

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

**AND IN THE MATTER OF** an application by Ontario Power Generation Inc. pursuant to section 78.1 of the *Ontario Energy Board Act, 1998* for an Order or Orders determining payment amounts for the output of certain of its generating facilities.

**BRIEF OF MATERIAL RE  
DRAFT ISSUES LIST**

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**EB-2007-0050**

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

**AND IN THE MATTER OF** an Application by Hydro One Networks Inc. pursuant to section 92 of the Act, for an Order or Orders granting leave to construct a transmission reinforcement project between the Bruce Power Facility and Milton Switching Station, all in the Province of Ontario;

**BEFORE:** Pamela Nowina  
Presiding Member and Vice-Chair

Cynthia Chaplin  
Member

## **ISSUES DAY - DECISION AND ORDER**

### **Background**

The Board held an Issues Day on September 17, 2007. At the hearing the Board received a list of issues to which the parties had agreed and heard submissions on a number of contested issues.

The Board's findings on the contested issues, which are set out below, include some additions to the issues list and some modifications to the agreed issues. Except where a modification has been made to an agreed issue as a result of the Board's conclusions on a contested issue, the Board accepts the agreed issues for inclusion on the Issues List. The Board also notes that at Issues Day the parties agreed to modify agreed issues 3.1, 3.2 and 3.3 to include the phrase "near term and" before the words "interim measures" in each case. The heading for these issues was changed as well. The

Board also accepts this change. The complete approved Issues List appears at Appendix A.

There was some discussion throughout the course of the proceeding as to the purpose of the Issues List. The Board reminds parties that the Issues List has two purposes: 1) it defines the scope of the proceeding; and 2) it articulates the questions which the Board must address in reaching a decision on the application. The Board does not believe it is appropriate to define the Issues List in complete detail. For many of the issues, the Board expects that sub-issues will arise during the course of the proceeding which will need to be addressed in argument and in the final decision. It is not possible to identify all of those detailed issues now so early in the process. The Board is therefore hesitant to include detailed sub-issues on the Issues List if the matters are otherwise included in a broader issue.

### **The Contested Issues – Project Need and Justification**

#### ***1.1 Is it appropriate for Hydro One to have relied as it has on the OPA for the need for the project and the route and corridor selection? Further, has Hydro One properly considered the OPA's current 20 year plan?***

This issue was proposed by Powerline Connections and was supported by Pollution Probe and the landowners represented by Mr. Ross and Mr. Fallis. The issue was opposed by Hydro One and PWU.

The Board agrees that Hydro One's reliance on the OPA is a relevant consideration, and we note that Hydro One has confirmed that witnesses from the OPA will appear at the hearing. However, the Board will not adopt the issue as proposed. Rather, the following issue will be added: *Has the need for the proposed project been established?* The Board finds that it is appropriate to add this direct question to the list, as suggested by PWU, as this is one of the key issues which the Board will have to address in its decision. The issue is also broad enough to ensure that Hydro One's reliance on the OPA can be explored.

The aspect of the contested issue related to the OPA's current 20 year plan can be explored in the context of project need and alternatives. The Board's findings in respect of issues related to alternatives and the comparison of alternatives follow later in this decision.

***1.2 Should leave to construct be granted now or should the consideration of the need and justification for the line and the leave to construct being sought be deferred until the completion of an approved Environmental Assessment Report, or alternatively at least approval of the EA Terms of Reference?***

The issue was proposed by Powerline Connections and was supported by Pollution Probe and the landowners represented by Mr. Ross and by Mr. Fallis. The issue was opposed by Hydro One and PWU.

The Board has to some extent addressed this issue already in its Decision and Order on Motion, dated July 4, 2007, as follows:

Both the Leave to Construct and the EA approval are required before the project may proceed, but neither process is completely dependent upon the other. There is the potential for conflicting results, but that potential arises no matter which process goes first. Therefore, the proponent and the agencies involved must manage these applications in an appropriate manner. As Hydro One pointed out, the Board's leave to construct orders are conditional on all necessary permits and authorizations being acquired, including a completed EA. In this way, the Board ensures that it is not in contravention of the EA Act but allows for the timely consideration of applications before it.

The Board, however, is of the view that the two processes should not be significantly out of step. For example, the leave to construct would be significantly affected if the EA Terms of Reference did not include the same route. Therefore, the Board will proceed with the Leave to Construct application, but we will reassess the matter in advance of the oral phase of the hearing if the Terms of Reference are still not approved at that time.

