



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](http://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](mailto:swaque@blgcanada.com)  
e-mail: [ecooke@blgcanada.com](mailto:ecooke@blgcanada.com)

May 14, 2007

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
P.O. Box 2319  
27<sup>th</sup> 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**

**Written Submissions of Powerline Connections -  
Directly Affected Landowners**

Please find attached hereto the Written Submissions of a group of directly affected landowners calling themselves Powerline Connections.

Powerline Connections is comprised of those individuals listed at numbered paragraph one, on the following page. That list has grown since Powerline Connections filed with the Board its original request for Oral Hearing on May 3, 2007.

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)

Vancouver  
•  
Toronto  
•  
Ottawa  
•  
Montréal  
•  
Calgary

## ONTARIO ENERGY BOARD

**In the matter of the *Ontario Energy Board Act, 1998*;**

**And in the matter of** an Application by Hydro One Networks Inc., pursuant to subsection 98(1.1)(a) of the *Ontario Energy Board Act, 1998*, for an Interim Order granting access to land in connection with the Applicant's request for leave to construct a new transmission line in southwestern Ontario and the Greater Toronto Area, from the Bruce Power Complex on Lake Huron to the town of Milton.

### WRITTEN SUBMISSIONS OF DIRECTLY AFFECTED LANDOWNERS

#### **Directly Affected Landowners:**

1. 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, Scott Einmann, John MacLeod, Melanie MacLeod, Joanne Coletta, Fernando Coletta, Maria Coletta, Rosa Nucci, Vittorio Nucci, Jim Dinatale, Lisa Dinatale, Eileen Dinatale, and Elda Threndyle (collectively "Powerline Connections") are all "directly affected landowners" as described in the Ontario Energy Board's (the "Board") Notice of Application and Written Hearing, dated April 12, 2007 ("Notice").
2. Powerline Connections oppose Hydro One Networks Inc.'s ("Hydro One") Application for Access EB-2007-0051 (the "Application for Access").
3. While the named members of Powerline Connections have as-of-right standing to participate in the hearing of the Application for Access, whether it be oral or written, they have also applied to the Board for intervenor status by letter dated

May 14, 2007. That application for intervenor status relates to both the Application for Access, and to the anticipated hearing of Hydro One's Application for Leave to Construct EB-2007-0050 ("Application for Leave to Construct").

**Need for an Oral Hearing:**

4. Pursuant to the Notice, Powerline Connections request an oral hearing. The Notice required 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. The request for an oral hearing was served on the Board and on Hydro One on May 3, 2007, and was copied on Hydro One. These written submissions elaborate on that May 3, 2007 correspondence. Please find that May 3, 2007 correspondence attached hereto.
5. 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.
6. 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.

7. Rule 34.01 of the Board's *Rules of Practice and Procedure* (the "Rules") states that:

In any proceeding, the Board may hold an oral, electronic or written hearing, subject to the *Statutory Powers Procedure Act* and the statute under which the proceeding arises.
8. Section 5.1(2) of the *Statutory Powers Procedure Act*<sup>1</sup> states that "the tribunal shall not hold a written hearing if a party satisfies the tribunal that there is good reason for not doing so.
9. 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.
10. The parties are not economically balanced. While Powerline Connections 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 of the *Ontario Energy Board Act, 1998*(the "OEB Act").<sup>2</sup>

---

<sup>1</sup> R.S.O. 1990, c.S. 22.

<sup>2</sup> S.O. 1999, c. 15, Sched B.

