



**EB-2012-0031**

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

**AND IN THE MATTER OF** a review of an application filed  
by Hydro One Networks Inc. for an order or orders  
approving a transmission revenue requirement and rates  
and other charges for the transmission of electricity for  
2013 and 2014.

**DECISION ON PROCEDURE FOR ORAL HEARING  
OF CONCURRENT EXPERT EVIDENCE  
AND  
PROCEDURAL ORDER NO. 12  
February 1, 2013**

Hydro One Networks Inc. ("Hydro One") filed an application, dated May 28, 2012, with the Ontario Energy Board (the "Board") under section 78 of the *Ontario Energy Board Act, 1998*, c.15, Schedule B, seeking approval for changes to its 2013 and 2014 transmission revenue requirement and for changes to the provincial uniform transmission rates charged for electricity transmission, to be effective January 1, 2013 and January 1, 2014. The Board assigned File Number EB-2012-0031 to the application.

On August 13, 2012 the Board issued an Issues List Decision and Procedural Order No. 2 which set out an approved Issues List for the Proceeding.

The Board issued a Decision and Order on Confidentiality and Procedural Order No. 3 on October 1, 2012 in which the Board ordered, among other things, that the parties

conduct a Settlement Conference. A Settlement Conference was held from October 23 to 26, 2012. Parties achieved settlement on all but one issue, namely Issue #23 from the approved Issues List: “What is the appropriate level for Export Transmission Rates in Ontario?”

The Settlement Proposal (filed by Hydro One on November 6, 2012) was approved by the Board in an oral decision on November 8, 2012. On December 7, 2012 the Board issued a Decision on Interim Rates and Procedural Order #10, declaring Hydro One’s current Export Transmission Service (ETS) rate of \$2/MWh is final as of January 1, 2013 until such time as the Board makes its decision on the final ETS rate.

On December 20, 2012, the Board issued its Rate Order for the Ontario Uniform Transmission Rates, effective January 1, 2013.

In Procedural Order No. 8, issued on November 15, 2012, the Board established a process to address the remaining unsettled issue of Export Transmission Rates, set dates for an Experts’ Conference and related procedural steps, and also set dates for an oral hearing of a concurrent expert witness panel on January 28 and 29, 2013. The Board also asked parties to file submissions with respect to the process for the oral hearing by January 22, 2013. A Joint Written Statement of the Experts was submitted on January 16, 2013.

On January 25, 2013, the Board issued Procedural Order No. 11, adjourning the oral hearing until a later date.

### **Process for Oral Hearing of the Concurrent Expert Witness Panel**

The Board received submissions with respect to the process for the oral hearing from the following parties: the Independent Electricity System Operator (“IESO”), the Association of Power Producers of Ontario (“APPrO”), HQ Energy Marketing Inc. (“HQEM”), the Canadian Manufacturers and Exporters (“CME”), the Association of Major Power Consumers in Ontario (“AMPCO”), the School Energy Coalition (“SEC”), the Consumers Council of Canada (“CCC”) and Board staff.

The IESO proposed that Mr. Darren Finkbeiner, the IESO Manager of Market Development, be included on the concurrent expert witness panel for the purpose of answering clarification questions from the Hearing Panel regarding the IESO market. The IESO noted that this is in accordance with Rule 13A of the Board’s Rules of

Practice and Procedure, stressing that Mr. Finkbeiner is not a witness supporting the IESO position as the IESO has not taken a position on the ETS rate. The IESO also submitted that APPrO witness Mr. Laurin, should testify as part of a separate panel, prior to the testimony from the concurrent expert panel.

APPrO objected to Mr. Finkbeiner sitting with the expert panel because, in APPrO's view, he is not an independent witness and he has not filed any evidence. APPrO submitted that Mr. Finkbeiner should appear as a part of a separate witness panel together with the expert witnesses from Charles River Associates ("CRA").