The Board's mandate is to assess the proposal in terms of price, reliability and quality of electricity service. Part of that assessment involves an analysis of alternatives. Any assessment of alternatives in the EA process will be in terms of environmental and socio-economic impact. To the extent that alternatives raised in the EA process are relevant and material to the comparison of alternatives in terms of price, reliability and quality of electricity service, those alternatives may appropriately be considered in the Leave to Construct application. The Board's findings in respect of issues related to alternatives and the comparison of alternatives are set out in the next section of this decision.

The Board (in the Motions Day Decision and Order) has already decided that it is premature to determine, at this point, whether the schedule and finalization of the Leave to Construct application process should be revised in light of the EA process. The Board has also decided that it will reassess the issue of the relative timing of the Leave to Construct application and the EA process, if approved Terms of Reference are not available in advance of the oral hearing. Currently, the processes are aligned; the draft EA Terms of Reference and Leave to Construct application include the same proposed route. Therefore, the Board finds it unnecessary to include the contested issue on the Issues List.

The Board does find that it is appropriate to add an issue to address potential conditions of approval on a leave to construct order. The issue will be: *"If Leave to Construct is approved, what conditions, if any, should be attached to the Board's Order?"*

***1.3 Have all appropriate project risk factors pertaining to the need and justification (including but not limited to the costs and rate impacts of EMFs, forecasting, technical and financial risks) been taken into consideration in planning this project?***

The underlined text was proposed by Powerline Connections and was supported by the landowners groups represented by Mr. Ross and Mr. Fallis. The additional wording was opposed by Hydro One, PWU and Board staff. The balance of the issue was agreed to by all parties.

Hydro One acknowledged that issues related to electromagnetic fields ("EMFs") would be relevant in the context of the technical risks of the project (and questions of how the design of the options have taken EMFs into account) but submitted that specific identification of EMFs as a risk factor was unnecessary. Hydro One also acknowledged that litigation risk might be a relevant financial risk but cautioned against too detailed an enquiry.

The Board will not include the proposed additional wording. EMFs (the uncertainty related to, and the mitigation in respect of) may have an impact on the design and cost of the project, and, therefore, on the rate impact of the project. However, we conclude that these impacts, if they are material, are among the technical and financial risks of the project. As a result, the impacts can be explored in that context, and it is not necessary to identify this one specific aspect of those risks when setting the issue. The

Board cautions that an examination of the health and/or socio-economic impacts of EMFs is beyond the scope of this proceeding. Any examination of the technical or financial risks to the project related to EMFs must be clearly grounded in the impact on consumers in terms of price (the cost of the project), reliability and quality of electricity service.

## **The Contested Issues – Project Alternatives**

### ***2.1 Have landowner proposed refinements or alternatives to the proposed route and corridor been adequately addressed?***

The issue was proposed by Powerline Connections and was supported by the landowners represented by Mr. Ross and Mr. Fallis. The issue was opposed by Hydro One.

There was discussion as to whether the contested issue was already covered by one of the agreed issues (namely: *Have all reasonable alternatives to the project been identified and considered?*). The dispute centred on whether there should be a consideration of alternative routes and/or alternative corridors. Hydro One submitted that detailed routing should be the subject of the EA process only, and that the Board should only hear issues related to alternative corridors and broad alternatives to the proposed project. However, Hydro One was not entirely consistent in its application of this proposed approach in that it agreed that the issue related to the route near Hanover would be a corridor issue, but suggested that switching the route from the applied for corridor to the other side of the existing corridor would be a detailed routing issue.

The Board does not agree with Hydro One's proposed delineation. The Board finds that it can and should address route alternatives that have a material impact on price, reliability and quality of electricity service, and we note Powerline Connections' intention to file evidence in this respect. That assessment should be included in the comparison of all reasonable alternatives. The Board notes that these alternatives may be alternatives in routing within the applied for corridor or alternatives outside the applied for corridor.

The Board concludes that on this basis the agreed issues related to project alternatives and the comparison of alternatives are sufficient to cover any relevant alternatives

proposed by landowners or other parties. Therefore, the contested issue will not be added.

***2.2 For all the considered alternatives, does the evaluation methodology utilized include a cost benefit comparison as well as a comparison of all relevant quantitative and qualitative benefits, including the impact of EMFs?***

The underlined text was proposed by Powerline Connections and supported by the landowners represented by Mr. Ross and Mr. Fallis. The proposed additional wording was opposed by Hydro One, PWU and Board staff. The balance of the issue was agreed to by all the parties.