**Prematurity of Application for Access:**

11. Powerline Connections respectfully submit that the Application for Access is premature.
- (i) *Lack of Meaningful Negotiations*
12. The Application for Access is premature because no meaningful negotiations have 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 access rights on 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, period of the right of access, 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.
13. Powerline Connections submit that directly affected landowners who lease their directly affected lands to tenants, and the tenants themselves, should not be put to the inconvenience of having Hydro One employees, contractors, and agents entering upon those lands without having some control over the terms and duration of that entry. Directly affected landowners, and/or their tenants, may want to be on-site to supervise during any period of entry upon their lands. Access with limitation may lead to lost wages, and a variety of scheduling difficulties. Consequently, Powerline Connections submit that any Permission to Enter agreement, providing same may be negotiated, should have defined dates for the commencement and termination. Further, Powerline Connections submit

- that any individual entry on the directly affected land should be preceded with proper advanced notice to the directly affected landowner and/or their tenants.
14. Powerline Connections submit that because livestock may be affected by the activities for which Hydro One seeks entry, directly affected landowners and/or their tenants should be, in the event a Permission to Enter may be negotiated, provided with detailed particulars of any and all activities Hydro One plans to undertake while on each property. These particulars should be provide with proper advanced notice, so the directly affected landowners and/or their tenants may address concerns about the impact of the proposed Hydro One activities on said livestock.
  15. Powerline Connections submit that any Permission to Enter agreement, provided same may be negotiated, must contain language that ensures any information resulting from the studies, inspections, or testing undertaken on the directly affected land be provided to the directly affected landowner. To allow entry onto private property for studies, inspection, or testing without such a provision would be procedurally unfair, and would provide Hydro One with a more detailed understanding of a property than the owner of that property.
  16. Powerline Connections submit that any Permission to Enter agreement, providing same may be negotiated, must contain a compensation provision for the directly affected landowners. This compensation should reflect the inconvenience directly affected landowners and their tenants are likely to experience as a result of the proposed Hydro One activities. Powerline Connections submit that providing Hydro One agrees to the provisions enumerated above, and such other reasonable provisions that may arise, compensation of at least \$2,500.00 should be paid for each parcel to which Hydro One seeks entry.
  17. In sum, Powerline Connections submit that because Hydro One has not made a meaningful effort to achieve a negotiated Permission to Enter agreement, it would be premature and unjust to approve the Application for Access.

(ii) *No Approved Terms of Reference*

18. 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.
19. 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”).<sup>3</sup> 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.
20. The Ministry of Environment’s Code of Practice (“Code of Practice”)<sup>4</sup>, cited by Hydro One in the Application for Leave to Construct<sup>5</sup> 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

<sup>3</sup> *Environmental Assessment Act*, R.S.O. 1990, c. E18, section 6.

<sup>4</sup> Code of Practice: Preparing and Reviewing Terms of Reference for Environmental Assessments in Ontario (Draft, October 2006).

<sup>5</sup> Reference to Code of Practice appears in the Environmental Assessment Status document (“EA Status Document”), filed March 29, 2007 as Exhibit B, Tab 6, Schedule 8 to the Application for Leave to Construct.

concern and their need for continued participation in the planning process.<sup>6</sup>

21. 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.

22. 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.<sup>7</sup>

23. 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."<sup>8</sup> 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.

---

<sup>6</sup> Code of Practice at page 1.

<sup>7</sup> Ibid at p. 15.

<sup>8</sup> EA Status Document at page 2/3.



24. 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 to land process in order 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.
25. 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.
26. The Ministry of Environment's "Guide to Environmental Assessment Requirements for Electricity Projects"<sup>9</sup> 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".<sup>10</sup>
27. 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.
28. 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

---

<sup>9</sup> MOE Environmental Assessment and Approvals Branch, March 2001.

<sup>10</sup> Ibid at page 7.

Construct, section 98 of the OEB Act provides an as-of-right access to lands intended to fall within the proposed project area.