APPrO also submitted that it should be allowed to present a separate witness panel comprised of its witness from Navigant (Mr. Hamal) and from one its members, Brookfield (Mr. Laurin).

HQEM submitted that the expert witness from Elenchus Research Associates ("Elenchus") should be allowed to sit as a separate witness panel as there are no differences in opinion among the Navigant and CRA experts with respect to the Elenchus evidence. In addition, HQEM provided a further submission on January 24, 2013 requesting that Mr. Finkbeiner be compelled to provide written evidence before he appears as a witness.

Board staff took the position that Mr. Finkbeiner and Mr. Laurin should each sit as separate witnesses.

SEC submitted that the witnesses on the concurrent expert panel should not be allowed to appear on separate witness panels and that the experts should not be allowed to cross examine each other.

CME submitted that the process followed in the Enbridge Gas Distribution proceeding (EB-2011-0354) should be followed in this proceeding and also that the experts should not be allowed to cross examine each other. CCC also submitted that the experts should not be allowed to cross examine each other.

AMPCO submitted that parties should be allowed to cross examine on both the Joint Written Statement and the experts' pre-filed evidence, and provided a detailed order of

cross examination. AMPCO also submitted that the experts should not be allowed to cross examine each other.

### **Board Findings**

The Board reminds parties that the purpose of independent opinion evidence is to the assist the Board in understanding and deciding issues in dispute; the purpose is not to advocate on behalf of a particular party's position. The Board has taken this into account in arriving at its decisions as to process.

The Board has determined that all of the experts who were parties to the Joint Written Statement (CRA, Navigant and Elenchus) should sit as a concurrent expert witness panel ("Concurrent Expert Panel"). In the Board's view, this will provide the most efficient process and will make the make most effective use of the experts' conference and Joint Written Statement. This approach will facilitate the Board's understanding and assessment of the independent experts' opinions and the interplay among those opinions, even if they are not in direct dispute.

HQEM has expressed concern about the cost of having its experts appear as part of the Concurrent Expert Panel. The Board notes that it is allowing no more than two days for this proceeding.

The Board has determined that Mr. Finkbeiner of the IESO will sit with the Concurrent Expert Panel. Mr. Finkbeiner will only provide fact evidence on the IESO market in order to assist the Board. He will not provide evidence as to his opinion in relation to the expert evidence, nor will he give evidence as to the IESO's position. Given the limited scope of his testimony and given that it will be responding to questions of factual clarification, the Board has determined that it will not be necessary for him to provide written evidence in advance.

Given the scope of the issue and the requirements of the Board's regulatory calendar, the Board has determined that a maximum of two days will be provided for this hearing. The IESO will be required to file a Hearing Plan in advance of the proceeding. This Hearing Plan is to be prepared jointly with the parties and will include an agreed order of cross-examination for the Concurrent Expert Panel and a time estimate for each party conducting cross-examination. Counsel for the IESO has indicated that Mr. Finkbeiner

may be unavailable on the second day of the rescheduled hearing so the Board expects that all questioning of Mr. Finkbeiner would take place on the first day of the hearing.

APPrO requested that its witness from Brookfield (Mr. Laurin) be permitted to testify with APPrO's expert (Mr. Hamal from Navigant) given the integrated nature of the testimony. The Board has determined that this would not be appropriate. The Board considered a similar request in the recent Enbridge proceeding and refused, stating:

“Further, the Board has convened the expert concurrent witness panel for the express purpose of hearing the evidence in an independent fashion. To call the company witnesses and the Concentric witnesses together could undermine that purpose and unnecessarily result in a lack of clarity concerning matters to which the company can speak on and be tested, and matters to which the experts can speak on and be tested.”<sup>1</sup>

When the Concurrent Expert Panel has completed its evidence, the APPrO witness, Mr. Laurin will appear (“APPrO Panel”). The Hearing Plan should include an order of cross-examination and time estimates for the APPrO panel as well.