Parties did not make submissions on this issue, but adopted their submissions on contested issue 1.3. Similarly, the Board's finding and reasons for this issue are the same as the findings for contested issue 1.3. The Board concludes that material quantitative and/or qualitative benefits relating to the matter of EMFs that are relevant to price, reliability and quality of service, may be considered under the issues related to the analysis of alternatives. As a result, the contested text will not be added. As stated earlier in this decision, an examination of the health and/or socio-economic impacts of EMFs is beyond the scope of this proceeding.

***2.3 Are the project's estimated rate impact and costs reasonable for:***

- ***The transmission line;***
- ***The station modifications; and***
- ***The estimated Operating, Maintenance and Administration requirements.***

The underlined text was proposed by Hydro One and opposed by Pollution Probe. The balance of the issue was agreed to by the parties.

All parties agreed that the proceeding is necessarily based on estimated costs, not actual costs. However, Pollution Probe was concerned that with the revised wording the focus of the issue would be on the reasonableness of the cost estimates, rather than on the reasonableness of the rate impacts. Hydro One agreed that the issue is the reasonableness of the rate impacts. The Board agrees that the issue is whether the rate impacts are reasonable and finds that the issue should be revised to remove both references to "estimated". The Board expects that in assessing the reasonableness of the rate impacts there will also be consideration of whether the cost estimates themselves are reasonable.

***2.4 As it relates to the cost-benefit analysis, has appropriate consideration been given to both compensable and potentially non-compensable impacts, and how these can be addressed or mitigated with alternative forms of land agreements or changes to the preferred corridor or route?***

This issue was initially proposed by Powerline Connections; however, Powerline Connections indicated at Issues Day that it was content that the issue is subsumed within the agreed issues. We therefore do not need to address this contested issue, and it will not be included on the Issues List.

***2.5 If the Board is considering approval of the project application prior to the approval of the EA Report, is it fair to consider the quantitative and qualitative impacts contemplated in the EA Terms of Reference when deciding to grant leave?***

The issue was proposed by Powerline Connections and was opposed by Hydro One.

Powerline Connections submitted that the issue is related to the assessment of the qualitative and quantitative impacts contemplated in the EA Terms of Reference in the context of price, reliability and quality of electricity service. Although Hydro One questioned whether evidence in the EA process is relevant and material to the Leave to Construct application, it did acknowledge that such matters would be relevant if there is a cogent link with price, reliability and quality of electricity service. The Board agrees, and reiterates our findings above in relation to contested issue 1.2, where we have stated:

*To the extent that alternatives raised in the EA process are relevant and material to the comparison of alternatives in terms of price, reliability and quality of electricity service, those alternatives may appropriately be considered in the Leave to Construct application.*

The Board concludes that the agreed issues related to project alternatives and the assessment of those alternatives are sufficient to encompass the matters which relate to relevant impacts of all reasonable alternatives, including those which may be part of the EA process.

***2.6 Is the additional cost of the use of “narrow base towers” to reduce impacts on Classes 1-3 agricultural lands and farm operations justified?***



The issue was proposed by Powerline Connections and was supported by the landowners represented by Mr. Fallis. The issue was opposed by Hydro One.

Powerline Connections submitted that land acquisition costs might be lower if narrow base towers were used, thereby potentially lowering overall project costs. In Powerline Connections' view, the issue is not subsumed within the other issues. The Board accepts that it is appropriate to explore the issue of whether the use of narrow base towers is a preferable alternative in terms of price, reliability and quality of electricity service. However, we find that the agreed issues related to project alternatives and the assessment of those alternatives is sufficiently broad to include this area of review. The proposed issue will not be added.

### ***2.7 Can a reasonable cost-benefit analysis be prepared in the absence of an EA Report?***

This issue was proposed by Powerline Connections and supported by the landowners represented by Mr. Ross and Mr. Fallis. The issue was opposed by Hydro One. Parties relied on their submissions in respect of other related issues.

The Board has already decided that the earlier contested issue related to the relative timing of the EA process and the leave to construct approval will not be added to the Issues List. For the same reasons, this contested issue will not be added.

