

BY EMAIL AND RESS

July 29, 2022

Ms. Nancy Marconi
Registrar
Ontario Energy Board
Suite 2700, 2300 Yonge Street
P.O. Box 2319
Toronto, ON M4P 1E4

Dear Ms. Marconi,

EB-2021-0110 – Hydro One JRAP – HVAC Intervention – Shepherd Rubenstein

Hydro One Networks Inc. (Hydro One) is in receipt of the HVAC Coalition's (HVAC) request for late intervention and related matters in the above proceeding. In summary, HVAC has (a) requested late intervenor status, (b) requested eligibility for costs, (c) requested that the OEB order Hydro One to answer a series of interrogatories prior to the start of the Settlement Conference, (d) indicated its intention to potentially file intervenor evidence at an unspecified point during the proceeding, (e) indicated its intention to potentially seek permission to present a panel of heat pump contractors in an unspecified forum as part of the proceeding, and (f) suggested that Hydro One may be engaging in behavior that is anti-competitive in nature and contrary to applicable legal and regulatory requirements. The following is Hydro One's response to these matters.

Intervenor Status and Cost Eligibility

HVAC's request for late intervenor status should be denied because (i) their proposed intervention is primarily focused on matters outside the scope of the proceeding, (ii) the concerns raised in their request are immaterial in relation to the setting of transmission and distribution rates for Hydro One, and (iii) the additional steps requested or contemplated by HVAC would introduce procedural uncertainty, regulatory burden and delay. In the alternative, if the OEB is inclined to permit HVAC's late intervention request, Hydro One submits that the scope of the intervention should be expressly limited to rate-related matters that are relevant to the setting of Hydro One's transmission and distribution rates during the 2023-2027 period, that no additional procedural steps should be established to accommodate HVAC's late intervention (discussed further in the next section, below), and that HVAC should not be eligible for costs to the extent it pursues matters or procedural steps beyond the permitted scope.

By way of background, HVAC bases its request for late intervenor status on a July 11, 2022 article from Mechanical Business Magazine (MBM) regarding Hydro One's myEnergy Marketplace (the "Marketplace").

The Marketplace¹ is a subsection of the Energy Savings for Homes section of Hydro One's public website.² The Energy Savings for Homes section of Hydro One's website is a resource dedicated to providing tips and tools for energy savings, guides for energy-saving, and general information regarding energy-saving steps for the home. The nature and scope of the Marketplace are discussed further below, together with the fact that it is not exclusive and available to all contractors and does not endorse any particular information, product or service. Also, as discussed in a later section of this letter, Hydro One hosts the Marketplace in accordance with Section 71(2) of the *Ontario Energy Board Act*.

HVAC argues that it should be granted late intervenor status because it had no notice of Hydro One's application and because this proceeding represents the only opportunity for HVAC to raise its concerns until after the proposed rate period, by which time they suggest there could be lasting harm to the HVAC industry. In addition, HVAC comments that the concerns they raise engage both the rate-making jurisdiction of the OEB and the compliance/enforcement responsibilities of the OEB.

Hydro One has complied with all applicable OEB notice requirements. As set out in the OEB's August 19, 2021 Letter of Direction, this included publication of the Notice of Application by the OEB in various wide circulation newspapers and on Hydro One's website, notice through Hydro One social media platforms, and service of the Notice of Application on all transmitters and distributors, all intervenors from Hydro One's last transmission and distribution rebasing applications, and all distribution customers for whom Hydro One has an email address and appropriate permissions. HVAC was not entitled to be served directly with the Notice but they had reasonable notice through various forms of publication and dissemination of the Notice. HVAC's complaint that it had no notice should therefore provide no basis for granting late intervenor status.

Given that the primary focus of HVAC's stated concerns appears to relate to matters of compliance and non-rate related impacts to the interests of heating and air conditioning contractors, there is no merit to HVAC's assertion that Hydro One's rate proceeding is the only opportunity for it to raise its concerns until the next rate period. Rather, HVAC could avail itself of the OEB's mechanisms for receiving complaints about regulated utilities. Hydro One's rate application that is currently before the OEB is not the forum for considering those issues, nor is it a forum for parties to solicit information from Hydro One concerning matters unrelated to the setting of rates.

