



BORDEN
LADNER
GERVAIS

Borden Ladner Gervais LLP
Lawyers • Patent & Trade-mark Agents
Scotia Plaza, 40 King Street West
Toronto, Ontario, Canada M5H 3Y4
tel.: (416) 367-6000 fax: (416) 367-6749
www.blgcanada.com

STEPHEN F. WAQUÉ / EVAN A. COOKE
direct tel.: (416) 367-6275/6202
direct fax: (416) 361-2708/2561
e-mail: swaque@blgcanada.com
e-mail: ecooke@blgcanada.com

May 4, 2007

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

Dear Ms. Walli:

Re: Hydro One Networks Inc. - Access Application of March 30, 2007
Bruce – Milton Transmission Reinforcement Project
OEB File No. EB-2007-0050 & OEB File No. EB-2007-0051
Amended Amended Letter of Comment of Interested Landowners

We write on behalf of our clients William Allison, Janet Allison, Edward Bird, Maribeth Bird, Robert Barlow, Bruce Barrett, Dave Clifford, Anne Clifford, Pat Crouse, Steve Crouse, Ralph Cunningham, Viviean Cunningham, Paul Fisher, Pat Fisher, John Hofing, John Jenkins, Julia Jenkins, Steven Joyce, Anne Joyce, Robert McClure, Susan McClure, Joseph Rice, Ivan Rice, Verna Rice, Rice & McHarg Limited, Garry Sterritt, Mary Jean Sterritt, Bonnie Neely, Perry Stuckless, Elaine Stuckless, Mark Bergermann, Janet Bergermann, Leslee Einmann and Scott Einmann (collectively the “Powerline Connections”). We state on their behalf their opposition to the Hydro One Networks Inc. (“Hydro One”) Application for Access EB-2007-0051 (the “Application for Access”).

While the named members of Powerline Connections have as-of-right standing to participate in the Application for Access hearing, they will be making an application for intervenor status pursuant to the Ontario Energy Board *Rules of Practice and Procedure* for the right to participate in the anticipated Application for Leave to Construct EB-2007-

Vancouver
Toronto
Ottawa
Montréal
Calgary

0050 hearing (“Application for Leave to Construct”). This application for intervenor status will be made at the same time as Powerline Connections submits its full written submissions in the Access Application matter, which process is described in the Notice of Application and Written Hearing (“Notice”) of the Ontario Energy Board (the “Board”), dated April 12, 2007.

Need for an Oral Hearing:

Pursuant to the Notice, we write to request an oral hearing on behalf of Powerline Connections. The Notice requires that any requests for an oral hearing be made within ten days of the date the Notice was served, which in the case of Powerline Connections was April 23, 2007. While the Notice places the onus on “directly affected landowners” to establish a justification for holding of an oral hearing, we respectfully submit that the onus should be on Hydro One to establish that anything other than an oral hearing is reasonable in the circumstance.

Powerline Connections submit that the reverse onus mentioned above is contrary to established principles of procedural fairness, and note that the Board is committed to fair, transparent, and inclusive processes that include property owners affected by Board decisions. As the Board states that regular interaction with stakeholders is an integral part of the Board’s adjudicative and regulatory policy development activities, it makes sense to hold an oral hearing wherein landowners directly affected by the Application for Access, and the related Application for Leave to Construct, can voice concerns, challenge the fairness of the procedure Hydro One proposes, cross-examine witnesses, and present evidence, all in a forum open to the public. The Board is clearly aware of Hydro One’s position based on the extensive filings of March 2007, and related interactions between the Board and Hydro One, but directly affected landowners should have an opportunity to orally present their position on same.

An oral hearing should be held so that directly affected landowners, and the public at large, may better understand Hydro One’s attempts to truncate well established legal process with respect to this proposed project. Equally important, the Board will be assisted by oral submission from counsel, given the complex issues at play in this matter.

