Ontario Energy Board

Commission de l'Énergie de l'Ontario

EB-2007-0051

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

AND IN THE MATTER OF an Application by Hydro One Networks Inc., pursuant to section 98 of the OEB Act, for an Interim Order granting entry onto land in connection with the Applicant's request for leave to construct a new transmission line between the Bruce Power Facility and the Milton Switching Station.

AND IN THE MATTER OF an award of costs pursuant to section 30 of the OEB Act.

BEFORE: Pamela Nowina
Vice Chair and Presiding Member

Cynthia Chaplin
Member

Bill Rupert
Member

PARTIAL DECISION AND COST ORDER

The Proceeding

Hydro One Networks Inc. (Hydro One) filed an application with the Ontario Energy Board on March 30, 2007 for approval to access land in connection with Hydro One's application to construct a new transmission line between the Bruce Power Facility and the Milton Switching Station. This Access to Land Application was given Board File No. EB-2007-0051. A Notice of Application and Written Hearing for the Access to Land

Application was served by Hydro One on all directly affected landowners. In addition to the Notice of Application, on May 25, 2007, the Board sent an information letter to the affected landowners providing more information on the proceeding and extending the timeline for requests to participate in the proceeding.

A large number of landowners were registered as participants in the proceeding. Most of the landowner-participants were represented by counsel as follows: Powerline Connections group of about 150 landowners represented by Borden Ladner Gervais LLP; about 30 landowners represented by Fallis, Fallis & McMillan; three landowners represented by Kevin W. McMeeken; and nine landowners represented by the Ross Firm Group. Approximately 25 landowners were registered as individual participants.

The following organizations were registered as participants: Ministry of Energy; Ontario Power Authority; Ontario Federation of Agriculture; Independent Electricity System Operator; Association of Power Producers of Ontario; Pollution Probe Foundation; Energy Probe Research Foundation; Power Workers' Union; Saugeen Ojibway Nations; Town of Halton Hills; and Halton Hills Hydro Inc.

The Board issued four procedural orders in the proceeding.

A Motions Day was held on June 25, 2007 in Toronto. On July 4, 2007, the Board issued its Decision and Order on Motions. The Board denied the requests to stay or adjourn the proceeding.

On July, 9, 2007, the Board held an Issues Day in Toronto and finalized the issues list.

The oral hearing took place on Monday, July 30, 2007 and on Tuesday, July 31, 2007 at Best Western Hotel and Suites in Orangeville, Ontario.

The following parties participated in the oral hearing:

- Toad Hall Farm Inc., represented by Rick Waern, a landowner;
- Heinrich and Theresia Eschlboeck, landowners represented by Anthony Wellenreiter of Wellenreiter & Wellenreiter ("Wellenreiter");

- Herman and Berta Weller and Cedarwell Excavating Ltd., represented by Kevin W. McMeeken of Halpin McMeeken Law Office;
- Powerline Connections, represented by Frank Sperduti of Borden Ladner Gervais LLP;
- a landowner group represented by Quinn Ross and Heather Ross of the Ross Firm Group (the "Ross Group");
- a landowner group represented by Peter Fallis of Fallis, Fallis & McMillan (the "Fallis Group");
- Power Workers' Union, represented by Richard Stephenson of Paliare Roland Rosenberg Rothstein LLP; and
- Energy Probe Research Foundation, represented by David MacIntosh.

On August 20, 2007 the Board issued its Decision and Order approving the Hydro One's application subject to certain conditions. In the Decision and Order the Board directed eligible intervenors wishing to seek cost awards to file their cost submissions in accordance with the *Practice Direction on Cost Awards* with the Board Secretary and with Hydro One within 15 days of the date of the Decision and Order. Hydro One was permitted to make submissions regarding the cost claims within 30 days of the Decision and Order and any affected party could reply within 45 days of the Decision and Order.