If HVAC intends to explore in this proceeding the costs associated with the Marketplace over the 2023-2027 period, Hydro One notes that these costs are far below the applicable materiality thresholds, such that they did not warrant a dedicated section in Hydro One's application beyond the evidence already furnished regarding customer care-related costs.³ In particular, the associated OM&A expenditures represent less

¹ <https://www.hydroone.com/saving-money-and-energy/residential/myenergymarketplace>

² <https://www.hydroone.com/saving-money-and-energy/residential>

³ In particular, see Hydro One's evidence related to Customer Care OM&A functions and expenditures (Exhibit E, Schedule 3, Tab 4), including expenditures to "...provide energy usage analytics [through the myAccount customer Dashboard] and conservation advice [in part, through the Marketplace]".

than 0.1% of the Distribution Customer Care OM&A 2023 Test Year forecast. Further, there is nothing inherently unique about the nature of these costs that would require singular and substantial interest in them in this proceeding or would reasonably be expected to help advance the OEB's deliberations concerning the application.

Interrogatories, Intervenor Evidence and Witness Panel

As noted, HVAC has requested that the OEB order Hydro One to answer interrogatories prior to the start of the Settlement Conference. In addition, HVAC has indicated its intention to potentially file intervenor evidence and seek permission to present a panel of heat pump contractors in an unspecified forum as part of the proceeding.

In Hydro One's view, if the OEB is inclined to allow HVAC's late intervention, the OEB should not at this late stage of the proceeding order Hydro One to respond to further interrogatories. The opportunity for interrogatories has passed. Moreover, the questions that HVAC seeks responses to are largely unrelated to evidence that has been filed in this proceeding but, instead, seek clarification of matters reported on in the article from MBM. That is not a proper purpose for interrogatories.

Furthermore, if the OEB is inclined to allow HVAC's late intervention, Hydro One submits that the OEB should not at this late stage of the proceeding permit HVAC to file intervenor evidence or to convene a panel of heat pump contractors as part of the proceeding. Allowing intervenor evidence would drive the need for interrogatories on that evidence, which would give rise to regulatory burden and delay. While HVAC's proposal for a panel of heat pump contractors is not clear, it is not likely to assist the OEB in deciding matters that are material or relevant to the proceeding and it would give rise to procedural uncertainties. Finally, given the immateriality of HVAC's concerns to the setting of rates in this proceeding, even if there is any value in allowing intervenor evidence from HVAC or testimony from a panel of heat pump contractors, this would be far outweighed by the noted procedural impacts.

Allegations of Anti-Competitive and Non-Compliant Behavior

Hydro One is disappointed to see HVAC use its late intervention request to suggest that Hydro One may be engaging in behavior that is anti-competitive in nature and contrary to applicable legal and regulatory requirements. For the reasons set out below, those suggestions are unsupported, misleading and without merit. If HVAC nevertheless wishes to pursue its concerns, there are avenues available for it to do so outside of the current proceeding.

Background

As noted above, the Marketplace is a part of Hydro One's website which serves as a resource dedicated to providing tips and tools for energy savings, guides for energy-saving, and general information regarding energy-saving steps for the home. Like other utilities in Ontario and other jurisdictions, Hydro One entered into an agreement with a third-party contractor, Bidgley, for the purpose of empowering Hydro One customers with information and choices to help them conserve and more efficiently use electricity, manage demand, and transition to cleaner energy resources in a manner that best suits them. Hydro One pursued these objectives through two distinct solutions with Bidgley: (1) the Marketplace and (2) customer dashboards which provide personalized insights into electricity usage by integrating the customer platform with myAccount.

The Marketplace operates within the scope of the activities permitted under section 71 of the *Ontario Energy Board Act*, which states:

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(2) Subject to section 80 and such rules as may be prescribed by the regulations, a transmitter or distributor may provide services in accordance with section 29.1 of the Electricity Act, 1998 that would assist the Government of Ontario in achieving its goals in electricity conservation, including services related to,

- a) the promotion of electricity conservation and the efficient use of electricity;*
- b) electricity load management; or*
- c) the promotion of cleaner energy sources, including alternative energy sources and renewable energy sources.*

The Marketplace went live on Hydro One's external public website in December 2020 and has since been available for any visitors to the website, including customers or vendors, to view, explore, or to make enquiries about participating in the Marketplace. At no time did Hydro One or Bidgley restrict access to or prevent any vendors from making enquiries about participating in the Marketplace.

