

## **SERVICES AGREEMENT**

**THIS AGREEMENT** made this 1<sup>st</sup> day of January, 2001

**BETWEEN:**

**(Erie Thames Services Corporation)**

(hereinafter referred to as the Services Corporation)

**OF THE FIRST PART**

- and -

**(Erie Thames Powerlines Corporation)**

(hereinafter referred to as the Powerlines Corporation)

**OF THE SECOND PART**

**WHEREAS** THE SERVICES CORPORATION and THE POWERLINES CORPORATION are duly incorporated Ontario business corporations pursuant to s. 142 of the *Electricity Act, 1998*;

**AND WHEREAS** both THE SERVICES CORPORATION and THE POWERLINES CORPORATION are, as separate but affiliated corporate entities, governed by the *Affiliate Relationship Code*;

**AND WHEREAS** the parties have agreed that THE SERVICES CORPORATION will maintain and repair THE POWERLINES CORPORATION's electrical distribution system on a fee-for-service basis and THE SERVICES CORPORATION shall provide such further and other products and services as may be agreed by the parties from time to time.

**AND WHEREAS** the parties acknowledge and agree that in providing goods and services THE SERVICES CORPORATION acts as an independent contractor and not as an agent, partner, or servant;

**AND WHEREAS** the parties shall consult as frequently as may be desirable to ensure that THE POWERLINES CORPORATION and its customers receive adequate, economical and effective electrical distribution and ancillary services;

**NOW THEREFORE IN CONSIDERATION** of the mutual covenants and agreements set forth, and for other good valuable consideration and the sum of two (\$2.00) dollars of lawful money of Canada now paid by each of the Parties to the other (the receipt and sufficiency of which is hereby expressly acknowledged), the Parties covenant and agree, and with each other, as follows:

**1. Definitions**

- 1.01 **"Capital Cost"** means the cost incurred for materials, equipment, overhead, and labour to provide capital works.
- 1.02 **"Capital Works"** means those expansions and upgrades to THE POWERLINES CORPORATION's electrical distribution system as may be agreed from time to time pursuant to Article 4.01 of this Agreement.
- 1.03 **"Customer Service Costs"** means the cost incurred by a party to bill and collect and to provide related customer services.
- 1.04 **"Customer Services"** means all services related to customer services, which without limiting the generality of the foregoing shall include customer billing, collection of unpaid accounts, and customer relations, etc.
- 1.05 **"Direct Costs"** means the cost incurred directly by THE POWERLINES CORPORATION for its own operations including but not limited to electrical power costs for Standard Supply Service, IMO costs, Ontario Hydro Transmission costs, Competition Transition Charge, Retail/Wholesale Settlement costs, Ministry of Finance OEB Regulatory costs, Commission meetings and conferences, MEA dues, MEARIE insurance and other insurance premiums, legal, accounting and audit fees, etc.
- 1.06 **"Easements"** means any permissions, concessions, permits, licenses, interests, ways, privileges, easements and right-of-way to install, operate and maintain part or parts of the electrical distribution system over real property.
- 1.07 **"Extraordinary Costs"** means those unusual and unanticipated costs as more particularly described in Article 6.06.
- 1.08 **"OM&A Costs"** means operations maintenance, and administration costs incurred by THE SERVICES CORPORATION to distribute electric power within THE POWERLINES CORPORATION 's geographic territory.
- 1.09 **"Transition Costs"** means one-time costs of reconfiguring or adding any system, policy, procedure, legal arrangement, employee relationship, etc. necessary for the Parties to operate under this Agreement and under electric utility industry restructuring as defined in The Energy Competition Act, 1998 and its associated regulations.
- 1.10 **"Vehicle and Equipment Cost"** means the cost of trucks and other motorized vehicles, and equipment used in operations, maintenance, administration and capital works of THE POWERLINES CORPORATION.

2. **Term**

- 2.01 Unless terminated in accordance with Article 13.01, the term of this Agreement shall be from January 1, 2001 to and including December 31, 2003 and the term shall be extended automatically for further periods of two years each, unless either party gives the other notice in writing not less than one hundred and eighty (180) days prior to the end of the term, or the end of renewal as the case may be that the Agreement is not to be extended.