## **Contested Issues – Reliability and Quality of Electricity Service**

### ***4.1 [Is the recommended alternative superior] or [How does the recommended alternative compare] to all other reasonable alternatives with regard to stability and transient stability levels, voltage performance and Loss of Load Expectation projections under normal and post-contingency conditions?***

Hydro One proposed the second introduction to the issue; Pollution Probe, Powerline Connections, and the landowners represented by Mr. Ross and Mr. Fallis supported the first. The balance of the issue was uncontested.

Hydro One submitted that it was not required to demonstrate that the proposed project is superior to all alternatives on each aspect; rather the requirement is to demonstrate

that overall the project is superior to the alternatives and that the proposed project is in the public interest in terms of price, reliability and quality of electricity service. Pollution Probe submitted that the onus is on Hydro One to demonstrate that the proposal is better than the alternatives, not on intervenors to show that an alternative is better than the proposal.

Hydro One submitted that specific elements for the comparison are already incorporated within the agreed issue, but Pollution Probe noted that the agreed issue is focussed on the comparison, not the results.

The Board notes that one of the disputed aspects of this issue, and of some of the other contested issues, relates to the extent of Hydro One's onus in this proceeding and the threshold it must meet in assessing the alternatives. As set out in the filing requirements, the Board will require Hydro One to establish that the proposal is better than the other alternatives. The Board concludes that it would provide greater clarity to set an issue directly related to this point. The Board will add the following to the Issues List: *Is the proposal a better project than the reasonable alternatives?* As part of this issue, participants will be able to explore whether Hydro One has met the expectations of the filing requirements and what conclusion should be reached based on the analysis of the reasonable alternatives. The Board agrees with Hydro One that it (Hydro One) is not required to demonstrate that the proposal is superior to the alternatives in each respect and for that reason we will not adopt the wording supported by Pollution Probe.

Therefore, the wording on the original Draft Issues List will not be adopted.

An issue remains as to whether the uncontested specific parameters identified in the contested issue are adequately covered in the agreed issue 2.4. The Board finds that a separate issue is not needed. However, for greater clarity and because the specific parameters were agreed by the parties, the Board will modify the general issue to include the specific parameters. The issue will be: *Have appropriate comparisons been carried out on all reasonable alternatives with respect to reliability and quality of electricity service, including stability and transient stability levels, voltage performance and Loss of Load Expectation projections under normal and post-contingency conditions?*

**4.2 Does the placement of 6,000+MW of transmission capacity on one right of way create an unacceptable risk for consumers and system reliability?**

This issue was proposed by Powerline Connections and was supported by landowners represented by Mr. Ross and Mr. Fallis. The issue was opposed by Hydro One.

Powerline Connections submitted that issue goes beyond the agreed issue 4.2 regarding whether the proposal meets the applicable standards for reliability and quality of electricity service. In Powerline Connection's view, the proposal might meet the applicable standards, but might still pose an unacceptable risk. Hydro One was of the view that the issue was already included in the agreed issues.

The Board agrees with Powerline Connections that the issues related to reliability and quality of electricity service may go beyond the question of whether applicable standards are met and whether the project has addressed the requirements of the System Impact Assessment and the Customer Impact Assessment. However, the Board will frame the issue in a more general way and will adopt the structure used for the issue respecting the consideration of project risks from the perspective of project need and justification. The issue will be: *Have all appropriate project risk factors pertaining to system reliability and quality of electricity service been taken into consideration in planning this project?*

***4.3 What has Hydro One done to make sure that the project is carbon neutral given the major woodlands and habitat that will be removed?***

This issue was initially proposed by Powerline Connections, but was withdrawn at Issues Day. It will therefore not be added to the Issues List.

**Contested Issues – Land Matters**

***5.1 Has Hydro One assessed the impacts of the project on landowners whose lands are not specifically required for the project?***

This issue was proposed by Powerline Connections and was supported by the landowners represented by Mr. Ross and Mr. Fallis. The issue was opposed by Hydro One.

Powerline Connections submitted that there may be cost impacts arising from claims from landowners outside the applied for corridor. Hydro One opposed the issue and

submitted that it was an inappropriate attempt to build an evidentiary record for an expropriation proceeding.

The Board has already found that it is appropriate to consider the proposal and alternatives to the proposal in terms of price, reliability and quality of electricity service. The Board has also found that it is neither necessary nor appropriate to try to identify each specific aspect of those comparisons. The same conclusion is applicable here. The Board finds that the potential magnitude of various claims arising from the project may be relevant, but to the extent the factor is relevant, it is covered already in the issue related to project alternatives and the comparison of those alternatives.