As Hydro One clarified to MBM for the purposes of its article, Hydro One has not entered into any exclusive brand endorsement arrangements with any vendors; Hydro One does not have a direct relationship with any vendors on the Marketplace; and Hydro One does not have any interest in (nor has it taken any steps aimed at) controlling the HVAC marketplace in Ontario, as was suggested in HVAC's late intervention request. Hydro One also clarified to MBM for purposes of the article that:

- The Marketplace website works as an information and referral hub for customers and is operated by a third-party contractor named Bidgely;

- As Hydro One customers’ energy needs evolve, the utility intends to work with Bidgely to ensure an assortment of relevant products and services appear on the Marketplace that customers can learn about and access according to their interests, while prioritizing Canadian products and service providers with valuable, innovative and reliable home energy products and services and the ability to service most, if not all, of Hydro One’s service area; and
- Hydro One will connect new vendors with Bidgely so that they can have the opportunity to enter into an agreement to provide their products or services on the Marketplace.

Hydro One notes that the article has been revised on the MBM website since first issued. The version in HVAC’s intervention is not the current version. In the revised version, MBM removed a reference to the disclaimer that appears on the Marketplace website regarding vendors and removed a baseless statement about Hydro One’s strategy being in relation to “the electrification climate change push from the provinces and the federal government”. In Hydro One’s view, the disclaimer that appears clearly on the Marketplace website is important to acknowledge because it plainly clarifies that Hydro One does not endorse any vendor products or services:

Disclaimer

For convenience, our website contains links that will redirect the user to external websites owned and operated by third parties (“Sites”). Hydro One has no control over these Sites, which have their own privacy and other policies, nor does Hydro One endorse the information, material, products, or services, offered therein (collectively, “Offerings”). Hydro One is not responsible for the accuracy, legality or content of the Sites or for that of subsequent links. Hydro One is not liable for damage or loss, however caused in connection with the use of or reliance on any of the Offerings. [emphasis added]

Response

HVAC suggests that Hydro One has been engaging in anti-competitive and perhaps non-compliant practices which could result in “permanent damage” to the HVAC industry. These are serious allegations that are not supported by facts, and the sole basis for such allegations appears to be the MBM article. Moreover, it is important to recognize that the alleged anti-competitive behavior that HVAC is concerned with relates not to Hydro One’s behavior in the electricity market over which the OEB has jurisdiction to regulate and with respect to which the OEB has a responsibility to monitor competition. Rather, HVAC’s concerns relate to competition in the markets for HVAC contractors and HVAC equipment in Ontario. These are not markets that the OEB is authorized to regulate in any context, let alone through an electricity transmission and distribution rate proceeding.

HVAC’s late intervention request tries to persuade the OEB that this is a matter that it has a role in regulating. Specifically, HVAC mentions an example “in the distant past” of “Enbridge (then Consumers Gas) ... seeking (and for a time succeeding) to control the HVAC marketplace in Ontario” and the “OEB put a stop to this”.

While HVAC's counsel did not provide further specifics, it appeared to be referencing a past case involving HVAC's complaints over the marketing practices of Enbridge Consumers Gas and certain of its affiliates. The complaints raised at the time were pursuant to the OEB's powers to hear certain complaints under the *Affiliates Relationships Code for Gas Utilities* because the allegations related to the utility's endorsement of services or support for the marketing activities of its affiliate, which was an energy service provider. While there are comparable provisions in the *Affiliate Relationships Code for Electricity Distributors and Transmitters*, they have no application to Hydro One's operation of the Marketplace given that the Marketplace expressly does not endorse any products, services or vendors and it does not endorse or support the marketing activities of any Hydro One affiliates. As such, the example from HVAC is not relevant.

Based on the foregoing, there are no affiliate issues, licensing issues or compliance issues relevant to the OEB's jurisdiction, in the rate application or otherwise, which are engaged by the concerns set out in HVAC's late intervention request. If HVAC nevertheless wishes to pursue those matters, it may do so through other avenues with the OEB or otherwise, but it should not be permitted to do so through Hydro One's transmission and distribution rate proceeding.

Conclusion

For the above noted reasons, Hydro One submits that the OEB should not grant HVAC's late intervention request. If HVAC wishes to further test the appropriateness of Hydro One's Marketplace, its compliance with legislative or regulatory requirements, or other matters related to perceived brand/vendor endorsement or infringement on franchise areas, they may do so through other avenues, separate and apart from this proceeding. If the OEB is inclined to grant late intervenor status to HVAC, it should do so subject to express limitations on the scope of their intervention and without providing for additional procedural steps.

In the meantime, Hydro One encourages HVAC and its members to further explore the Marketplace and welcomes requests from HVAC and its members to participate in the Marketplace, so that the Marketplace can continue to provide Hydro One customers and other site visitors with information regarding the conservation and efficient use of electricity and associated energy products and services in Ontario.

Sincerely,

A handwritten signature in black ink that reads "Kathleen Burke".

Kathleen Burke