3. **Electrical Distribution Maintenance Services**

- 3.01 THE SERVICES CORPORATION agrees to maintain in a good and workmanlike manner THE POWERLINES CORPORATION's electrical distribution system in the areas serviced by THE POWERLINES CORPORATION, as more particularly described in Schedule "A" to this Agreement (hereinafter referred to as the "THE POWERLINES CORPORATION Service Area").

4. **Capital Works**

- 4.01 THE SERVICES CORPORATION shall expand or upgrade in a timely way and in a good and workmanlike manner THE POWERLINES CORPORATION's electrical distribution system at THE POWERLINES CORPORATION's request, which shall hereinafter be referred to as "Capital Works" provided that such Capital Works have been designed in accordance with good engineering principles applicable in the Province of Ontario.

5. **Costs**

**OM&A Costs**

- 5.01 THE POWERLINES CORPORATION shall pay THE SERVICES CORPORATION the fees and charges more particularly outlined in Schedule "B" for the operation, maintenance and administrative costs (OM&A Costs) to maintain THE POWERLINES CORPORATION's electrical distribution system.

**Vehicle/Equipment Costs**

- 5.02 THE POWERLINES CORPORATION shall pay THE SERVICES CORPORATION the fees and charges more particularly outlined in Schedule "B" as THE POWERLINES CORPORATION's contribution towards the acquisition of trucks, other motorized vehicles and equipment used by THE SERVICES CORPORATION to maintain THE POWERLINES CORPORATION's electrical distribution system.

**Direct Costs**

- 5.03 THE POWERLINES CORPORATION shall assume and be directly responsible for its Direct Costs.

### **Capital Works Costs**

- 5.04 THE POWERLINES CORPORATION shall reimburse THE SERVICES CORPORATION for its actual costs, which without limiting the generality of the foregoing, shall include all THE SERVICES CORPORATION's direct labour, material costs, engineering design and review costs, vehicle and equipment variable operating costs plus overhead administration costs calculated at 40 (%) percent of the actual costs.
- 5.05 Work orders may be progress billed or billed upon completion by submitting an invoice to THE POWERLINES CORPORATION and THE POWERLINES CORPORATION shall pay all invoices within ten (10) days of receipt.

### **Extraordinary Costs**

- 5.06 THE POWERLINES CORPORATION agrees to reimburse THE SERVICES CORPORATION for any extraordinary costs over and above normal OM&A and customer service costs to which THE SERVICES CORPORATION may be put resulting from extraordinary unanticipated events such as fires, major storms, tornadoes, equipment failures, and the like provided such equipment failures are not caused by negligence on the part of THE SERVICES CORPORATION to provide routine service and maintenance of the electrical distribution system.

### **Transition Costs**

- 5.07 THE SERVICES CORPORATION shall invoice THE POWERLINES CORPORATION for transition costs associated with electric utility industry restructuring and deregulation and the transfer of THE POWERLINES CORPORATION 's operations to THE SERVICES CORPORATION .

### **Renewal**

- 5.08 Upon renewal of the term of this Agreement and any subsequent renewals, THE SERVICES CORPORATION may adjust the OM&A, Vehicle/Equipment Costs, Capital Works Costs and Extraordinary Costs upon ninety (90) days prior notice in writing to THE POWERLINES CORPORATION provided that, if THE POWERLINES CORPORATION does not accept the adjusted costs and the parties are unable to agree after negotiating in good faith, the adjusted costs may be submitted to arbitration pursuant to paragraph 12 of this agreement.

### **6. Invoicing**

- 6.01 THE SERVICES CORPORATION shall submit an invoice within five (5) days from the end of each month to THE POWERLINES CORPORATION for payment for all costs incurred by THE SERVICES CORPORATION in performing its services. All monthly invoices shall provide sufficient detail of the costs incurred and the description of the services undertaken by THE SERVICES CORPORATION. All invoices shall be paid by THE POWERLINES CORPORATION within ten (10) days from the date of receipt.
- 6.02 THE SERVICES CORPORATION will submit details of any extraordinary costs to THE POWERLINES CORPORATION for review before invoicing. Invoices for

extraordinary costs will be paid by THE POWERLINES CORPORATION within ten (10) days of receipt.