### **Contested Issues – Aboriginal Peoples Consultation**

#### ***6.1 Has the necessary consultation occurred with all Aboriginal Peoples whose interest may be affected by this project?***

**OR**

***Have all Aboriginal Peoples whose existing or asserted Aboriginal or treaty rights are affected by this project been identified, have appropriate consultations been conducted with these groups and if necessary, have appropriate accommodations been made with these groups?***

Hydro One originally proposed that the first version of the issue replace the second version (which was originally included in Board staff's Draft Issues List). Hydro One indicated at Issues Day that it was withdrawing its proposed issue and accepted the issue as draft by Board staff. This issue is therefore resolved and the Board will include the agreed issue on the Issues List.

The approved Issues List is shown in Appendix A to this Decision and Order.

### **THE BOARD THEREFORE ORDERS THAT:**

The approved Issues List for this application, shown in Appendix A to this Decision and Order, shall be used by all parties in scoping their involvement in this proceeding including questions submitted to Hydro One for the upcoming technical conference, interrogatories, evidence and cross-examination.

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**DATED** at Toronto, September 26, 2007  
**ONTARIO ENERGY BOARD**

*Original Signed By*

Peter H. O'Dell  
Assistant Board Secretary

## APPENDIX A

### **Bruce to Milton Transmission Reinforcement Project Leave to Construct Application EB-2007-0050 Issues List**

#### **1.0 Project Need and Justification**

- 1.1 Has the need for the proposed project been established?
- 1.2 Does the project qualify as a non-discretionary project as per the OEB's *Filing Requirements for Transmission and Distribution Applications* and if so what categories of need as referred to in Section 5.2.2 of these Filing Requirements are relevant?
- 1.3 Have all appropriate project risk factors pertaining to the need and justification (including but not limited to forecasting, technical and financial risks) been taken into consideration in planning this project?
- 1.4 Is the project suitably chosen and sufficiently scalable so as to meet all reasonably foreseeable future needs of significantly increased or significantly reduced generation in the Bruce area?

#### **2.0 Project Alternatives**

- 2.1 Have all reasonable alternatives to the project been identified and considered?
- 2.2 Has an appropriate evaluation methodology been applied to all the alternatives considered?
- 2.3 For all of the considered alternatives, does the evaluation methodology utilized include a cost benefit comparison as well as a comparison of all quantitative and qualitative benefits?
- 2.4
  - a) Have appropriate evaluation criteria and criteria weightings been utilized in the evaluation process for the alternatives and the proposed project and what additional criteria/weightings could be considered?
  - b) Have appropriate comparisons been carried out on all reasonable alternatives with respect to reliability and quality of electricity service, including stability and transient stability levels, voltage performance and

Loss of Load Expectation projections under normal and post-contingency conditions?

- c) Do the alternatives meet the applicable standards for reliability and quality of electricity service?

2.5 Is the proposal a better project than the reasonable alternatives?

2.6 Are the project's rate impacts and costs reasonable for:

- the transmission line;
- the station modifications; and
- the Operating, Maintenance and Administration requirements.

### **3.0 Near Term and Interim Measures**

3.1 Are the proposed near term and interim measures as outlined in the application appropriate?

3.2 Can the proposed near term and interim measures be utilized longer than the suggested two to three year time frame?

3.3 If these proposed near term and interim measures could be utilized for a longer period than proposed, could they (or some combination of similar measures) be considered an alternative to the double circuit 500 kV transmission line for which Hydro One has applied?

### **4.0 Reliability and Quality of Electricity Service**

4.1 For the preferred option, does the project meet all the requirements as identified in the System Impact Assessment and the Customer Impact Assessment?

4.2 Does the project meet applicable standards for reliability and quality of electricity service?

4.3 Have all appropriate project risk factors pertaining to system reliability and quality of electricity service been taken into consideration in planning this project?

### **5.0 Land Matters**

5.1 Are the forms of land agreements to be offered to affected landowners reasonable?

5.2 What is the status and process for Hydro One's acquisition of permanent and temporary land rights required for the project?

### **6.0 Aboriginal Peoples Consultations**

Have all Aboriginal Peoples whose existing or asserted Aboriginal or treaty rights are affected by this project been identified, have appropriate consultations been conducted with these groups and if necessary, have appropriate accommodations been made with these groups?

**7.0 Conditions of Approval**

If Leave to Construct is approved, what conditions, if any, should be attached to the Board's order?