(iii) ***The Integrated Power System Plan Has Not Been Approved***

29. Hydro One attributes the need to have the proposed line in service by 2011 to anticipated demand figures provided to Hydro One by the Ontario Power Authority (“OPA”). Hydro One states that it was advised by the OPA that Hydro One must work “as quickly as possible” to initiate the activities necessary to construct the proposed line, in order to meet the “earliest possible in-service date of December 2011.
30. Hydro One filed as part of the Application for Leave to Construct a letter from Dwight Duncan, the Minister of Energy of Ontario, that directed OPA to create an Integrated Power System Plan (“IPSP”) pursuant to section 25.30 of the *Electricity Act, 1998* (the “Minister’s Letter”). That letter dated June 13, 2006, requested that the IPSP meet a series of goals, one of them being an analysis of how the transmission system in Ontario can be strengthened. The final line of the Minister’s Letter states that the IPSP “should comply with Ontario Regulation 424/04 as revised” (O. Reg. 424/04”).
31. O. Reg. 424/04 sets out the particulars of the development of IPSPs. Section 2(1) of O. Reg. 424/04 states that:

In developing an integrated power system plan under subsection 25.30(1) of the Act, the OPA shall follow directives that have been issued by the Minister under subsection 25.30(2) of the Act and shall do the following:

2(1)(8) Ensure that for each electricity project recommended in the plan that meets the criteria set out in subsection (2), the plan contains a sound rationale including,

(i.) an analysis of the impact on the environment of the electricity project, and

(ii.) an analysis of the impact on the environment of a reasonable range of alternatives to the electricity project. O. Reg. 277/06, s. 1.

2(2) For the purposes of paragraph 8 of subsection (1), the following are the criteria:

(1.) An environmental assessment of the electricity project under Part II of the *Environmental Assessment Act* must be required.

32. Section 25.30(1) of the *Electricity Act, 1998* directs that IPSPs should be submitted to the Board for review, so that the Board may ensure they comply with any directions issued by the Minister and that the IPSPs are economically prudent and cost effective.

33. Powerline Connections submit that while the IPSP was released in preliminary format in February 2007, review by the Board is not yet complete. The IPSP notes under the heading Putting the Plan into Action that:

The plan will be put into action once the Ontario Energy Board (OEB) approves it. The OPA will submit the plan in 2007 to the OEB, which will review it through an open process that includes public hearings. The OEB's role is to ensure that the plan complies with government policy and is cost effective.

34. While the Board has not completed the IPSP review, the OPA has indicated to Hydro One by letter of March 23, 2007 that the proposed line should be advanced despite the IPSP not having been approved:

Although this project is consistent with the IPSP, we do not believe that it can await the outcome of the IPSP proceeding if it is to meet the earliest possible in-service date, which Hydro One staff have indicated is December 1, 2011.

35. While the OPA has the power under section 25.2(5)(e) of the *Electricity Act, 1998* to "take such steps as it considers advisable to ensure there is adequate transmission capacity as identified in the integrated power system plan",

Powerline Connections submit that the OPA does not have the authority to circumvent the IPSP process or the *Environmental Assessment Act* to ensure there is adequate transmission capacity. Moreover, Powerline Connections submit that the OPA does not have the authority to direct Hydro One to act on recommendations contained in a preliminary IPSP.

(iv) ***No Expropriation Proceedings Have Been Commenced***

36. The Application for Access states that:

Early Access Activities relating to property appraisals and legal surveying are required for negotiations with landowners to commence and for an expropriation plan to be developed and filed. The expropriation plan must be approved and registered under the *OEB Act* and the *Expropriations Act*, respectively, prior to construction of the line commencing in early 2009.<sup>11</sup>

37. Powerline Connections note that the *Expropriations Act*, section 10(3), allows for entry to land for valuation purposes, but not until the formal expropriation process has been commenced and notice of same served on the owner:

An expropriating authority may, after it has served notice of expropriation on the owner in possession of the lands expropriated, and with the consent of said owner, enter on the expropriated lands for the purpose of viewing the appraisal, but, where the consent of the owner is not given, the expropriating authority may apply to the Board which may, by order, authorize the entry upon such terms and conditions as may be specified in the order.<sup>12</sup>

38. Powerline Connections note that none of its members has yet been served with any expropriation documents, and none have been given notice of any application to the Ontario Municipal Board seeking access under s. 10(3) of the *Expropriations Act*. In any event, proceeding with an expropriation process would also be premature without an approved EA. Moreover, Powerline Connections are unaware of any expropriation related provision in the OEB Act

---

<sup>11</sup> Application for access, para 8.

