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BY EMAIL

August 3, 2022

Jay Shepherd
Shepherd Rubenstein Professional Corporation
2200 Yonge Street, Suite 1302
Toronto ON M4S 2C6
jay@shepherdrubenstein.com

Dear Mr. Shepherd:

**Re: Request for Late Intervenor Status and Cost Eligibility
Hydro One Networks Inc. – 2023-2027 Transmission and Distribution Rate
Application
Ontario Energy Board File Number: EB-2021-0110**

This letter is in response to your correspondence, dated July 21, 2022, filed on behalf of HVAC Coalition (HVAC), requesting late intervenor status and cost eligibility in the above proceeding, which began almost one year ago, and where the settlement conference will reconvene on August 15, 2022; Hydro One's letter in response dated July 29, 2022 (response letter), in which Hydro One submitted that the OEB should deny these requests; and your reply of July 29, 2022.

The OEB denies HVAC's request for the reasons outlined below. To summarize, based on the correspondence exchanged in this regard, the OEB has determined that if Hydro One's activity as a licensed distributor related to its "MyEnergy Marketplace" (the Marketplace) raises any concerns for the OEB (and to be clear, the OEB is not suggesting at this time that it does), those concerns relate to Hydro One's compliance with the *Ontario Energy Board Act, 1998* (the Act) and the conditions of its OEB-issued Electricity Distributor Licence, and not to the current rates proceeding. Should HVAC believe that Hydro One's activity in this regard raises a compliance issue, then HVAC should be addressing this with the OEB's Consumer Protection & Industry Performance (CPIP) division.

The ensuing provides further reasons for the OEB's decision.

Notice

This proceeding began in August of 2021. The OEB notes that HVAC's intervention request was filed approximately 10 months after the September 14, 2021, deadline for requesting intervenor status and cost eligibility. HVAC explained that it filed the request late because: (i) it had no notice of the application; and (ii) that on July 15, 2022, it was made aware that Hydro One had apparently entered into exclusive brand endorsement arrangements with select companies for the sale of heat pumps in their franchise area. HVAC stated that the endorsement by a regulated utility of a select group of companies had the potential to undermine competition and the availability of energy efficient equipment and services to Hydro One customers at affordable prices. HVAC explained that through intervening, it was seeking to raise this issue before the OEB.

In its response letter, Hydro One stated that where the matter of adequate notification is concerned, it had complied with all applicable OEB notice requirements. Hydro One noted that as set out in the OEB's Letter of Direction,¹ 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.

Hydro One further stated that while HVAC was not entitled to be served directly with the Notice, HVAC had received reasonable notice through various forms of publication and dissemination of the Notice. Hydro One argued that as such, HVAC's complaint that it had no notice should provide no basis for granting late intervenor status.

In your reply, you state that the notice provided by Hydro One to members of the public made no mention of the issue that concerns HVAC and that Notice is an issue-specific concept.

Findings

The OEB finds that adequate notice was provided by Hydro One for the reasons cited by Hydro One. The notification process does not and cannot provide information on every issue that might be of concern to members of the public.

Anti-Competitive Practices

In its response letter, Hydro One noted HVAC's suggestion that Hydro One had been engaging in anti-competitive and perhaps non-compliant practices which could result in

¹ August 19, 2021

“permanent damage” to the HVAC industry. Hydro One argued that these are serious allegations that are not supported by facts, and that the sole basis for such allegations appears to be the Mechanical Business Magazine (MBM) article referred to in HVAC’s correspondence.

Hydro One submitted that 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, but instead relates to competition in the markets for HVAC contractors and HVAC equipment in Ontario. Hydro One argued that these are not markets that the OEB is authorized to regulate in any context, let alone through an electricity transmission and distribution rate proceeding.

In your reply, you acknowledge Hydro One’s denial of engaging in anti-competitive practices and agree that this denial may be valid. You further submit that while you are not alleging that anti-competitive activity has been proved, HVAC seeks to ask questions about this, so that the OEB can determine whether the customers are being harmed by anti-competitive practices. You conclude that at this point, the burden on HVAC is to show that there may be an issue that harms customers.

Findings

The OEB finds that this is not a matter for this rates case. If HVAC is concerned that Hydro One is engaging in activity that contravenes the Act, a condition of its Distributor licence or any other enforceable provision as that term is defined in the Act, then HVAC may raise their concerns with the OEB’s CPIP division.

Regulatory Efficiency

HVAC stated its commitment, in general, to accept the record as filed to date, but noted two procedural elements for the OEB’s consideration. First, HVAC requested that the OEB order Hydro One to answer interrogatories² it has regarding the issue. Second, HVAC stated that depending on the information filed and if the issue remains unresolved after the settlement conference, it may seek the OEB’s permission to present a panel of heat pump contractors. The panel would provide evidence on the potential impact of such activities on competition, product and service availability, and pricing to consumers.

² The interrogatories were included as an attachment to HVAC’s letter of intervention.

Hydro One submitted that if the OEB is inclined to grant late intervenor status to HVAC, it should do so subject to express limitations on the scope of its intervention and without providing for additional procedural steps. Hydro One argued 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; and that HVAC should not be eligible for costs to the extent it pursues matters or procedural steps beyond the permitted scope.

Hydro One submitted that 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. Hydro One argued that the opportunity for interrogatories has passed and that the questions 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 MBM article. Hydro One argued that this is not a proper purpose for interrogatories.

Hydro One submitted that the OEB should also 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. Hydro One argued that allowing intervenor evidence would drive the need for interrogatories on that evidence, which would give rise to regulatory burden and delay. Hydro One added that 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, Hydro One submitted that 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.

In your reply, you state that HVAC has not asked for any delay in the process, nor any special provision except the answers to a few simple questions that Hydro One should have readily available. You further state that HVAC has not asked for any permission to file evidence, or provide a panel of witnesses (whether contractors or customers), and understands that, if and when that appears to be necessary, HVAC will have to demonstrate to the OEB that it is both efficient and necessary to do so. You add that you hope that will not be necessary, but add that until you have more information you will have no way of knowing if this will in fact be the case. You conclude that this appears to be an issue that is perfectly suited for the settlement conference, where a dialogue can produce a solution and that the purpose of sending a brief set of questions was to facilitate an early and complete resolution of this issue.

Findings

As outlined previously, the OEB has determined that the issues raised by HVAC are beyond the scope of the current proceeding. Accordingly, it is not necessary for the OEB to make findings on the matters discussed above.

Conclusions

In your letter, you suggest that this issue engages the rate jurisdiction of the OEB, as it deals with costs and revenues arising in the regulated utility, as well as the jurisdiction of the OEB to police the activities of regulated utilities to ensure that they are consistent with their licences and with applicable legal and regulatory limitations.

Having considered your and Hydro One's correspondence, and for the reasons discussed above, the OEB has determined that this matter is beyond the scope of the current rates proceeding. The issue, if any, being raised by HVAC appears to be licensing- and compliance-related. While that relates to the jurisdiction of the OEB to police the activities of regulated utilities to ensure that they are consistent with their licences and with applicable legal and regulatory limitations, the OEB has ways other than this rates proceeding in which to carry out that work. HVAC's request for intervenor status and cost eligibility in this proceeding is denied. Should HVAC wish to pursue its concerns, it should do so by contacting the OEB's CPIP division.

Yours truly,

Nancy Marconi
Registrar

c: Martin Luymes, HVAC Coalition
All Parties to EB-2021-0110