WASAGA DISTRIBUTION INC.

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June 10, 2026 **BY EMAIL AND RESS**

Ritchie Murray
Registrar
Ontario Energy Board
27-2300 Yonge Street
P.O. Box 2319R
Toronto, ON M4P 1E4

Re: EB-2026-0133 – WDI's Submission on the Threshold Questioner by Hydro One Networks Inc. Motion to Review and Vary the OEB's Decision and Order in EB-2025-0254

Dear Mr. Murray,

Pursuant to the OEB's Notice of Hearing and Procedural Order No. 1, issued May 12, 2026, in the above noted proceeding, please find enclosed Wasaga Distribution's submission on the Threshold Question.

Respectfully Submitted,

AKaramatic

Ashly Karamatic, CPA
Manager, Finance & Regulatory

cc: All Parties in EB-2025-0254
Jonathan Meyers, Torys LLP

EB-2026-0133

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*,
S.O. 1998, c.15, Sched. B, as amended;

AND IN THE MATTER OF a Motion by Hydro One Networks Inc. to Review and Vary the OEB's Decision and Order in EB-2025-0254.

WASAGA DISTRIBUTION INC.

SUBMISSION ON THRESHOLD QUESTION

JUNE 10, 2026

A. INTRODUCTION

These submissions are filed on behalf of Wasaga Distribution Inc. ("WDI") in response to Procedural Order No. 1 dated May 12, 2026, which directed parties to address the threshold question under Rule 43.01 of the Ontario Energy Board's *Rules of Practice and Procedure* (the "Rules").

The sole issue at this stage is whether the Motion to Review and Vary ("Motion") filed by Hydro One Networks Inc. ("Hydro One") meets the threshold required to warrant a review of the Decision on the merits.

The Motion does not identify a reviewable error within the meaning of Rule 43.01. It seeks to revisit issues that were fully considered and determined by the OEB panel (the "Panel") in the OEB's March 19, 2026 Decision and Order for EB-2025-0254 (the "Decision") and to substitute Hydro One's preferred conclusions for those reached in the Decision.

These submissions do not address the merits of Hydro One's Motion, which WDI does not accept. Rather, they address only whether the Motion meets the threshold required to proceed to a review on the merits under Rule 43.01.

B. THE THRESHOLD TEST UNDER RULE 43.01

Rule 43.01 establishes a screening mechanism to determine whether a motion to review should proceed to a hearing on the merits. The threshold question is not whether the moving party's arguments are persuasive, but whether they identify a genuine, reviewable error and raise relevant issues material enough to warrant a review of the decision or order on the merits.[1]

For the purposes of this Motion, the following parts of Rule 43.01 are important:

> *…. prior to proceeding to hear a motion under Rule 40.02 on its merits, the Review Panel may, with or without a hearing, consider a threshold question of whether the motion raises relevant issues material enough to warrant a review of the decision or order on the merits. Considerations may include:*
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> *(a) 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);*
>
> *…*
>
> *(d) whether any alleged errors, or new facts, if proven, could reasonably be expected to result in a material change to the decision or order;*
>
> *(e) whether the moving party's interests are materially harmed by the decision and order sufficient to warrant a full review on the merits.*

[1] *Rules of Practice and Procedure* (effective November 13, 2025), Rule 43.01.

When the OEB recently amended its Rules of Procedure, it provided guidance as the intent of the updated Rule 43.01 and the threshold question, stating:

