

**RESS & EMAIL**

May 27, 2026

Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street, 27th Floor  
Toronto, ON M4P 1E4

**Attention: Ritchie Murray, Acting Registrar**

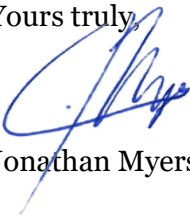
Dear Mr. Murray:

**Re: Submission on the Threshold Question by Hydro One Networks Inc. – Motion to Review and Vary the OEB’s Decision and Order in EB-2025-0254 (EB-2026-0133)**

We are legal counsel to Hydro One Networks Inc. (“Hydro One”), which is the moving party in the above-referenced Motion to Review and Vary the OEB’s Decision and Order in EB-2025-0254. Further to the OEB’s Notice of Hearing and Procedural Order No. 1 issued May 12, 2026, please find enclosed Hydro One’s Submission on the Threshold Question under Rule 43 of the OEB’s *Rules of Practice and Procedure*. Hydro One’s Submission has been filed in the OEB’s online filing portal and served on all parties.

Hydro One reiterates the request it made upon filing the Notice of Motion on April 8, 2026, that to mitigate potential impacts on the developer of the subject property from the delay in having a final resolution on WDI’s application, the OEB should consider this Motion on an expedited basis.

Yours truly,



Jonathan Myers

/JM

cc: Kathleen Burke, Hydro One  
Pasquale Catalano, Hydro One  
All Parties in EB-2025-0254

**ONTARIO ENERGY BOARD**

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B, as amended (the “OEB Act”);

**AND IN THE MATTER OF** an Application by Wasaga Distribution Inc. for a service area amendment in respect of 400 45<sup>th</sup> Street South, Town of Wasaga Beach;

**AND IN THE MATTER OF** the OEB’s Decision and Order dated March 19, 2026; its Decision and Order dated March 31, 2026; and its Procedural Order dated May 12, 2026;

**AND IN THE MATTER OF** Rules 8, 40, 42 and 43 of the Ontario Energy Board’s *Rules of Practice and Procedure*.

**HYDRO ONE NETWORKS INC.**

**Motion to Review and Vary the OEB’s Decision and Order in EB-2025-0254**

**Submission of Hydro One Networks Inc. on the Threshold Question Under Rule 43**

May 27, 2026

**TORYS LLP**  
79 Wellington St. W., 30th Floor  
Box 270, TD South Tower  
Toronto, Ontario M5K 1N2  
[jmyers@torys.com](mailto:jmyers@torys.com)

Jonathan Myers  
Tel: 416.865.7532

Counsel for the Applicant,  
Hydro One Networks Inc.

**A. Introduction**

1. On April 8, 2026, Hydro One Networks Inc. (“Hydro One”) filed a Notice of Motion to Review and Vary the OEB’s March 19, 2026 Decision and Order in EB-2025-0254 (the “Decision”) (the “Motion”).
2. In the Decision, the OEB panel (the “Original Panel”) approved Wasaga Distribution Inc.’s (“WDI”) proposed service area amendment in respect of the property located at 400 45<sup>th</sup> Street South, Town of Wasaga Beach (the “Subject Property”). In a subsequent decision on March 31, 2026, the OEB also approved an amended Schedule 1 for WDI’s distribution licence to reflect the decision (“Licence Amendment Decision”).
3. Hydro One’s Notice of Motion indicated that it is seeking:
  - a) an Order that Hydro One has met the “threshold test” described in Rule 43.01 of the OEB’s *Rules of Practice and Procedure* (the “Rules”);
  - b) an Order for a hearing of the Motion on its merits;
  - c) a stay of the Decision and the Licence Amendment Decision;
  - d) an Order reviewing and varying the Decision in several material respects, including the Original Panel’s finding that WDI’s application met the *Filing Requirements for Service Area Amendment Applications, March 12, 2007* (the “Filing Requirements”) and that there was sufficient evidence to support the conclusion that WDI’s proposal was more economically efficient; and
  - e) an Order revoking the Licence Amendment Decision or putting it in abeyance until such time that the Original Panel can complete a proper comparison of the economic efficiency of WDI serving the Subject Property to the economic efficiency of Hydro One continuing to serve the Subject Property based on WDI filing, and appropriate discovery on, a complete Offer to Connect (“OTC”).

4. In WDI's responding letter to the OEB, it took the position that the issues raised on the Motion do not pass the threshold question as provided under Rule 43 and asked that the OEB receive submissions on the threshold question before considering the merits.
5. After receiving the Notice of Motion and WDI's letter, the OEB issued Procedural Order No. 1 on May 12, 2026 ("PO1"). On the threshold question, the OEB invited parties and intervenors to make written submissions before the Motion advances. The OEB acknowledged but did not address Hydro One's request for a stay of the Decision and the Licence Amendment Decision.
6. Hydro One files this submission in accordance with PO1.

**B. Overview of Hydro One's Position on the Threshold Test**

7. The threshold question before the OEB is whether the grounds set out in Hydro One's Motion raise relevant and material issues that warrant a review of the Decision on the merits.<sup>1</sup> Hydro One's Notice of Motion meets the threshold test. Hydro One has raised four errors that implicate the correctness of the Decision and that, if accepted, could result in the OEB deciding that the Decision should be varied, cancelled or suspended. These errors also warrant review on the merits given the harm caused by the Decision to Hydro One's interests and the confusion that the Decision will engender if left to stand.

**C. The Threshold Test**

8. On a Motion to Review and Vary a decision of the OEB, the Board may determine a threshold question of whether the matter should be reviewed before conducting any review on the merits. This is known as the threshold test.
9. The OEB has pronounced on the requirements of this test many times. In general, the test requires the applicant to identify grounds that raise a question as to the correctness of the

---

<sup>1</sup> *Rules of Practice and Procedure*, Rule 43.01.

decision and demonstrate that there is enough substance to the issues raised such that a review based on those issues could result in the OEB varying, cancelling or suspending the decision.<sup>2</sup>

10. The threshold inquiry does not require the review panel to determine whether the alleged errors will be proven. The only issue at this stage is whether the errors could reasonably be expected to result in a material change to the Decision if proven on the merits.<sup>3</sup>

11. Rule 43.01 sets out several considerations that the Review Panel may address in determining whether the threshold is met. These include whether any alleged errors are in fact errors (as opposed to a disagreement regarding the weight the Original Panel applied to particular facts or how it exercised its discretion); whether any alleged errors, if proven, could reasonably be expected to result in a material change to the Decision; and whether the moving party's interests are materially harmed by the decision sufficient to warrant a full review on the merits. As set out below, each of the errors raised by Hydro One satisfies these considerations.

#### **D. The Motion Meets the Threshold Test**

12. In its Notice of Motion, Hydro One raised four errors with the Decision:

- a) ***The OTC Requirement Findings.*** The Filing Requirements require the applicant to file evidence that the customer, landowner, or developer had the opportunity to obtain an Offer to Connect (“OTC”) from the applicant, as well as to file a copy of the OTC in support of the application. Despite this, the Original Panel found that WDI was not required to have filed an OTC, and that WDI needed only provide evidence that the relevant customer, landowner or developer has (rather than had) the opportunity to obtain an OTC.
- b) ***The Opportunity to Obtain an OTC Findings.*** Based on the above (incorrect) finding, the Original Panel was required to consider and determine whether WDI

---

<sup>2</sup> EB-2006-0322/0338/0340, May 22, 2007, as cited in EB-2017-0320, January 4, 2018, p. 4.

<sup>3</sup> EB-2025-0333, Decision on Threshold Question and Procedural Order No. 2, March 24, 2026, pp. 7-8; EB-2009-0038, Decision and Order on Motion to Review and Vary, May 11, 2009, pp. 9-10.

provided an opportunity for the developers<sup>4</sup> to obtain an OTC from WDI. The Original Panel made no such finding but concluded that the Filing Requirements were met anyway.

- c) ***Incorrect Amounts Findings.*** The Original Panel failed to consider the correct amounts, including the capital contribution, that WDI will require from the developers in comparing the economic efficiency of the WDI and Hydro One proposals, contrary to the Filing Requirements.
- d) ***The Civil Costs Findings.*** The Original Panel found that the issue of ratepayer exposure to the cost of civil works for any new premium (underground) service related to the new connection should be examined and addressed in WDI's next rebasing application. This was an error. This finding deferred to a future OEB panel the question of how the \$1.52M of WDI civil costs should be treated, even though this amount should be a key input in comparing the costs of the proposals that are under consideration in the SAA proceeding.

