's reference in the letter to "unprecedented inflationary pressures" is unusual as this inflationary trend could not have come as a surprise to Hydro One on the eve of the settlement conference, and should have been anticipated earlier. The OEB shares the concerns of at least one intervenor who observed that Hydro One's explanation that its inflation forecast has changed "is unsurprising given that inflation expectations and central bank responses to those expectations have been widespread in the financial news well before the end of last year. It is perhaps a bit more surprising that Hydro One should come to this realization on the brink of the settlement conference."⁶ Hydro One had opportunities to flag these issues as part of the interrogatory process in October / November 2021 and the Technical Conference in December 2021. Although Hydro One provided more explanation for the change in its inflationary assumptions in its February 7, 2022 letter, the OEB still believes that these changes should have been foreseen and flagged earlier.

While the OEB has concerns about the manner in which Hydro One approached this matter, the OEB approves Hydro One's request to postpone the settlement conference.

Hydro One advised the OEB that it intends to amend its application in accordance with its obligation under the Rules and the *Practice Direction on Settlement Conferences* (Practice Direction).⁷ The OEB notes that Hydro One has not requested the OEB's permission to amend the evidentiary record under Rule 11.01, but the OEB confirms that the Rules and the Practice Direction do create obligations on parties to disclose material changes in their pre-filed evidence, and to file appropriate amendments. Rule 11.02 and section 7 of the Practice Direction provide, respectively:

¹ Decision on Blue Page Update, Confidentiality Request and Reply on Expert Evidence and Procedural Order No. 2, October 25, 2021.

² OEB correspondence to Hydro One, December 2, 2021.

³ OEB correspondence to Hydro One, January 18, 2022.

⁴ OEB correspondence to Hydro One, December 2, 2021.

⁵ OEB correspondence to Hydro One, January 18, 2022.

⁶ Vulnerable Energy Consumers Coalition (VECC) correspondence to OEB dated February 9, 2022.

⁷ Hydro One correspondence to OEB dated February 11, 2022.

11.02 Where a party becomes aware of new information that constitutes a material change to evidence already before the OEB before the decision or order is issued, the party shall serve and file appropriate amendments to the evidentiary record, or serve and file the new information.

7. Material Changes in Pre-filed Evidence

Where a participant in a settlement conference becomes aware of a material change in its pre-filed evidence prior to or during a settlement conference, that participant must disclose that material change as soon as possible.

The OEB finds that the nature and magnitude of the application amendment are not known at this time and will not be known until the amendment is filed. Therefore, the OEB is not in a position to determine the nature and duration of next steps.

The OEB has established performance standards for processing applications. The performance standards set out the typical steps and number of days that it takes to hear each type of application. The OEB has a *Protocol for Adjusting Adjudicative Timelines* (Protocol) that establishes a mechanism for the treatment of material delays in adjudicative proceedings that are not within the OEB's control.

The Protocol defines the current situation as an "undetermined extension request"⁸ where the full extent of the delay's duration is not known at the time the OEB is notified. The Protocol requires that, if the extension request is approved, the application is placed in abeyance until the new evidence is filed and the OEB establishes the next procedural steps. According to the Protocol, "Once the extent of the delay is known, the performance standard will be extended by the total number of calendar days associated with any approved request once the proceeding re-starts, including the issuance date of the OEB's final decision."

The OEB shares the concerns expressed by the intervenors and directs Hydro One to address these concerns in its amended application to the OEB's satisfaction in accordance with the OEB's Filing Requirements and Rules. The OEB is encouraged by Hydro One's commitment to recognize the intervenors' comments while complying with the Rules and to provide revised interrogatory and undertaking responses that are materially impacted by the amendment.

The OEB finds that addressing the intervenors' concerns in a comprehensive manner in the application amendment will contribute to an efficient and more streamlined process following the filing of the amendment. It is incumbent on Hydro One to ensure that the

⁸ Protocol for Adjusting Adjudicative Timelines, November 1, 2021, p.3.

proceeding can continue as efficiently as possible under the circumstances. At a minimum, Hydro One shall provide updated exhibits and responses to interrogatories and undertakings where the original responses are materially affected by the amended application. Hydro One shall include 2021 financial actuals if these are available at the time of filing the application amendment.

Regarding the blue page update, the OEB's position has not changed. In its December 2, 2021 and January 18, 2022 letters, the OEB stated that "the OEB is not currently requiring Hydro One to file a blue page update in April 2022. However, the OEB may order Hydro One to file financial updates at any time during this proceeding if deemed to be necessary."

In the meantime, Hydro One's current application is hereby placed in abeyance as of February 4, 2022 (the day Hydro One informed the OEB that it could not proceed with the settlement conference). Once the amended application is filed by Hydro One, the OEB will establish the next procedural steps. The performance standard (decision metric date) will be extended by the total number of calendar days associated with Hydro One's extension request which will include filing of the amended application as well as any subsequent necessary procedural steps. For clarity, while the abeyance period will only be for the time that it takes Hydro One to file its amended application, the total delay that will extend the OEB's target decision metric date will include not only the time required for the new evidence to be filed and to establish those next procedural steps, but also any time required to test the new evidence and for parties to be able to resume the next step on the original schedule (i.e., the settlement conference).

THE ONTARIO ENERGY BOARD THEREFORE ORDERS THAT:

1. The settlement conference scheduled to begin on February 7, 2022 is postponed, and Hydro One's application is in abeyance as of February 4, 2022. The application will remain in abeyance until Hydro One files the amended application and the OEB issues a new procedural schedule.
2. When Hydro One files its amended application, it shall ensure that the amended application is in accordance with the OEB's Filing Requirements and *Rules of Practice and Procedure* and shall include updated exhibits and responses to interrogatories and undertakings where those are materially affected by the amended application.

DATED at Toronto, February 18, 2022

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar