



May 15, 2003

Via Courier, e-mail & fax

Mr. Paul Pudge
Board Secretary
Ontario Energy Board
P.O. Box 2319, 26th Floor
2300 Yonge Street
Toronto, ON M4P 1E4

Dear Sir:

Re: **OEB Procedural Order No. 4 Paragraph 3: Combined Distribution Service Area Amendments Proceeding - Board File No. RP-2003-0044**

Newmarket Hydro Ltd. hereby submits, in accordance with the Board's Procedural Order No. 4 Paragraph 3, its arguments relating to the jurisdictional issue, as framed by Hydro One Networks Inc. on May 8, 2003, for consideration by the Board.

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?

Newmarket Hydro Response

We submit that licence amendment provisions of the *Ontario Energy Board Act* gives the Ontario Energy Board the jurisdiction to make an order which would have the effect of transferring a Distributor's existing customers to another Distributor which is a successful Applicant for a licence amendment taking over part of an incumbent

Distributor's territory. Specifically, we submit that Section 70 (6) of the *Ontario Energy Board Act* ("OEB Act"):

"Non-exclusive

(6) 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"

and Section 70 (11) of the *Ontario Energy Board Act* ("OEB Act"):

(11) The licence of a distributor shall specify the area in which the distributor is authorized to distribute electricity.

effectively allows for transfer of the Incumbent Distributor's existing customers to an Applicant Distributor, especially when Board's objectives as outlined in Part 1 General of OEB Act Section 1, subsections 2, 3 & 4 are met. In other words, our interpretation of this section of the OEB Act is that within an area, say a regional area, serviced by several distributors abutting each other, the OEB Act Sections 70 (6) allows the amendment of licenced boundaries within that larger area, thereby precluding exclusivity in perpetuity for any one licensee, while OEB Act Sections 70 (11) precludes overlapping service areas within a larger area, say a regional area.

In particular, if the subject existing customers' interests with respect to prices and the reliability and quality of electricity service are met, then the transfer should be considered.

Also having reasonably sized contiguous licenced area boundaries would meet Board objectives to promote economic efficiency in the distribution of electricity. Allowing overlapping service areas would cause inefficiencies due to duplication of plant, and cause customer confusion.

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

Newmarket Hydro Response

We believe that generally, this would not be in the best interest of customers in terms of distribution efficiencies and overlapping service area issues as explained above. Also, the complex issues of asset transfers and inefficiencies of stranded assets are avoided if existing customers in an incumbent Distributor's territory are precluded from applying to be served by a different Distributor, unless they can demonstrate that Board objectives will be met.

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

Newmarket Hydro Response

We believe that the Board should consider the incumbent Distributor's existing customer as a "new" customer when that existing customer requires additional electrical distribution facilities, especially when the existing facilities will no longer be required. New facilities may cause that customer to have different reliability and servicing needs. Hence the Board objectives as outlined the OEB Act Section 1 subsection 3, to protect the interests of consumers with respect to reliability and quality of electricity service, would have to be considered e.g. urban sprawl may dictate that customers whose facilities were adequately served by rural distribution quality service levels, may require higher service levels when they expand their facilities. These customers should be given the opportunity to do what they feel is in their best interest provided Board objectives as discussed above are also met.

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?

Newmarket Hydro Response

We do not see this as a rate issue but as a "stranding of assets" issue. Whoever initiated the transfer of customers, be it the applicant Distributor or a customer, should be the party to pay for the stranded asset.

In accordance with paragraph 6 of Procedural Order No. 4, we are filing one electronic copy in Word, and six (6) hardcopies of this letter.

Should you have any questions or require any further information, please contact the undersigned at (905) 953-8548 or e-mail address COO@nmhydro.on.ca

Sincerely,

Gaye-Donna Young, P.Eng.
Chief Operating Officer

GY/

cc: List of Parties to RP-2003-0044
D. Gibson – McCarthy Tetrault