> *There are three main objectives of the proposed amendments. First, the OEB wishes to reinforce through the Rules that the purpose of a review is not simply to reargue a case that was already presented to the original panel of Commissioners. Motions to review should be limited to instances where a party can clearly identify a material error of fact, law or jurisdiction in the decision or order, or if there is a change in circumstances or new facts that would have a material effect on the decision or order. The proposed amendments also clarify that for the purposes of the Rules, a disagreement about how the OEB exercised its discretion or the weight that it placed on particular facts are not a basis for a motion to review. The proposed amendments to Rule 42.01 (a) are intended to provide further guidance to parties on these and other issues relating to the types of matters that are appropriate subjects for a motion to review, including new requirements that must be met by notices of motion to review.*
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> …
>
> *Second, the proposed amendments are intended to clarify the nature and purpose of the "threshold" question contained in Rule 43.01. Rule 43.01 is meant to be a tool that the OEB can use to assess motions to review at the outset (with or without a hearing), with a view to ensuring that only motions that have a proper basis will proceed to a review on the merits.*
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> …
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> *Third, the proposed amendments clarify (in Rule 43.03) that the OEB will only alter a decision or order when it is clear that the motion raises one of the permitted grounds and a material change is called for.*[2]

The OEB has consistently held that a motion to review must raise a question as to the correctness of the decision. As the OEB has confirmed, there must be an identifiable error in the decision, and a motion to review is not an opportunity to reargue the case.[3] It is not enough to assert that conflicting evidence should have been interpreted differently.[4]

The threshold inquiry therefore requires distinguishing a true error from mere disagreement. Disagreement with the weight the OEB applied to particular facts[5], or with how it exercised its discretion[6], does not in itself constitute a reviewable error.[7]

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[2] EB-2021-0154, Letter re: Proposed Amendments to Rules 40–43 of the Rules of Practice and Procedure Regarding Motions to Review, May 13, 2021, p. 2.
[3] EB-2006-0322/0338/0340 Decision and Order, May 22, 2007, p. 18.
[4] *Ibid.*
[5] EB-2024-0078 Decision and Order, October 8, 2024, page 6.
[6] Rule 43.01(a). See also EB-2018-0164 Decision and Order, February 14, 2019, p. 7.
[7] EB-2021-0154, Letter re: Re: Adoption of Amendments to Rules 40-43 of the Rules of Practice and Procedure regarding Motions to Review and Minor Administrative, July 30, 2021, p. 2.

In addition to identifying an error, the moving party must establish that the alleged error is material. There are two dimensions to this inquiry. One is that the moving party must establish that the alleged error, if proven, could reasonably be expected to result in a material change to the decision.[8] The other is that the error must be material to the applicant in the sense that there is material harm to the applicant arising from the decision such a full review on the merits is warranted.[9]

C. OVERVIEW OF WDI'S POSITION

Hydro One's Motion fails at the threshold question stage because it does not identify a reviewable error. Rather, it seeks to revisit issues that were raised, considered, and decided by the Panel, and to substitute Hydro One's preferred conclusions for those reached in the Decision.

At its core, the Motion:

- seeks to reargue issues previously canvassed;
- challenges the Panel's weighing of evidence and exercise of discretion in interpreting the OEB's own guidance documents; and
- reframes disagreement with the Decision as alleged errors.

Properly understood, Hydro One's grounds for the Motion amount to a contention that the Panel should have reached different conclusions on the same evidentiary record. That is the essence of reargument and does not give rise to a reviewable error under Rule 43.01.

Hydro One's argument that the OEB erred in applying the Filing Requirements for Service Area Amendment ("SAA") Applications ("Filing Requirements") is not supported by the record and fails to take account of the fact that the Filing Requirements are a discretionary instrument that the OEB can interpret and apply in a manner that is reasonable in all the circumstances.

Hydro One identifies no new facts or evidence and instead relies on alternative interpretations of the existing record. Its Motion recharacterizes previously rejected submissions as alleged errors of interpretation, omission, or procedure.

Hydro One has also failed to demonstrate that any alleged error would reasonably be expected to result in a material change to the Decision. Its materiality argument is premised on the assertion that, if various alleged errors were corrected, the Panel might have reached a different conclusion. These submissions are inherently speculative and do not satisfy the threshold under Rule 43.01. They depend on multiple intervening assumptions about how the Panel would have weighed the record or exercised its discretion, rather than identifying an error that is outcome-determinative on its own terms.