An oral hearing will provide an opportunity for a dialogue, which may not be as easily achieved in written form. The opportunity to cross-examine representatives of Hydro One will be invaluable in presenting Powerline Connections' position. Written interrogatories are an insufficient means of cross-examining technical witnesses, as live exchanges provide cross-examiners with lines of questioning that are not likely to arise in written form.

The parties are not economically balanced. While our clients intend to file further evidence, they do not have the economic resources to match the filings of Hydro One. An oral hearing would provide the Board with a better forum to balance the opportunity to present argument and evidence relating to the Board's exercise of its discretion pursuant to Section 98.

Prematurity of Application for Access:

Powerline Connections respectfully submit that the Application for Access is premature.

First, it is premature because no meaningful negotiation has taken place for entry into a voluntary Permission to Enter Agreement. In the absence of such good faith negotiations, the Board should not consider imposing an Access Agreement on the landowners to permit what would otherwise constitute a trespass at law. At the appropriate time, our clients may wish to negotiate with Hydro One to achieve a better balanced Permission to Enter Agreement. Matters to be addressed in such negotiations may include, but may not be limited to, addressing the interests of their tenants, impact on livestock, receiving proper notice of any exercise of the right of entry, compensation for the right of entry, potential liability, and obtaining the right to any information derived from the studies, inspections or testing undertaken on their private land. Powerline Connections object to Hydro One's approach of seeking access before attempting to negotiate, and submit that a negotiation should have taken place before the Application for Access was filed.



BORDEN
LADNER
GERVAIS

Second, and more fundamentally, the Application for Access is premature because the Environmental Assessment process has not yet identified which properties are the relevant properties for study.

The *Environmental Assessment Act* (“EA Act”) requires proponents of projects such as the proposed line, to consult with interested persons, and provide public notice of proposed Terms of Reference (“TOR”).¹ The TOR are key to identifying the relevant options to be considered, to carry out the undertaking, including the alternative routes for the transmission corridor. To permit access to the properties affected by only one alternative route, before the TOR are in place, clearly demonstrates a prejudgment about the TOR. Moreover, the EA Act also states that any person who wishes to comment on the proposed TOR shall be entitled to do so by writing by a prescribed deadline. As no draft TOR have yet been made available to the general public, and no opportunity has been given to provide comment on same, it would be premature to grant Hydro One access to our clients’ properties to commence their EA field work. The particulars of the field work should not yet be clear to Hydro One, as the TOR have not been scrutinized, much less approved.

The Ministry of Environment’s Code of Practice, “Preparing and Reviewing Terms of Reference for Environmental Assessments in Ontario (Draft October, 2006)”, cited by Hydro One in the Environmental Assessment Status document (“EA Status Document”) produced as part of the Application for Leave to Construct, states that:

The first step in the application for approval to proceed with an undertaking under the *Environmental Assessment Act* is the approval of a terms of reference by the Minister. The public and other interested persons will have an early opportunity to be involved in the terms of reference process to get information about proposals that may affect them, and allow them to decide early on about the level of their concern and their need for continued participation in the planning process.²

¹ *Environmental Assessment Act*, R.S.O. 1990, c. E18, section 6.

² MOE, Code of Practice: Preparing and Reviewing Terms of Reference for Environmental Assessments in Ontario (Draft, October 2006) (hereafter “Code of Practice”) at page 1.

We respectfully submit that the Application for Access should not have been brought, and certainly should not be approved, before directly affected landowners have had the opportunity to examine the TOR for the proposed line. Directly affected landowners are not yet in a position to assess the merits of the proposed line, and should not be pressured to provide access to their properties in advance of Hydro One publishing the TOR.

The Code of Practice further states that:

At the heart of the environmental assessment planning process in Ontario is the comparative analysis of alternatives, assessing the advantages and disadvantages of the alternatives and determining the best alternative that is appropriate to address the problem or opportunity.

