

February 15, 2008

Gordon M. Nettleton  
Direct Dial: 403.260.7047  
gnettleton@osler.com  
Our Matter Number: 1099714

**BY ELECTRONIC MAIL & COURIER**

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street, Suite 2700  
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: OEB-2007-0050 – Hydro One – Bruce-Milton Transmission Reinforcement  
Project Pollution Probe Correspondence dated February 13, 2008**

I am writing to you on behalf of Hydro One Networks Inc. (“Hydro One”) in respect of Pollution Probe’s request to have “the Board slightly revisit the timetable set out in Procedural Order No. 4.” We are also in receipt of correspondence from Mr. Fallis, of February 14, 2008, and Mr. Ross, of February 15, 2008, which support Pollution Probe’s position. This letter accordingly responds to the concerns as raised in Pollution Probe’s request.

Despite Pollution Probe’s attempt to downplay the impact of its request, what has been requested is a minimum 9 week delay in the commencement of the oral public hearing portion of OEB-2007-0050. The relief Pollution Probe seeks is substantial in nature. This is particularly so given the nature of the Project, the likely involvement of the public, and the suggested implications of scheduling public hearings in the midst of the summer vacation season. The changes sought by Pollution Probe should be considered in that light. Only if there is clear demonstration that the existing timetable would likely lead to some error in procedural fairness should Pollution Probe’s request be entertained.

It is Hydro One’s submission that Pollution Probe’s three justifications, namely (a) timing of the EA Process; (b) past “history” of the existing proceeding and nature of the Project; and (c) available time to complete the pre-hearing evidentiary step, do not demonstrate any procedural unfairness and, in any event, do not outweigh the resulting delay and impacts to landowners from altering the scheduling so that the public hearings occur in the summer period. Further reply submissions specific to each of Pollution Probe’s three justifications are provided below. While Hydro One is likely to be challenged by certain of the milestone dates, it is nonetheless prepared to proceed forward and, as best possible, to meet the Procedural Order No. 4 timetable deadlines.

## ***Timing of the EA Process***

Pollution Probe's argument appears to be that resubmission by Hydro One of its EA Terms of Reference and the completion of the public comment period into the resubmission have created some unexplained substantial delay which now renders it "unlikely that approval of the EA Terms of Reference will be forthcoming soon, and thus the entire EA process will be further postponed."

How the completion of a public comment period into the revised EA Terms of Reference in any way suggests that the EA process is now, or will likely be, significantly out of step with this Board's decision to commence oral hearings in May, is not explained at all by Pollution Probe. While the Terms of Reference milestone date has obviously changed, this change has not had a significant effect on Hydro One's EA process as preparatory work efforts continue.

The fact is that completion of the additional commentary exercise into the resubmitted EA Terms of Reference will have taken place some 11 weeks before the date on which the OEB public hearing process is contemplated to start. Presumably that window should provide ample time for decisions to be taken in respect of the Terms of Reference and for the EA process to proceed in earnest.

It is also the case that resubmissions on the Terms of Reference have occurred while at the same time revisions have been made to the Board's original hearing schedule (i.e., that which was set out in Procedural Order No. 3). Deferrals in both processes have occurred such that they remain as "in step" as they were from the start of this proceeding. There is simply no basis for Pollution Probe to now suggest otherwise. For these same reasons, Hydro One also opposes the suggested additions to the list of issues presented in Mr. Ross' letter of February 15, 2008.

## ***Past History of this Proceeding and Nature of the Project***

Pollution Probe appears to suggest that because the Board provided more procedural time and steps at the initial Motions Day proceeding into EB-2007-0050, this should in some way serve as justification for allowing parties to request and receive additional time and procedural steps to participate in this proceeding, without more consideration.

Hydro One simply does not follow Pollution Probe's logic. The fact is that Hydro One's application has now been before the Board and interested parties for some 46 weeks since the filing date of March 29, 2007. Motions Days, Issues Days and Technical

Conferences have all been held to allow parties the opportunity to better understand Hydro One's Application. The fact also is that there has been a substantial period of time between the Technical Conference and the issuance of Procedural Order No. 4 for parties to continue their review of Hydro One's Application, consider and prepare information requests and at least start to prepare evidence that they may intend to sponsor. Given these circumstances, and given Pollution Probe's participation in the past, it cannot be said that the remaining pre-hearing evidentiary activities of preparing information requests and direct evidence have only now come to fruition with the issuance of Procedural Order No. 4.

### *Extensions and Additions to the Procedural Order No. 4 Timetable*

#### (a) Hydro One's Need for Additional Time to Complete Responses to Information Requests

Pollution Probe suggests that an additional week should be provided to Hydro One so that it may complete its responses to information requests. On the one hand, Pollution Probe suggests that the additional time is required because Hydro One refused to answer written interrogatories or provide undertakings during the Technical Conference, and that the Technical Conference as a result was less than successful. Yet on the other hand, Pollution Probe suggests that the interrogatory process must now become broader and that Pollution Probe's information requests must now be revised to take into account the information and learnings obtained through the Technical Conference.

What remains unclear to Hydro One is if Pollution Probe (or others) already have information requests prepared, why such requests cannot be provided to Hydro One well in advance of the March 10 filing deadline. In its view, if Pollution Probe is expecting Hydro One to be inundated with information requests on March 10, 2008, then there is all the more reason to file those questions that are already prepared and await Hydro One's consideration. Procedural Order No. 4 does not restrict or prevent interveners from filing information requests in advance of the deadline or to send multiple sets of questions to the Applicant before the filing deadline. Such steps may very well avoid altogether the "inundation" issue and allow Hydro One and all parties the opportunity to complete the intended exercises and review responses to requests in advance of the milestone dates.

#### (b) Need for an Additional Motions Day

Hydro One is not averse to the concept of the Board potentially convening a Motions Day process to consider common Motions made by parties into responses to information requests. That said, Hydro One does not agree that filing deadlines for intervenor evidence should become dependent upon the results of any Motions Day Process. If

Motions to compel better answers to information requests are successful, the opportunity for interveners to make revisions to their evidence should be afforded and filed accordingly.

## **Conclusions**

Based on the above, Hydro One respectfully submits that Pollution Probe's request to adjust the Procedural Order No. 4 Timetable such that the commencement of the oral portion of the hearing does not commence before July 7 should be rejected.

Hydro One notes Pollution Probe's willingness to make appearances before the Board to have this matter considered further. Hydro One submits that this matter is not one which merits further oral submissions. Pollution Probe's request is clear. The Board should therefore act accordingly based upon the submissions before it. In the alternative, if further consideration is deemed necessary, Hydro One would support having this matter set down during the potential Issues Day process contemplated to take place on February 21, 2008, as per Procedural Order No. 4.

Yours truly,



for: Gordon M. Nettleton  
GMN:Sln

c: Basil Alexander of Klippensteins