7. **Easements**

- 7.01 THE POWERLINES CORPORATION represents that it has secured all requisite Easements necessary for the delivery of electrical services for the distribution of electric power throughout the THE POWERLINES CORPORATION Service Area.
- 7.02 THE POWERLINES CORPORATION shall indemnify and save THE SERVICES CORPORATION harmless from any claims, demands, actions and applications brought against THE SERVICES CORPORATION arising from the failure of THE POWERLINES CORPORATION to have secured Easements or from any defect or deficiency in the Easements secured by THE POWERLINES CORPORATION prior to the effective date of this Agreement.
- 7.03 If further Easements are required for the distribution of electric power throughout the THE POWERLINES CORPORATION Service Area, THE POWERLINES CORPORATION shall acquire such Easements at its expense provided that prior to acquiring such Easements, THE POWERLINES CORPORATION shall consult with THE SERVICES CORPORATION to determine THE SERVICES CORPORATION's minimum technical requirements for such Easements.
- 7.04 After the effective date of this Agreement, THE SERVICES CORPORATION shall act on behalf of THE POWERLINES CORPORATION to secure all Easements required for the performance of the expansion or upgrade of electrical distribution services pursuant to this Agreement. Any costs related to the acquisition of Easements, including appraisal and legal costs, shall be paid by THE POWERLINES CORPORATION.

8. **Customer Billing**

- 8.01 THE SERVICES CORPORATION shall bill THE POWERLINES CORPORATION's customers for electricity supplied to them but such bills shall be issued in THE POWERLINES CORPORATION's name.
- 8.02 THE POWERLINES CORPORATION shall be responsible for all costs related to any billing errors and uncollectable hydro bills incurred on or before the commencement of this Agreement and shall indemnify and save THE SERVICES CORPORATION harmless in respect thereof.
- 8.03 THE SERVICES CORPORATION shall assume responsibility for any billing errors arising after the commencement of this Agreement only to the extent that the hydro costs arising from the billing errors are unrecoverable from THE POWERLINES CORPORATION's customer and only if the billing error is attributable to THE SERVICES CORPORATION's negligence or the negligence of its servants, agents or representatives.

9. **Arbitration**

- 9.01 The parties agree to consult with each other and to negotiate in good faith to resolve any differences or disputes which either party may have relating to the interpretation,

application or implementation of this agreement, or any dispute which may arise over any costs, fees or other costs incurred and failing agreement the parties agree to resolve their disputes by arbitration as provided in paragraph 9.02.

- 9.02 Arbitration of a dispute shall be commenced by written notice by a party requesting arbitration to the other, which notice shall identify the issue or issues it wishes to submit to arbitration. Within thirty (30) days of the date of the notice, the Parties shall agree upon a single arbitrator and failing agreement then each party shall appoint an arbitrator and the two appointees shall within 45 days of the date of the notice of arbitration appoint a third person who shall act as Chair of the arbitration panel, and failing agreement the Chair shall be appointed by a judge of the Superior Court of Ontario pursuant to the provisions of the Arbitration's Act, RSO 1991 c.A.17.
- 9.03 The commencement of the arbitration and all rules of procedure for the arbitration shall be by agreement of the Parties, or failing agreement, as determined by the arbitrator or Chair of the arbitrator panel. The provisions of the Arbitration's Act, RSO 1991 c.A.17, as amended or any successor legislation shall apply to the arbitration.
- 9.04 All decisions of the arbitrator or arbitrators, as the case may be, shall be made in writing and shall be delivered to all Parties within ten (10) days from the conclusion of the arbitration. All decisions shall be final and binding upon the Parties, their respective successors and assigns, and shall not be subject to appeal.
- 9.05 Each Party shall pay its own costs incurred in respect of the arbitration including the payment of its appointee to the arbitration panel, and in the case of a three person panel the parties agree to share the fees of the Chair and other related costs equally.

## 10. Termination

- 10.01 In the event of non-performance by either party of its obligations under this Agreement, the other party may at its sole option elect to terminate this Agreement provided that the defaulting party shall be given written notice of the default and shall be given sixty (60) days to cure the default, and then only upon failure to cure the default the Agreement may be terminated.