<sup>12</sup> Expropriations Act, R.S.O. 1990, c. E.26.

that allows a proponent to access private land without prior approval of an application for leave to construct.

(v) ***Summary of Argument Regarding Prematurity of Application for Access***

39. Powerline Connections therefore submit that the Application for Access has been made prematurely as:

- (a) No attempt has been made to negotiate a voluntary Permission to Enter agreement with the directly affected landowners;
- (b) The EA process is far from complete, no TOR have been made public, and no public consultation has yet occurred. Moreover, meaningful study of alternative routes is lacking and Hydro One intends to promote a route it has already selected, despite the EA requirement that there be discussion on that very issue;
- (c) The Board has not yet completed its review of the OPA's IPSP as required by section 25.30(5) of the *Electricity Act, 1998*;
- (d) The Minister's Letter explicitly mandated that the IPSP comply with O. Reg. 424/04, which in turn mandated that all IPSPs comply with the *Environmental Assessment Act*. The OPA does not have the authority to advance projects that do not comply with O. Reg. 424/04 or the *Environmental Assessment Act*;
- (e) No expropriation proceeding has been commenced under either the *Ontario Energy Board Act*, or the *Expropriations Act*, and therefore provide no assistance to Hydro One in its efforts to gain access to the lands of the directly affected landowners.

40. 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 TOR, EA, and IPSP processes nothing but formalities. 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.

**Relief Requested:**

41. By letter of May 3, 2007, Powerline Connections requested that the OEB approve its request for an oral hearing, so the concerns of directly affected landowners may be properly addressed (“May 3, 2007 Letter”).
42. By letter of May 14, 2007, Powerline Connections made an application for intervenor status (“Application for Intervenor Status”).
43. By letter of May 14, 2007, Powerline Connections made an application for a Board order deeming Powerline Connections eligible to make claim for, and receive, cost awards pursuant to the Rules and the Board Practice Direction Cost Awards (“Cost Award Eligibility Application”).
44. By these written submissions, Powerline Connections request that the Board reject, or alternatively adjourn, Hydro One’s Application for Access until such time as the IPSP has been reviewed and approved, 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 (“Written Submissions”).
45. With the understanding that the Board does not intend to hear argument on the merits of the Application for Leave to Construct, Powerline Connections will reserve further argument on the procedural and substantive merits of that Application for Leave to Construct for a later date, but notes for the record that it is also opposed to the Application for Leave to Construct on the basis it is premature and ill-conceived. Powerline Connections also hereby reserve its right to pass comment on the IPSP and the TOR, participate in the EA process, and resist any efforts to expropriate the lands of the directly affected landowners.



46. Powerline Connections request that a copy of all documents filed with the Board be served on Powerline Connections and Powerline Connections' counsel, as follows:

a) **Mr. Robert Barlow**  
Powerline Connection Coordinator  
4992 5<sup>th</sup> Line, RR #2  
Limehouse, Ontario, L0P 1H0

Tel.: 905-873-7552  
E-mail: [rbarlow@fountaingreen.com](mailto:rbarlow@fountaingreen.com)

b) **Mr. Stephen Waqué**  
Partner  
Borden Ladner Gervais LLP  
Scotia Plaza, 40 King Street West  
Toronto, Ontario, M5H 3Y4

Tel.: 416-367-6275  
Fax.: 416-361-2708  
E-mail: [swaque@blgcanada.com](mailto:swaque@blgcanada.com)

::ODMA\PCDOCS\TOR01\3547641\2