The Board will adopt most of the process used in the recent Enbridge proceeding. However, the Board agrees with SEC, CME and CCC that the experts should not undertake questioning of each other. The process will be as follows:

1. The Board will swear the expert witnesses.
2. Each of the witnesses on the Concurrent Expert Panel will be examined for the purposes of qualifying them as experts in the relevant subject area. The witnesses for CRA will be examined first, followed by the Navigant and Elenchus witnesses.
3. Each of the experts will adopt their evidence filed individually and concurrently and will advise of any errors or other similar issues.

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<sup>1</sup> *Decision on Procedure for Oral Hearing of Concurrent Expert Evidence*, EB-2011-0354, November 15, 2012, p. 4.

4. Each expert (or team of experts in the case of CRA and Elenchus) will have 15 minutes to make an opening statement, in lieu of an examination-in-chief led by counsel. In the opening statement, the witnesses will be expected to summarize their own evidence, summarize their understanding of the evidence of other expert(s), and highlight the main areas of disagreement, including disagreements of fact, methodology, and opinion that are relevant to the resolution by this Board of the outstanding issue. The CRA witnesses will go first, followed by the Navigant and Elenchus witnesses. Mr. Finkbeiner will also have an opportunity to address the panel with any clarifying statements.
5. Each party and Board staff will have an opportunity to cross-examine the witnesses on the Concurrent Expert Panel. Parties that have sponsored one or more experts will be expected to address their questions only to the opposing expert(s). The Board panel will interject to provide an opportunity for the expert that is not currently being questioned to respond to the particular line of questioning or the particular answers provided, as and when the Board determines that there is a logical break in the questioning or when the Board is interested in hearing the other expert's view.
6. Mr. Shavel and Mr. Baziliauskas of CRA (appearing for the IESO) will be subject to cross-examination first, followed by re-examination by IESO's counsel, if necessary. Mr. Hamal of Navigant (appearing for APPrO) will be subject to cross-examination next, and APPrO counsel may conduct re-examination if necessary. Mr. Todd and Mr. Roger of Elenchus (appearing for HQEM) will then be subject to cross-examination and re-examination, accordingly. On re-examination, the Board panel may ask the expert(s) that was not being re-examined to respond to one or more aspects of the re-examination.
7. Although the Board is allowing all parties to cross-examine the expert witnesses, the Board expects parties to coordinate their efforts so that there is no duplication.
8. The IESO is required to prepare, with the parties, an agreed order of cross-examination (hearing plan) in advance of the hearing. Board staff will be expected to conduct the last cross-examination.

9. When examination of the Concurrent Expert Panel is complete, the APPrO Panel, comprised Mr. Laurin, will be subject to cross examination.
10. As is customary in Board proceedings, the Board panel may ask questions at any time and may intervene with respect to procedural or other issues in order to conduct a fair hearing and to elicit the information it needs in respect of the issues to be decided.

#### THE BOARD ORDERS THAT:

1. The IESO shall file a Hearing Plan with the Board no later than **Wednesday, February 20, 2013**, and shall send it to all the parties.
2. The oral hearing will commence at 9:30 a.m. in the Board's North Hearing Room at 2300 Yonge Street Toronto on **Monday, February 25, 2013** and will continue on **Tuesday, February 26, 2013**, if required.

All filings to the Board must quote file number EB-2012-0031, be made through the Board's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties shall use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at [www.ontarioenergyboard.ca](http://www.ontarioenergyboard.ca).

If the web portal is not available, parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

**ADDRESS**

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P.O. Box 2319  
2300 Yonge Street, 27th Floor  
Toronto ON M4P 1E4  
Attention: Board Secretary  
E-mail: [Boardsec@ontarioenergyboard.ca](mailto:Boardsec@ontarioenergyboard.ca)  
Tel: 1-888-632-6273 (toll free)  
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**DATED** at Toronto, February 1, 2013

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary