



**Hydro One Networks Inc**

**Application for leave to construct: construction of an electricity transmission line between Chatham switching station and Lakeshore transmission station**

**PROCEDURAL ORDER NO. 4**

**AND DECISION ON MOTION FROM THE ROSS FIRM GROUP**

**September 27, 2022**

Hydro One Networks Inc (Hydro One) applied to the Ontario Energy Board (OEB) on May 9, 2022 under sections 92 and 97 of the Ontario Energy Board Act (OEB Act), 1998, S.O. 1998, c. 15, (Schedule B), for an order or orders granting leave to construct approximately 49 kilometres of 230 kilovolt double-circuit transmission line between Chatham Switching Station and Lakeshore Transformer Station and associated station facilities to connect the proposed new transmission line at the terminal stations (Project). Hydro One has also applied to the OEB for approval of the form of land-use agreements it offers to landowners for the routing and construction of the Project.

Procedural Order No. 1 made provision for (amongst other things) the filing of interrogatories by intervenors and OEB staff on Hydro One's evidence. Through Procedural Order No. 2, issued on August 23, 2022, the OEB made provisions for a supplemental interrogatories process limited to a) the price impacts of Hydro One's Environmental Assessment costs and costs related to Indigenous consultation activities, b) price and reliability impacts related to route selection, and/or c) price or reliability impacts related to the choice of tower or conductor technologies

On August 26, 2022, the Ross Firm Group (RFG) filed a "Notice of Motion to Review and Vary Procedural Order No. 1 and Determinations on the Filing of Evidence and Form of the Hearing". The motion requested, amongst other things, that: a) the OEB require Hydro One to lead evidence with respect to the preferred route and route alternatives as it relates to the interests of consumers with respect to prices and the

reliability and quality of electricity service, b) that the OEB reverse its decision to hold a written hearing, and to hold an oral hearing instead.

Through Procedural Order No. 3, issued on August 30, 2022, the OEB determined that it would defer any hearing of RFG's motion until after Hydro One filed its responses to supplemental interrogatories. The OEB also encouraged RFG to seek through supplemental interrogatories the information and/or evidence related to route and route alternatives it has requested through its motion, to the extent that the requested information is within the scope of the proceeding. The OEB also noted that should RFG wish to pursue the motion after the process for supplemental interrogatories was concluded, it must inform the OEB with clear and specific reasons for why the motion should be heard.

On September 19, 2022, Hydro One filed responses to the supplemental interrogatories it received from OEB staff, RFG and other intervenors.

On September 23, 2022, RFG sent an email to the OEB and all parties indicating that, while it was satisfied with Hydro One's responses to its supplemental interrogatories, it wished to pursue the portion of its motion relating to holding an oral hearing instead of a written hearing. RFG indicated that: "for all the reasons set out in our motion, and in light of the existing evidence, and the new evidence, we require the opportunity to cross-examine the witnesses in person." No additional details were provided.

### **Decision Regarding the RFG Motion**

The OEB is dismissing RFG's motion to require the OEB to hold an oral hearing instead of a written hearing. As RFG has withdrawn the other issues that were raised in its motion, this proceeding can now move to final argument.

In its Notice of Motion, RFG argued that an oral hearing was necessary on account of the complex nature of the evidence advanced by Hydro One. RFG argued that an oral hearing was required to meet the requirements of natural justice and procedural fairness, and that the landowners represented by RFG have a legitimate expectation of an oral hearing. RFG further stated that by limiting the process to only written submissions, the OEB was failing to fulfil its mandate to be transparent and accountable.

The OEB's authority to hold written hearings comes from section 5.1 of the *Statutory Powers Procedure Act* (SPPA):

### Written hearings

**5.1** (1) A tribunal whose rules made under section 25.1 deal with written hearings may hold a written hearing in a proceeding.<sup>1</sup>

### Exception

(2) The tribunal shall not hold a written hearing if a party satisfies the tribunal that there is good reason for not doing so.

Procedural Order No. 3 required that if RFG wished to pursue its motion after the supplemental interrogatory process was completed, it must provide clear and specific reasons why the motion should be heard. The OEB has reviewed the Notice of Motion and the RFG's email dated September 23, and it is satisfied that a written hearing is appropriate.

The OEB's process has provided parties with a comprehensive opportunity to test Hydro One's evidence. Although many proceedings before the OEB include only one opportunity for interrogatories, in response to concerns raised by RFG and other intervenors the OEB made provision for a second round of interrogatories. Hydro One responded to those interrogatories, and RFG noted that it was satisfied with the answers that were submitted. As is the case in many OEB proceedings, some of the evidence in this case is of a complex and technical nature. This on its own is not sufficient to require the OEB to hold an oral hearing, and it is not clear to the OEB what additional information RFG is hoping to obtain through oral cross examination. The OEB is satisfied that the evidence that has been provided by Hydro One provides a sufficient basis for intervenors and OEB staff to prepare their final argument, and that oral cross examination (or oral final argument) is not required.

The OEB takes the concerns of landowners (and all intervenors) seriously. However, there is no legitimate expectation to an oral hearing, nor can written hearings generally be characterized as lacking in transparency or accountability. Most hearings before the OEB are conducted in writing, and the SPPA makes it clear that the OEB is permitted to hold a written hearing unless a party satisfies it that a written hearing is not appropriate.

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<sup>1</sup> Rule 32 of the OEB's *Rules of Practice and Procedure*, made under section 25.1 of the Statutory Powers Procedure Act, allow the OEB to hold an oral, electronic, or written hearing, and provide that the format of the hearing will be determined by the OEB.

RFG has not provided the OEB with any clear or specific reasons why an oral hearing is required in the current case. The motion is therefore dismissed.

Given the timing of the OEB's decision on the RFG motion, the OEB has determined that the schedule for argument will be extended by an additional day to ensure that parties have sufficient time to prepare. It is necessary to make provision for the following matters related to this proceeding. Further procedural orders may be issued by the OEB.

**IT IS THEREFORE ORDERED THAT:**

1. Hydro One shall file a written argument-in-chief with the OEB and serve it on all intervenors by **September 28, 2022**.
2. Any written submissions from OEB staff and intervenors, shall be filed with the OEB and served on all parties by **October 6, 2022**.
3. Any written reply submissions from Hydro One shall be filed with the OEB and served on intervenors by **October 13, 2022**.

Parties are responsible for ensuring that any documents they file with the OEB, such as applicant and intervenor evidence, interrogatories and responses to interrogatories or any other type of document, **do not include personal information** (as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*), unless filed in accordance with rule 9A of the OEB's [Rules of Practice and Procedure](#).

Please quote file number, **EB-2022-0140** for all materials filed and submit them in searchable/unrestricted PDF format with a digital signature through the [OEB's online filing portal](#).

- Filings should clearly state the sender's name, postal address, telephone number and e-mail address.
- Please use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#) found at the [File documents online page](#) on the OEB's website.
- Parties are encouraged to use RESS. Those who have not yet [set up an account](#), or require assistance using the online filing portal can contact [registrar@oeb.ca](mailto:registrar@oeb.ca) for assistance.

- Cost claims are filed through the OEB's online filing portal. Please visit the [File documents online page](#) of the OEB's website for more information. All participants shall download a copy of their submitted cost claim and serve it on all required parties as per the [Practice Direction on Cost Awards](#).

All communications should be directed to the attention of the Registrar at the address below and be received by end of business, 4:45 p.m., on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Andrew Bishop at [Andrew.Bishop@oeb.ca](mailto:Andrew.Bishop@oeb.ca) and OEB Counsel, Michael Millar at [Michael.Millar@oeb.ca](mailto:Michael.Millar@oeb.ca).

Email: [registrar@oeb.ca](mailto:registrar@oeb.ca)

Tel: 1-877-632-2727 (Toll free)

**DATED** at Toronto, **September 27, 2022**

**ONTARIO ENERGY BOARD**

Nancy Marconi  
Registrar