

February 19, 2008

**BY COURIER (10 COPIES) AND EMAIL**

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
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Dear Ms. Walli:

**Re: Pollution Probe – Reply to Hydro One’s Submissions on  
Request to Slightly Revisit Timetable  
EB-2007-0050 – Hydro One – Bruce-Milton Transmission  
Reinforcement Project**

We write on behalf of Pollution Probe to respond to Hydro One’s submissions dated February 15, 2008 regarding Pollution Probe’s request that the Board slightly revisit the timetable set out in Procedural Order No. 4. With respect, Hydro One has not provided a reasonable basis to reject Pollution Probe’s request. Pollution Probe continues to rely on its original submissions dated February 13, 2008, but it does provide reply submissions below to some of Hydro One’s specific submissions. We would also appreciate the Board’s direction on how it wishes to deal with Pollution Probe’s request (e.g. in writing based on submissions already received or by further oral submissions on February 21, 2008 or such other date as directed by the Board).

**Detailed Reply Submissions**

First, Hydro One appears to ignore the Board’s broad powers and discretion with respect to timetables. As the Board is aware, the Board’s *Rules of Practice and Procedure* state:

- 4.03 The Board may *at any time* amend any procedural order.
- 7.01 The Board may on its own motion or upon a motion by a party *extend* or abridge *a time limit* directed by these Rules or by the Board, *on such conditions the Board considers appropriate*.
- 7.02 The Board may *exercise its discretion* under this Rule before or after the expiration of a time limit, *with or without a hearing*.

- 7.03 Where a party cannot meet a time limit directed by the Rules, Practice Directions or the Board, the party shall notify the Board Secretary as soon as possible before the time limit has expired. [emphasis added]

Pollution Probe submits that it has simply acted in accordance with the letter and spirit of these Rules. The Board has previously exercised its powers and discretion with respect to timetables as appropriate, including in this and many other proceedings. Given the circumstances of Pollution Probe's reasonable request, Pollution Probe submits that now is another such appropriate occasion.

Second, with respect to Hydro One's assertions regarding the supposed impact of Pollution Probe's request on the landowners, Pollution Probe respectfully defers to the landowners themselves:

- The Fallis Group – “***We could not agree more with [Pollution Probe's] comments of concern about the extremely tight dates*** ... With due respect[,] we suggest that they have been established without needed time regard for the interests of the interveners and, we suspect, the Applicant itself [emphasis added].”<sup>1</sup>
- The Ross Firm Group – “***The Ross Firm Group agrees with and adopts the submissions of Pollution Probe and The Fallis Group with regard to the timeline*** ... Specifically, it is this writer's opinion that the timeline as set will be oppressive for both the intervenor groups as well as the proponent [emphasis added].”<sup>2</sup>
- Mr. Chris Pappas agreed with and adopted the position of The Ross Firm Group.<sup>3</sup>
- Powerline Connections – “***Powerline Connections further requests that the Board hear submissions about the timeline*** ..., particularly in light of the continued uncertainty regarding the environmental assessment approval and ***there is a clear risk that the hearing of the Leave to Construct application will be forced to commence before the [EA] Terms of Reference are even approved*** [emphasis added].”<sup>4</sup>

Pollution Probe respectfully submits that the landowners' submissions and positions strongly amplify Pollution Probe's position, and contradict Hydro One's claims.

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<sup>1</sup> Submissions of the Fallis Group dated February 13, 2008 at page 1.

<sup>2</sup> Submissions of the Ross Firm Group dated February 15, 2008 at page 4.

<sup>3</sup> Submissions of Mr. Chris Pappas dated February 15, 2008 at page 3.

<sup>4</sup> Submissions of Powerline Connections dated February 15, 2008 at page 2.

Third, Hydro One appears to have missed the key point of Pollution Probe's reference to the ongoing postponement of the EA process. As the Board is aware, this project requires, by statute, approval from *both* the Board and the EA process. Hydro One's evidence estimates about a year between approval of the EA terms of reference and potential final EA approval.<sup>5</sup> However, since the EA terms of reference are not even approved yet, the earliest time that final EA approval could be obtained is currently being pushed back on an ongoing basis. As final EA approval is statutorily required for this project to proceed, Pollution Probe submits that *no prejudice* accrues by introducing slightly more time into the Board's timetable (e.g. the introduction of slightly more time into the Board's timetable would not delay the project overall given the ongoing postponement of the EA process).

Fourth, Hydro One appears to misunderstand and downplay the importance of interrogatory *responses* to the preparation of intervenor expert evidence. As the Board is aware from other proceedings, interrogatory responses are sometimes fundamental to the proper and efficient preparation of intervenor's expert evidence (particularly here given Hydro One's narrow and limited approach at the technical conference).<sup>6</sup> For example, if an interrogatory response provides the necessary evidence for an intervenor, the intervenor's expert is unlikely to be duplicative. Conversely, if an interrogatory response shows serious conflicting issues that the Board needs to consider, the intervenor's expert will likely need to provide necessary and high quality evidence to assist the Board's understanding of these technical and specialized transmission issues. These realities need to be incorporated into the timetable now, as detailed in Pollution Probe's February 13, 2008 submissions, rather than on ad hoc basis later on that will unnecessarily complicate and impact the proceeding in unknown ways.

### **Conclusion**

In light of all of the above and Pollution Probe's previous submissions, Pollution Probe respectfully submits that Hydro One has not provided a reasonable basis for the Board to reject Pollution Probe's request. It is appropriate for the Board to slightly revisit the current timetable for this matter, particularly since Hydro One, with all of its resources, itself notes that "Hydro One is likely to be challenged by certain of the milestone dates [in the current timetable]."<sup>7</sup> Such a revisit would likely only add about 2 months to the existing timetable, and it would significantly increase the Board's understanding of the issues that it will need to decide. These minor changes would also keep the Board's processes "in step" with the EA process, which is currently subject to an ongoing postponement.

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<sup>5</sup> See Exhibit A, Tab 2, Schedule 1, page 4, as filed March 29, 2007 and as updated November 30, 2007.

<sup>6</sup> For further details, see Pollution Probe's submissions dated February 13, 2008 at pages 3-4 and Tab 1.

<sup>7</sup> Submissions of Hydro One dated February 15, 2008 at page 1.

We hope that the Board will address Pollution Probe's reasonable request and concerns, and please do not hesitate to contact Murray Klippenstein or the undersigned if you wish to discuss this matter further.

Yours truly,

A handwritten signature in blue ink, appearing to read 'B. Alexander', with a long, sweeping horizontal stroke extending to the right.

Basil Alexander

BA/ba

cc: Applicant and Intervenors per Procedural Order #4