

Hydro One Networks Inc.

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LAW

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March 3, 2017

Ms Kirsten Walli
Board Secretary
Ontario Energy Board
P. O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, Ontario, M4P 1E4

Dear Ms Walli:

Re: EB-2016-0155 – Service Area Amendment Application by E.L.K. Energy Inc.

Enclosed please find the Sur-Reply of Hydro One Networks Inc., which is being filed in response to the Final Submissions (dated March 2, 2017) of E.L.K. Energy Inc.

Yours very truly,

ORIGINAL SIGNED BY MICHAEL ENGELBERG

Michael Engelberg

cc: Mr. John Vellone, Borden Ladner Gervais
Mr. Andrew Lanni, OEB Staff

encl.

HYDRO ONE NETWORKS INC.'S SUR-REPLY

TO E.L.K. ENERGY INC.'S REPLY SUBMISSIONS DATED MARCH 2, 2017

Although it is unusual for an intervenor, including Hydro One Networks Inc. (“Hydro One”) to file a Sur-Reply, there were entirely new, unfounded, inappropriate and unprofessional statements contained on page 6 of the March 2nd Reply Submissions of E.L.K. Energy Inc. (“ELK”) that cannot be left unanswered. Also, new evidence was introduced by the Applicant on page 5 of the Reply Submissions.

1. ELK alleges, in the first paragraph on page 6, that Hydro One has tried to complicate and confuse the evidentiary record and has also tried to do so in its (Hydro One’s) Final Submission. The allegation is unfounded: Hydro One produced witnesses and intervenor evidence that explained every basis for Hydro One’s analysis of the financial harm that would occur to ELK’s ratepayers if the Application were approved. To allege, against a respectful, process-compliant intervenor, sinister motives of “tirelessly” trying to complicate and confuse the record is improper, unprofessional and unhelpful.
2. ELK alleges for the first time in this proceeding, in the third paragraph on page 6, that Hydro One has used “aggressive litigation tactics.” Hydro One submits that there is no evidence to support that allegation, and Hydro One submits that it has acted in a proper and respectful way throughout. It is improper, unprofessional and unhelpful for an Applicant to make such an allegation.
3. ELK alleges for the first time in this proceeding, in the fifth paragraph on page 6, that Hydro One is “sending a signal” to ELK and other small utilities that they should refrain from bringing a Service Area Amendment Application to acquire service territory from Hydro One because Hydro One will “throw resources at it, complicate it, confuse it, and make you pay for it – in time and money.” These allegations, apart from being totally unfounded and seeming to attempt to deny the right of an incumbent LDC to show the Board that the incumbent LDC is the lower-cost service provider, are improper and unprofessional. Again, as above, Hydro One submits that to allege sinister motives against a respectful, process-compliant intervenor, is unhelpful.

- 1 4. Further, Hydro One is not a default LDC: Hydro One’s licensed service territory has
2 the same status as the service territory of all other Board-licensed LDCs; and if the
3 best financial solution for all ratepayers is for a new customer to connect to the
4 incumbent service provider, the Board should not penalize the incumbent from
5 providing the relevant financial impact information to the Board so that the Board’s
6 objectives can be achieved. Hydro One submits that when an adjacent LDC provides
7 a more economically and technically efficient solution, Hydro One consents to the
8 application.
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- 10 5. ELK’s sworn evidence at the oral hearing, and ELK’s submission in heading #5 in
11 ELK’s Argument-in-Chief dated February 15, 2017, stated that ELK would connect
12 Sellick to Hydro One’s M7 feeder: that was the reason that both parties agreed that
13 service quality is not an issue in this Application. However, under heading #4, at
14 page 5 of ELK’s Reply Submissions dated March 2, 2017, ELK has stated that no
15 LTLT would be created if this Application were granted because “ELK would be the
16 physical distributor.” ELK also stated at page 5 that Sellick would connect to an ELK
17 feeder and that the Hydro One M7 feeder’s involvement was only that the M7 feeder
18 would be somewhere “upstream,” meaning that Hydro One would not be the physical
19 distributor. Those statements in ELK’s Reply Submissions conflict with sworn
20 testimony given on behalf of ELK at the oral hearing, when Mr. MacAulay
21 acknowledged twice that ELK would be connecting Sellick to Hydro One’s M7
22 feeder. The acknowledgment is at line 1 on page 6 of the transcript and at line 6 on
23 page 61 of the transcript. The complete exchange between Mr. MacAulay and Hydro
24 One’s counsel is from line 23 of page 59 to line 7 of page 61. Hydro One submits
25 that this attempt to introduce new evidence, contradictory to the Applicant’s previous
26 evidence, should not be in Final Submissions and should be rejected.
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- 28 6. In the second half of page 6, ELK asks that costs of its Application be paid by Hydro
29 One because ELK should not have had to retain legal counsel and a consultant and
30 because of “Hydro One’s failure to comply with the responsibilities of an incumbent
31 distributor...” Hydro One cannot speak to ELK’s decision to seek professional
32 assistance after ELK filed its Application and Evidence and then filed three different
33 amendments to the Application and the new evidence in paragraph 5 above. However,
34 Hydro One submits that there is no basis whatever to allege that Hydro One has not
35 complied with all the responsibilities of an incumbent distributor.
36
- 37 7. In the second half of page 6, ELK alleges, without basis, and for the first time, that
38 Hydro One failed to contribute to a better understanding by the Board, that Hydro

1 One “engaged in conduct” that tended to lengthen the process, and that Hydro One
2 “engaged in oppressive conduct.” Hydro One submits that it is unprofessional,
3 inappropriate and unhelpful for an Applicant to use final submissions to tar the
4 behaviour of an intervenor, particularly an intervenor who has acted properly and
5 professional throughout and has complied in a proper, respectful and timely fashion
6 with every procedural order issued by the Board. ELK has provided no evidence to
7 support its page 6 allegation that Hydro One has acted in an oppressive manner.
8

9 Closing
10

11 Hydro One submits that the SAA process was put in place by the OEB as a mechanism for
12 the proper resolution of matters such as this Application, in accordance with the Board’s
13 statute and its Rules of Practice and Procedures. The intent is for such matters to be
14 determined by the Board through a process of fact-based evidence, discovery and
15 argument. Hydro One is disappointed that the Applicant, a Board-licensed entity, has chosen
16 to deviate from this approach in its March 2nd Reply Submissions and that the final
17 argument stage has departed from what Hydro One believes to be the process intended by the
18 Board.
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22 All of which is respectfully submitted.
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24 ORIGINAL SIGNED BY MICHAEL ENGELBERG
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26 _____
27 Michael Engelberg
Counsel for the intervenor Hydro One Networks Inc.