13. Each of the grounds in the Notice of Motion constitutes an error of fact, law or mixed fact and law that could reasonably result in a material change to the decision:

- a) ***The OTC Requirement Findings:*** The Original Panel's incorrect finding that WDI was not required to file an OTC to satisfy the Filing Requirements led to the conclusion that the Filing Requirements were met. Had the Original Panel instead held that an OTC was required, consistent with the Filing Requirements as Hydro One asserts, the application would have been either denied or put into abeyance because it was incomplete and failed to meet the Filing Requirements. Alternatively, the Original Panel might have directed WDI to file an OTC, which if filed would have enabled a more informed and reasonable comparison against

---

<sup>4</sup> The developers of the residential subdivision on the subject property are Primont (Wasaga 2) Inc. and Sterling Group of Companies.

Hydro One's OTC, and could reasonably have led to a different outcome than the Decision.

- b) ***The Opportunity to Obtain an OTC Findings:*** The Original Panel's error in failing to make a finding of fact as to whether WDI provided an opportunity for the developers to obtain an OTC had a similar impact to the error above. Without this error, the application would either have been denied or put into abeyance on the basis that it was incomplete and failed to meet the Filing Requirements. Moreover, had the Original Panel considered this issue, it would have recognized its significance to the comparison of the competing proposals. While WDI's submissions explained that WDI lacked sufficient information to prepare an OTC, Hydro One filed evidence demonstrating that it was able to prepare an OTC and to provide its OTC to the developers.
- c) ***The Incorrect Amounts Findings:*** The Original Panel's error in failing to consider the appropriate cost information from the evidence on the record, especially the capital contribution that WDI will require from the developers, significantly impacted the Original Panel's conclusion that WDI's connection proposal was more economically efficient than Hydro One's proposal. The evidence showed that WDI's standard connection process would result in a capital contribution of \$2.26M, yet the Original Panel relied on Table 1 of the Decision, which reflected a capital contribution of only \$1.13M – a difference of \$1.13M that was not accounted for in the economic efficiency comparison. If the Original Panel had not made this error, the conclusion on which proposal was more economically efficient may have been different.
- d) ***The Civil Cost Findings:*** Similar to the above, the error in deferring consideration of civil costs to a future OEB panel and excluding such costs from consideration in the comparative analysis was significant. In effect, the Original Panel excluded \$1.52M in costs from WDI's connection proposal, even though those costs may be part of WDI's connection costs. This error has significant consequences for the

Decision. Had the Original Panel not erred in deferring this cost, it could have concluded that Hydro One's connection proposal was more economically efficient than WDI's connection proposal.

14. In raising these errors, Hydro One is not attempting to re-litigate arguments previously advanced and rejected.<sup>5</sup> Instead, Hydro One identifies specific interpretive and factual errors in the Decision that, if corrected, would reasonably be expected to change the Decision.
15. Nor is this a case where the errors merely focus on the weight the OEB placed on conflicting evidence.<sup>6</sup> Quite the opposite – the errors relate to the OEB's failure to reasonably interpret its own Filing Requirements, its failure to make findings of fact on key points, and its failure to consider certain costs that should have been considered in assessing the economic efficiency of competing proposals.
16. As a result of these errors, Hydro One's interests have been materially harmed. The effect of the Decision is to transfer a portion of Hydro One's service area to WDI, along with the opportunity to serve the Subject Property, all of which occurred without WDI submitting an OTC that would have enabled a comprehensive and transparent comparison of the two connection proposals. This transfer deprives Hydro One of the revenues and customer relationships associated with serving a 660-unit residential subdivision. This harm is sufficiently material to warrant review of the motion on its merits.
17. Review on the merits is also necessary to correct an error in the interpretation and application of the Filing Requirements that, if left to stand, will create confusion in future contested service area amendment applications. While prior administrative decisions are not strictly binding, the Divisional Court has been clear that the OEB "must be concerned with the general consistency of administrative decisions."<sup>7</sup> Of particular concern, the OTC Requirement Findings are

---

<sup>5</sup> EB-2024-0078, Motion to Review and Vary the December 21, 2023 Decision and Order in EB-2022-0200, October 8, 2024, p. 6.