In the terms of reference, it is essential to set out a reasonable range of alternatives to be examined in the environmental assessment or the process by which a reasonable range of alternatives will be determined in the environmental assessment. This should be done in consultation with the ministry, other provincial and federal agencies, and other interested persons.³

It is instructive that Hydro One's EA Status Document acknowledges that "the Bruce to Milton route is the only alternative that meets (Hydro One's) needs and objectives."⁴ It is evident that Hydro One does not intend to consider a "reasonable range of alternatives...in consultation with the ministry...and other interested persons". Hydro One has clearly stated that it has selected the route it intends to follow, and is seeking access to private land to commence pre-construction activities.

Hydro One acknowledges that it has set a target in-service date for the proposed line of December 2011, and upon working backwards has discovered that its timeline is not feasible if established EA procedure and public consultation practices are observed. Consequently, it appears an Application for Access has been filed to alter the standard access application process to suit Hydro One's purposes, in a fashion that presupposes the approval of the Application for Leave to Construct EB-2007-0050 ("Application for Leave to Construct"), and ultimately the EA.

³ Ibid at p. 15.

⁴ EA Status Document at page 2/3.

Powerline Connections respectfully submit that it is not appropriate that Hydro One obtain access to private lands so that it may develop detailed argument in favour of its only chosen route, in order to justify said route in the face of other “straw alternatives” that will be dismissed with a relatively superficial level of analysis.

The Ministry of Environment’s “Guide to Environmental Assessment Requirements for Electricity Projects” states that “it is recommended that a proponent commence the screening process before project planning, site layout and facility design have progressed too far and before irreversible decisions or commitments are made”.⁵

Powerline Connections respectfully submit that Hydro One has essentially completed the project planning and design, without having published the TOR, and without having consulted the public.

While Hydro One has identified a series of testing and investigation activities it wishes to pursue, we maintain that such testing and investigation is premature and unwarranted in advance of Hydro One making public the TOR. It is noteworthy that should Hydro One eventually obtain approval of the Application for Leave to Construct, section 98 of the *Ontario Energy Board Act, 1998* (the “OEB Act”) provides an as-of-right access to lands intended to fall within the proposed project area.

Powerline Connections therefore submit that the Application for Access has been made prematurely as no TOR have been made public, and no public consultation has yet occurred. To allow Hydro One to alter standard procedure to suit its timeline would be prejudicial to directly affected landowners, including Powerline Connections, would condone Hydro One’s attempt to avoid public meaningful public consultation, and would make the EA process nothing but a formality. In sum, Powerline Connections submit that Hydro One’s proposed course is highly prejudicial to the established statutory and common law rights of directly affected landowners.

⁵ Ibid at p. 7.

Relief Requested:

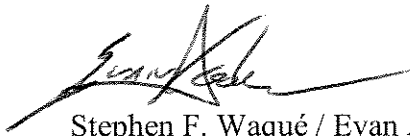
Powerline Connections request that the OEB approve the request for an oral hearing, so the concerns of directly affected landowners may be properly addressed.

Moreover, Powerline Connections request that the Board reject or alternatively adjourn Hydro One's Application for Access until such time as Hydro One's TOR have faced public scrutiny, alternative routes for the proposed line have been properly considered, the Application for Leave to Construct has been approved, the EA process is complete, and until good faith negotiations on terms of access are undertaken

Powerline Connections also request that the Board adjourn Hydro One's Application for Leave to Construct on the basis it is premature. While reserving its right to vigorously oppose approval of the Application for Leave to Construct as premature, pass comment on the TOR, and participate in the EA process, Powerline Connections respectfully request that the Board recognize its individual member as full parties to all the Board's processes related to that Application for Leave to Construct to the extent it proceeds at this time.

Finally, counsel for Powerline Connections request that all future correspondence affecting the rights of Powerline Connections be copied on Borden Ladner Gervais LLP so we may remain apprised of all matters relating to the Hydro One Applications.

Yours very truly,



Stephen F. Waqué / Evan A. Cooke
SFW/EAC:jr

cc: Mr. Glen MacDonald (via email)
cc: Mr. James H. Smellie (via email)

::ODMA\PCDOCS\TOR01\3534559\3