Cost Award Claims and Submissions

Four intervenors submitted a cost award claim:

Ross Group	$ 25,599.29
Fallis Group	$ 22,832.50
Wellenreiter	$ 9,472.67
Energy Probe	$ 5,899.45

Hydro One filed submissions on these claims on September 20, 2007. It did not object to the claims by Fallis Group, Wellenreiter and Energy Probe but did object to the amount claimed by the Ross Group. Hydro One argued that the total amount claimed by the Ross Group is excessive. The Ross Group represented only nine property owners

and incurred extra hours to have two lawyers participate in the proceeding. Hydro One also submitted that issues addressed by the Ross Group overlapped to some degree with the Fallis Group issues.

In its September 24, 2007 Reply Cost Submissions, the Ross Group argued that the number of hours claimed were necessary for the competent representation of the concerns of its members. It noted that this Section 98 access to land process was novel and involved issues that had never been before the Board. The Ross Group argued that sophisticated property law issues had to be researched, understood and arbitrated. It submitted that number of property owners represented did not affect the scope of the work that had to be done.

The Ross Group objected to Hydro One's submission that there was an overlap in the issues raised by the Ross Group and the Fallis Group. It noted that Hydro One did not indicate the degree to which there was overlap, or on which issues.

Board Findings

The Board finds that the intervenors who filed cost claims are entitled to 100% of their reasonably incurred costs of participating in the proceeding.

The Board notes Hydro One's concerns about the amount claimed by the Ross Group. But the Board does not agree that the amount claimed is excessive. In a Section 98 access to land proceeding, it is perhaps unavoidable that some of the issues addressed by the landowner groups will overlap. This is particularly true when the proposed transmission line is lengthy and crosses hundreds of properties. The Board notes that the many individual landowners consolidated their representation and that counsel for the groups appeared to cooperate and provided helpful submissions on issues without much duplication. The Board finds that the Ross Group managed their participation, their preparation and hearing time in a reasonable manner.

Most of the parties who actively participated in the access to land proceeding are also registered participants in leave to construct proceeding (EB-2007-0050). The Board is taking this opportunity to remind all the intervenors in the leave to construct proceeding, and in particular those with common interests and concerns, to cooperate and minimize costs by avoiding duplication of efforts. The Board will monitor the cost claims to ensure that costs are not awarded for duplicative efforts and activities.

The hours incurred by legal counsel for the Ross Group were higher than the legal hours for other intervenors, in part because two lawyers were involved. The Board has considered the Ross Group's use of two lawyers to prepare and participate in this case and will allow those costs in recognition that this was the first case of its kind before the Board. Notwithstanding the decision to allow these costs in this case, it remains the Board's practice in most cases to allow costs for the participation of a single counsel to represent the interest of an organization or group. It will adopt this approach in the Section 92 leave to construct proceeding for the proposed Bruce to Milton transmission line.

The Board directs Hydro One to pay the cost award upon receipt of the Board's Cost Order. The Board further directs that Hydro One shall also pay the Board's costs, of and incidental to, this proceeding immediately upon receipt of the Board's invoice.

The Board is issuing this decision as a partial decision as it understands that Powerline Connections Group, represented by Frank Sperduti of Borden Ladner Gervais LLP ("Powerline Connections") still intends to file a costs claim. Although the deadline for costs submissions is already well passed and the Board does not wish to encourage late filings, the Board will not preclude Powerline Connections from making this filing. In order to allow for the prompt payment of the costs claims that were received on time, the Board is issuing this decision as a partial decision to allow the option of granting costs to Powerline Connections at a later date. The costs claims dealt with in this partial decision will not be reviewed further, and the Powerline Connections claim will be dealt with when it is filed.

THE BOARD THEREFORE ORDERS THAT, pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Hydro One Networks Inc. shall immediately pay:

- A landowner group represented by Peter Fallis of Fallis, Fallis & McMillan the sum of **$22,832.50**
- A landowner group represented by Quinn Ross and Heather Ross of the Ross Firm Group the sum of **$25,599.29**
- Heinrich and Theresia Eschlboeck, landowners represented by Anthony Wellenreiter of Wellenreiter & Wellenreiter the sum of **$9,472.67**

- Energy Probe Research Foundation, represented by David MacIntosh the sum of **$5,899.45**
- Hydro One shall pay the Board's costs, of and incidental to, this proceeding immediately upon receipt of the Board's invoice.

DATED at Toronto, October 17, 2007
ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary