

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

IN THE MATTER OF a generic proceeding initiated by the Ontario Energy Board pursuant to section 74 of the *Ontario Energy Board Act*, 1998 to amend the licenses of electricity distributors to make provision for methods and techniques to be applied by the Board in determining distribution rates for licensed electricity distributors.

**SUBMISSIONS BY HYDRO ONE NETWORKS IN RESPONSE
TO BOARD PROCEDURAL ORDER NO. 1**

1. These are the submissions in response to the Board's Procedural Order No. 1 dated October 6, 2006 requesting written submissions from parties regarding the proposed licence amendments as outlined in the Notice of Proceeding and Notice of Hearing dated July 7, 2006.

Jurisdiction

2. A number of parties have raised the issue of whether the Board has the jurisdiction to issue the proposed cost of capital code and the 2nd generation IRM code, and amend the licences of electricity distributors to incorporate those codes by reference.
3. The Board does have jurisdiction to issue codes as permitted by the *Energy Board Act* ("the Act") and to amend the licences of electricity distributors. However, Hydro One submits that the jurisdictional issue here is whether what the Board is proposing in the three parallel proceedings (EB-2006-087, EB-2006-88 and EB-2006-89) is properly characterized as "rate making" pursuant to section 78 of the Act or providing for a "method or technique" by means of a code pursuant to section 70.1 of the Act.
4. The jurisdictional issue, from Hydro One's perspective, is whether this proceeding to amend licences and incorporate the two codes proposed by reference as a condition on electricity licences is really an exercise of the Board's ratemaking jurisdiction rather than its jurisdiction to licence

distributors. If so, a hearing is required. The Board cannot do indirectly what it cannot do directly.

5. It is difficult to assess in the abstract, in the absence of draft codes, whether the codes will **specify methods or techniques** to be used in determining rates (procedural in nature) or, in effect, **fix a rate**, or an essential component thereof (substantive in nature).

Hydro One Networks' Position re Proposed Licence Amendments

6. Hydro One understands and supports the Board motivation to develop an abbreviated and practical method to effect rate adjustments for the many electric utilities which it regulates. An appropriate and balanced adjustment mechanism will benefit the utilities and its customers by reducing the enormous cost of annual cost of service reviews.
7. Whether or not there are jurisdictional complications, the proposed method should provide a fair opportunity for the utilities and their customers to make their views known for consideration by the Board.
8. Hydro One does have concerns that the Board's proposal to establish essential elements of the utility's distribution rates by code could offend the ratemaking function, depending on the details of the chosen approach. Without such details, it is difficult to say in the abstract whether it will constitute "methods or procedures for ratemaking" as opposed to a "method or technique" to be employed in setting rates.
9. As a practical matter, Hydro One's concern is simple. It does not think it appropriate for the Board to fix important ratemaking components, which have serious financial impacts, without giving the affected parties the opportunity to be heard and to have those views taken into consideration. Therefore, if the Board does propose to mandate the details of a formulistic approach to cost of capital and an incentive regulation mechanism, it is submitted that the Board's decision should be based on proper evidence which has been subject to testing in a public hearing.
10. It should be noted that the processes just completed were informal technical conferences. There was no evidence tendered. There was no proper testing of any evidence, as there was no evidence to test.
11. If the Board decided to mandate a fixed set of parameters based on the informal proceedings to date, the process would not be transparent and

the parties would have no way of knowing the basis of the Board's decision because there is no evidence on which any decision could be based.

12. Furthermore, if cost of capital and 2nd generation incentive regulation mechanisms are to be established by code, Hydro One submits that it should have the opportunity to be exempted from the application of the code, upon proper evidence. Such an exemption opportunity should be available to all utilities upon a simple application procedure.
13. Hydro One's preferred approach, however, is a variation of the status quo. Presently, the Rate Handbook, which was developed after a substantial effort on behalf of the Board with considerable input from stakeholders, establishes default values as a means of promoting regulatory efficiency. This has proven to be an effective tool in managing the potentially huge regulatory burden of the Board. It is submitted that it would be preferable to employ an incentive based Rate Handbook, which would include appropriate parameters for development of the cost of capital and an incentive rate adjustment mechanism, after a public review of proper evidence.
14. Hydro One's final position on the proposed licence amendments will depend upon the contents of the draft codes, the procedures that the Board proposes to follow regarding issuance of the codes, and whether a clear exemption process is established.

ALL OF WHICH IS RESPECTFULLY SUBMITTED


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