Hydro One has also failed to demonstrate material harm to its interests. Beyond broad assertions regarding the implications of the Decision, the Motion does not explain how Hydro One's interests have been materially prejudiced. The facts show no material harm. The decision results in a new

[8] EB-2025-0333, Decision on Threshold Question and Procedural Order no.2, March 24, 2026, p. 8.
[9] Rule 43.01(e).

660-unit residential subdivision being served by WDI rather than Hydro One. In the context of Hydro One's overall operations with more than 1.5 million customers[10], this does not give rise to material harm. Disagreement with the Panel's conclusions, or concern regarding the precedential value of the Decision, does not constitute material harm.

In substance, the Motion asks the OEB to revisit matters that have already been considered and decided. The Motion should be dismissed at the threshold stage without proceeding to a review on the merits.

D. APPLICATION TO HYDRO ONE'S ALLEGED ERRORS

Hydro One raises four alleged errors with the Decision. These fall into two categories: (a) did the OEB improperly hear the SAA application even though WDI had not provided a formal offer to connect ("OTC") as contemplated by the Filing Requirements; and (b) did the OEB improperly fail to consider all relevant amounts when considering the question of which distributor's proposal is more economically efficient.

For each alleged error, WDI submits that Hydro One has not met its burden under Rule 43.01 to establish that any of these alleged errors justify a review on the merits.

a) The OTC Requirement Findings/The Opportunity to Obtain an OTC Findings

Hydro One asserts that the Panel erred in interpreting the Filing Requirements by not requiring a completed OTC and further alleges that the Panel failed to make required findings regarding whether the customer had the opportunity to obtain one.

This issue was raised in the underlying proceeding, where Hydro One argued that:

> *The OEB should not determine an SAA application until all the required information is filed on the record* [11]

And that:

> *WDI has not met minimum filing requirements—OTC not filed*[12]

In its Motion to Review, Hydro One reframes this same issue, asserting that:

> *The Original Panel made no such finding but concluded that the Filing Requirements were met anyway.*[13]

The Panel considered and rejected that position, finding that:

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[10] Hydro One Limited, About Hydro One, https://www.hydroone.com/about (accessed June 10, 2026).
[11] EB-2025-0254, Wasaga Distribution SAA Application, Hydro One Submission, January 29, 2026, p. 2.
[12] EB-2025-0254, Wasaga Distribution SAA Application, Hydro One Submission, January 29, 2026, p.16.
[13] EB-2026-0133, Motion to Review and Vary, Hydro One submission, May 27, 2026, p. 5.

> *The OEB finds that the application met the Filing Requirements. …. The Filing Requirements do not create a requirement that an Offer to Connect be filed in every application, but only that the customer, landowner or developer have the opportunity to obtain such an Offer to Connect.*[14]

This finding directly addresses and resolves the very issue Hydro One now characterizes as an error. The Panel did not omit the issue; it expressly determined how the Filing Requirements apply in the circumstances of this case.

Hydro One's Motion seeks to impose a requirement that is not prescribed in the Filing Requirements. At most, this reflects disagreement with the Panel's interpretation of section 7.5.

In any event, though, it is always open for the OEB to interpret its own guidance documents in a purposive and contextual manner. It is not reasonable or appropriate to conclude that the Filing Requirements are mandatory in the sense that the OEB has no discretion to consider what is reasonable in all the relevant circumstances. That would amount to the OEB fettering its own discretion.

Instead, the OEB is guided by its own Rules of Practice and Procedure, which confirm that the OEB seeks to act in the public interest to secure the most just, expeditious, and efficient determination on the merits of every proceeding before the OEB.[15]

In a decision that the OEB has relied upon in the past, the Federal Court of Appeal provided guidance as to how policy documents such as filing requirements should be interpreted.[16] Essentially, these *soft law* instruments exist to guide an administrative agency, but they cannot be considered to be prescriptive. It is not an error for an administrative tribunal, in appropriate circumstances, to diverge from filing requirements where appropriate.

WDI submits that the OEB was appropriately exercising this valid discretion when it interpreted the Filing Requirements and preferred the wording of one provision of the Filing Requirements (section 7.5.2) over other provisions with potentially different interpretations. The OEB sought to take a practical approach, in keeping with its overall mandate to be purposive and act in the public interest.

In any event, Hydro One does not demonstrate that the absence of a completed OTC prevented the Panel from reasonably assessing the competing proposals on the record before it, or that a completed OTC on record would have materially changed the Decision and Order. The OEB considered earlier complaints in the underlying proceeding from Hydro One about whether more

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[14] EB-2025-0254, Wasaga Distribution SAA Application, Decision and Order, March 19, 2026, p.17.
[15] Rule 2.01.
[16] 2007 FCA 198, *Thamotharem v. Canada (Minister of Citizenship and Immigration)* , see paras. 55-64. This case is cited by the OEB in the EB-2014-0155 Decision and Order (July 31, 2014) in a Review Motion brought by SEC – see p. 7, which states "*The Board has considered all of the submissions and agrees with the parties on the principal point that it can establish guidelines, policies and other non-binding instruments and that it can utilize those instruments to inform its decision-making. However, those instruments cannot be treated as binding.*" See also EB-2009-0139 Decision and Order (April 9, 2010), p. 8, which states: "*Tribunals are permitted to issue guidelines, policy statements and handbooks setting out how the tribunal is likely to exercise its statutory discretion on a matter which is before it on a regular basis provided the guidelines are not applied as if they were law, and the regulator's discretion is not pre-empted*."

evidence was required before the case could proceed to argument, and in response the OEB found there was sufficient information on the record to be able to make a decision.[17]

Hydro One's suggestion that the Decision may create broader uncertainty or precedent is misplaced. Future OEB panels are not bound by prior decisions. Each case turns on its own facts. However, even if Hydro One's concerns regarding potential broader implications were accepted, they do not establish a reviewable error or demonstrate that the outcome of the Decision would reasonably be expected to materially change.

Accordingly, these grounds do not meet the threshold for review under Rule 43.01.

b) Incorrect Amounts Findings/The Civil Costs Findings

Hydro One argues that the Panel relied on incorrect cost inputs in assessing economic efficiency, including with respect to capital contributions and the treatment of civil costs.

These issues were raised in the underlying proceeding and addressed in the Decision. The Panel did not fail to consider the issues raised by Hydro One.

In respect of civil costs, the Panel found that it was not persuaded by Hydro One's submissions and determined that cost recovery issues should be addressed in a future rebasing proceeding.[18]

Hydro One is merely arguing that the Panel should have exercised its judgment differently. That is not a reviewable error.

Hydro One does not identify evidence that was unavailable to the Panel, overlooked by the Panel, or inconsistent with the findings ultimately reached. Rather, Hydro One argues that the same evidence should have been given different weight and should have led to different conclusions. Hydro One just disagrees with how the Panel treated them.

The OEB has made clear that to establish an error:

> *The applicant must show that the findings are contrary to the evidence that was before the panel.*[19]

It is not sufficient to argue that conflicting evidence should be interpreted differently.

The Panel's determinations regarding both cost inputs and civil costs involve the assessment of evidence and the exercise of judgment, including decisions regarding cost, evidentiary weight, and the appropriate forum in which to assess cost recovery. These are matters squarely within the Panel's discretion.

In substance, Hydro One seeks to have a new OEB panel of Commissioners reweigh the evidence and to substitute its preferred conclusions for those reached by the Panel. Disagreement with the

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[17] EB-2025-0254, Decision on Motion and Procedural Order No. 6, January 15, 2026, p. 6.
[18] EB-2025-0254, Decision and Order, March 19, 2026, pp.16-18.
[19] EB-2006-0322/0338/0340 Decision and Order, May 22, 2007, p. 18.

Panel's weighing of evidence or exercise of discretion does not constitute a reviewable error and cannot be grounds for a motion to review.[20]

In any event, Hydro One does not demonstrate that adopting its preferred cost input would have led to a different outcome. The Panel's determination of economic efficiency formed part of a broader, multi-factor assessment under the Filing Requirements, rather than a purely cost-based comparison. Hydro One's focus on individual cost components does not establish that the outcome would reasonably be expected to change. Even if its proposed adjustments were accepted, the Decision was not a purely arithmetic comparison and would not be altered on that basis.

E. FAILURE TO ESTABLISH MATERIALITY

Even if an alleged error was established, which WDI denies, Hydro One has not demonstrated that correcting those errors could reasonably be expected to result in a material change to the outcome of the Decision, nor has it established that its interests are materially harmed sufficient to warrant a review on the merits.

Hydro One's argument that there are material errors in the Decision is premised on isolating individual elements of the Panel's reasoning and asserting that alternative inputs could materially change the outcome. That premise is inherently speculative and does not satisfy the standard under Rule 43.01. It mischaracterizes the Decision, which was based on a holistic assessment under the Filing Requirements in which no single input was determinative. By treating discrete cost components or the need for an OTC as determinative, Hydro One reconstructs the analysis in a manner inconsistent with the Decision itself.

Even if Hydro One's criticisms of discrete elements of the analysis were accepted, it does not follow that the overall conclusion would change. Hydro One does not identify any error that undermines the totality of the Panel's reasoning or its ultimate determination that the application is in the public interest.

As the OEB has confirmed:

> *The applicant must demonstrate that the alleged error is material, and relevant to the outcome of the decision, and that if the error is corrected, the reviewing panel would change the outcome of the decision.*[21]

As the OEB has emphasized, the reviewing panel must concern itself only with errors that could materially change the decision.[22] Accordingly, even if Hydro One's alleged errors were accepted, it has not been demonstrated that the outcome would reasonably be expected to change, and there is no basis to vary the Decision or any useful purpose in proceeding with the Motion.[23] The materiality requirement is not met and does not warrant a review of the Decision or Order on the merits.

[20] EB-2019-0143, page 13.
[21] EB-2006-0322/0338/0340, May 22, 2007, as cited in EB-2017-0320, January 4, 2018, p. 5.
[22] EB-2024-0078, Decision and Order, April 15, 2025, p.15.
[23] EB-2017-0320, Decision and Order, January 4, 2018, at p. 7.

Hydro One also fails to establish that its own interests will be materially harmed if the Decision stands. This case is about which distributor will serve a 660-unit residential subdivision. This is not material to Hydro One, which serves nearly 1.5 million customers[24]. In a recent case related to a Hydro One Z-factor request, the OEB set a standard for what is material to Hydro One. In that case, the OEB found that a cost impact of more than $69 million was not material in the context of the utility's operations during 2025, in the sense that Hydro One could absorb that impact without impairing earnings.[25] Taking these facts into account, WDI submits that Hydro One will not be "materially harmed" if the Decision stands. If Hydro One is concerned about "precedent", then it can argue its case in future proceedings, taking comfort from the fact that no one panel of the OEB can bind another.

F. STAY REQUEST

Hydro One's request for a stay is contingent on its Motion to Review.

Where a motion does not meet the threshold test under Rule 43.01, there is no basis upon which a stay can be granted under Rule 40.

In any event, Hydro One has not satisfied the applicable test for a stay. It has not demonstrated a serious issue to be tried, irreparable harm, or that the balance of convenience favours a stay.

G. CONCLUSION AND RELIEF REQUESTED

WDI respectfully requests that the OEB:

1. dismiss the Motion in its entirety at the threshold stage; and
2. deny the associated request for a stay.

All of which is respectfully submitted.

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[24] Hydro One Limited, About Hydro One, https://www.hydroone.com/about (accessed June 10, 2026).
[25] EB-2025-0030, Decision and Order, April 7, 2026, pp. 9-10.