

BEFORE THE ONTARIO ENERGY BOARD

IN THE MATTER OF the Ontario Energy Board Act, 1998,
S.O. 1998, c.15, (Sched. B);

AND IN THE MATTER OF applications by Centre Wellington Hydro, Veridian Connections Inc., EnWin Powerlines Ltd., Erie Thames Powerlines Corp., Chatham-Kent Hydro Inc., Essex Powerlines Corp., Cooperative Hydro Embrun Inc. and Hydro One Networks Inc. pursuant to subsection 74(1) of the Ontario Energy Board Act, 1998 to amend Schedule 1 of their Transitional Distribution Licences.

Submissions of the Vulnerable Energy Consumers' Coalition ("VECC") with respect to the Jurisdictional Issue raised by Procedural Order No. 4

Introduction

These submissions, made on behalf of the Vulnerable Energy Consumers' Coalition ("VECC") concern the jurisdictional questions raised in the issues day conference held on April 30th, 2003 regarding the effect of licence amendment proceedings on existing distribution customers. As required by the Board's procedural Order No. 4, Hydro One Networks filed with the Board a statement of the jurisdictional issue in a letter to the Board dated May 8, 2003, as follows:

Do the licence amendment provisions of the *Ontario Energy Board Act* give the Ontario Energy Board jurisdiction to make an order which would have the effect of transferring a Distributor's existing customers to another Distributor which has sought an amendment to expand its service territory, or does the Board have power only to consider licence amendments which would have the effect of transferring new customers?

VECC will respond to the four questions raised in Hydro One Networks Inc.'s May 8, 2003 letter in the sequence in which they appear.

Argument

VECC submits that the Board does not have the jurisdiction under the *Ontario Energy Board Act* and the *Electricity Act*, to make an order that would have the effect of transferring a Distributor's existing customers to another Distributor. However, it is VECC's submission that, notwithstanding the determination of the issue of customer transfer, the Board does have the authority under the *Ontario Energy Board Act* to

impose conditions of licence on a new distributor in keeping with the public interest, with respect to the treatment of the stranded costs and other financial concerns arising from the transfer of existing customers of an incumbent Distributor to that new Distributor.

1. If the Applicant for a licence amendment is successful in taking over part of an incumbent Distributor's territory, do the incumbent Distributor's existing customers in the area which is being added to the Applicant distributor's territory also become customers of the Applicant Distributor, or do they remain with the incumbent Distributor?

VECC submits that neither the *Electricity Act*¹ nor the *Ontario Energy Board Act, 1998*² provides for the automatic transfer of customers of an incumbent distributor to the applicant Distributor.

The provincial government's general electricity restructuring initiative, which resulted in the passing of the *Electricity Act* in 1998 and amendments to the *Ontario Energy Board Act* was guided by the desire to facilitate competitive choice in the electricity industry. The Board's objectives are outlined in the *Ontario Energy Board Act*:

The Board, in carrying out its responsibilities under this or any other Act in relation to electricity, shall be guided by the following objectives:

1. to facilitate competition in the generation and sale of electricity and to facilitate a smooth transition to competition.³

While the section deals specifically with competition in generation and retail sales of electricity, it makes little sense that choice should be encouraged in some components of the industry while being imposed on distribution customers to the effect that the incumbent operator is ousted. In VECC's view, the intent of the legislation was to facilitate customer choice with respect to electricity services, including enabling both new *and* existing customers. In this case, the new distribution entity must be chosen by the customer.

Part V, Section 70. (6) of the *Ontario Energy Board Act*, which concerns the regulation of electricity, indicates that a licence issued by the Board is non-exclusive. The legislation appeared to contemplate situations where there might be more than one distributor. It is therefore logical to infer that there is no automatic transfer of customers from an incumbent to an applicant Distributor. Section 70. (6) states:

Unless it provides otherwise, a licence under this Part shall not hinder or restrict the grant of a licence to another person within the same area and the licensee shall not claim any right of exclusivity.

¹ *Electricity Act, 1998*, S.O. 1998, c. 15, Sched. A.

² *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched. B.

³ *Ibid.* s. 1.

Section 28 of the *Electricity Act* supports this premise of customer choice by outlining the Distributor's obligation to connect and to sell electricity. Section 28 states:

A distributor shall connect a building to its distribution system, if,

- a) the building lies along any of the lines of the distributor's distributions system;
and
- b) the owner, occupant or other person in charge of the building requests the connection in writing.

2. Can existing customers in an incumbent Distributor's territory apply to be served by a different Distributor?

As indicated in response to the first question, there is no general authority in the applicable legislation to preclude customers from choosing between an incumbent and new distributor. The only specific limitation on this choice could be the terms of the territory defined under the licence.

3. Will the Board consider the incumbent Distributor's existing customer to be a "new" customer when that existing customer requires additional facilities?

As indicated in response to the first question, there is no general authority given to the Board under the applicable statutes to determine the status of a customer. This would also apply in the case where a customer of an incumbent Distributor requires additional facilities.

4. If the Board were to allow the transfer of existing customers of the incumbent Distributor, what rate treatment would be accorded to the assets that remain which are no longer used to serve these customers?

The Board has general powers to impose conditions upon licences of distributors under section 70. (1) of the *Ontario Energy Board Act*:

A licence under this Part may prescribe the conditions under which a person may engage in an activity set out in section 57 and a licence may also contain such other conditions as are appropriate having regard to the objectives of the Board and the purposes of the *Electricity Act, 1998*.

The rate treatment of stranded assets resulting from the transfer of existing customers of the incumbent Distributor is a critically important issue for the low income residential

ratepayers represented by VECC. It is VECC's submission that the Board has the authority to ensure that where stranded costs arise that customers of the incumbent utility are held harmless.

We would draw to the Board's attention, a decision by the Maine Public Utility Commission, which dealt with the elements of the public interest in similar circumstances. In *Re Kennebunk Light & Power District*⁴ there was a dispute between two electric distributors concerning expansion of service by one Distributor into a service area served by an existing Distributor. One of the issues raised in the dispute was the MPUC's powers with respect to the treatment of stranded assets of the incumbent utility. The Commission held that an aspect of their authority to act in the public interest may include ensuring that ratepayers of the incumbent utility are held harmless:

We agree with those comments that in considering whether to authorise service by a second public utility, we must determine the overall public interest, which may include many other issues other than whether there is a "public need" for the service. These issues could, as noted above, include the effect on existing utilities and their customers.⁵

Conclusions

VECC would accordingly submit that there exists scant legislative and policy support for a position that would advocate a Board imposed transfer of customers from an incumbent to a newly licensed distributor without customer choice. In the event that the transfer occurs as a result of customer choice, or other reason, it is within the powers of the Board, acting in the public interest, to ensure that the economic consequences of such transfer are not unfairly visited upon the incumbent. VECC would suggest that the resolution of such matter should devolve first upon the distributor parties and failing resolution, to be determined by the Board.

ALL OF WHICH IS RESPECTFULLY SUBMITTED on behalf of VECC, by its counsel, this 15th day of May, 2003.

Sue Lott

⁴ *Kennebunk Light & Power District, Re* Docket No. 2002-196, (4 October 2002), Maine Public Utilities Commission, online: WL.

⁵ *Ibid.*