<sup>6</sup> *Rules of Practice and Procedure*, Rule 43.01(a); EB-2024-0078, Motion to Review and Vary the December 21, 2023 Decision and Order in EB-2022-0200, October 8, 2024, p. 6.

<sup>7</sup> *Environmental Defence Canada Inc. v. Ontario Energy Board*, [2026 ONSC 1002](#), at para 69.

contrary to the language and scheme of the Filing Requirements and will cause confusion in future proceedings. The OTC Requirement Findings may also impact the extent to which applicants in contested applications will be forthcoming in filing OTCs. A decision that generates confusion about filing requirements across all proceedings of its nature warrants review on its merits.

### **E. The Stay Request**

18. In its Notice of Motion, Hydro One requested a stay of the Decision and of the Licence Amendment Decision. The stay is important to ensure WDI and the developers do not move forward with development and connection planning activities, including entering into contracts, seeking permits or making related commitments, on the basis of the Decision and the Licence Amendment, pending the outcome of the Motion. As such, it was Hydro One's expectation that the OEB would have addressed the stay request in PO1. Doing so would have been consistent with the OEB's practice in prior proceedings, such as in EB-2024-0078 where the OEB granted a partial stay roughly two weeks after the motion in that proceeding was filed, and before it had established a schedule for hearing submissions on the threshold question or the merits of the motion.<sup>8</sup> Hydro One therefore requests that the OEB grant the requested stay as soon as possible, prior to issuing its decision on the threshold question.

19. In Hydro One's view, its request meets the OEB's requirements for a stay. Pursuant to Rules 40.05 to 40.07 of the OEB's Rules, a motion may include a request to stay the implementation of the order or decision pending the determination of the motion, unless precluded by statute. The Review Panel may then order that the implementation of the order or decision be delayed, on conditions as it considers appropriate. A stay is appropriate in the circumstances because Hydro One's Notice of Motion, and its submissions on the threshold issue, indicate that there are serious issues to be considered by the Review Panel. Moreover, there is a risk of irreparable harm if the stay is denied. Specifically, WDI and the developers may make development

---

<sup>8</sup> EB-2024-0078, Order for a Partial Stay, February 12, 2024.

decisions including final siting design decisions, expending funds, obtaining permits and approvals and making contractual commitments, and perhaps engaging in public communications, all based on their reliance on the Decision and the Licence Amendment Decision which are at issue in this proceeding. The balance of convenience favours granting the stay. Hydro One also notes that in its letter to the OEB on March 23, 2026, confirming that its own licence did not require a further amendment, Hydro One expressly stated that its letter was without prejudice to Hydro One's right to bring a Motion to Review and Vary the Decision. The OEB nevertheless opted to proceed with issuing the Licence Amendment Decision prior to the expiry of Hydro One's right to file the Notice of Motion.

**F. Conclusion**

20. Hydro One's Motion passes the threshold test. The Motion identifies material errors which, if corrected, would reasonably be expected to change the Decision. The errors have materially harmed Hydro One's interests and generated a problematic precedent that should not stand unreviewed.
21. Hydro One has also demonstrated that a stay of the Decision and the Licence Amendment Decision are warranted and appropriate.
22. Accordingly, Hydro One respectfully requests that the OEB determine that the stay should be granted, that the Motion has passed the threshold test, and that each of the errors identified should be considered on their merits by a different panel of Commissioners from those who issued the Decision.

All of which is respectfully submitted this 27<sup>th</sup> day of May, 2026.

Jonathan Myers

  
\_\_\_\_\_  
Torys LLP  
Counsel to Hydro One Networks Inc.

Filed: 2026-05-27  
EB-2026-0133  
Motion to Review and Vary  
Page 10 of 10

**TORYS LLP**  
79 Wellington St. W., 30th Floor  
Box 270, TD South Tower  
Toronto, Ontario M5K 1N2  
Fax: 416.865.7380

Jonathan Myers  
Tel: 416.865.7532

Counsel for the Applicant,  
Hydro One Networks Inc.

**TO:            **ONTARIO ENERGY BOARD****  
2300 Yonge Street, 27th Floor  
P.O. Box 2319  
Toronto, Ontario M4P 1E4

**AND TO:**    All Intervenors in EB-2025-0254/EB-2026-0133