## 11. Insurance

- 11.01 THE POWERLINES CORPORATION and THE SERVICES CORPORATION shall jointly provide and keep in force an insurance policy in the amount of not less than \$16 million in respect of the services performed by THE SERVICES CORPORATION under the terms of this Agreement.
- 11.02 THE POWERLINES CORPORATION agrees to endorse its insurance coverage with THE SERVICES CORPORATION as an additional named insured to cover any liability of THE SERVICES CORPORATION resulting or arising from any claims of injury, including injury resulting in death, loss of property, or damage due to the negligence of THE SERVICES CORPORATION, or to those for whom THE SERVICES CORPORATION is at law responsible.
- 11.03 THE SERVICES CORPORATION agrees to endorse its insurance coverage with THE POWERLINES CORPORATION as an additional named insured to cover any liability of

THE POWERLINES CORPORATION resulting or arising from any claims of injury, including injury resulting in death, loss of property, or damage due to the negligence of THE POWERLINES CORPORATION, or to those for whom THE POWERLINES CORPORATION is at law responsible.

- 11.04 All policies shall contain a clause requiring the insurer to give THE SERVICES CORPORATION or THE POWERLINES CORPORATION, as the case may be, two hundred (200) days written notice prior to canceling insurance coverage.

- 11.05 Both Parties will notify the Municipal Electric Association Reciprocal Insurance Exchange (MEARIE) regarding liability insurance implications.

12. **Warranty**

- 12.01 THE SERVICES CORPORATION provides no warranty or guarantee for any defective or deficient equipment or materials supplied except for the manufacturer's or supplier's warranties or guarantees applicable to the defective or deficient equipment or materials.

13. **Notices**

All notices required to be given to either of the Parties under this Agreement shall be in writing and shall be delivered by prepaid unregistered post or hand delivery to the following:

- a) to the Secretary, THE SERVICES CORPORATION at: 143 Bell Street, P.O. Box 157, Ingersoll, Ontario, N5C 3K5
- b) to the Secretary, THE POWERLINES CORPORATION at: 143 Bell Street, P.O. Box 157, Ingersoll, Ontario N5C 3K5

or to such other address or individual as may be designated by written notice to the other Party. Any notice given by personal delivery shall be deemed to have been given on the day of actual delivery hereof and if sent by prepaid post, on the third day after mailing.

14. **Amendments**

- 14.01 Amendments to this Agreement shall be in writing and executed by the Parties duly authorized signing officers.

15. **Headings**

- 15.01 The headings in this Agreement are for purposes of reference only and shall not be read or construed so as to abridge or modify the meaning of any provision in the main text of this Agreement.

16. **Governing Law**

- 16.01 This Agreement shall be construed in accordance with the laws of the Province of Ontario.

17. **Successors**

- 17.01 This Agreement shall ensure to the benefit of and be binding upon the Parties and their successors and assigns, respectively.
- 17.02 For the purposes of this Agreement, whenever the term THE SERVICES CORPORATION or THE POWERLINES CORPORATION is used, the term shall be deemed to include all successor business corporations incorporated to whom assets and liabilities are transferred for the purpose of the installation, operation and maintenance of the Parties' electrical distribution systems.

18. **Regulatory Changes**

- 18.01 The Parties acknowledge that substantial changes to legislation and regulations and government policies are likely to occur during the term of this Agreement which are likely to affect the nature of the relationship between them, and as consequence the parties hereby agree to consult and negotiate in good faith any amendments to this Agreement which may be necessitated by changes in the regulatory environment, and failing agreement to submit their differences to arbitration as provided in Article 9.

19. **Relationship**

- 19.01 The parties acknowledge and agree that THE SERVICES CORPORATION shall act as an independent contractor providing its services under this Agreement and the Parties further acknowledge and agree that nothing in this Agreement shall be deemed or construed to be the formation of a partnership between THE SERVICES CORPORATION and THE POWERLINES CORPORATION.

IN WITNESS WHEREOF the Parties have duly executed this Agreement on the date first above written:

**ERIE THAMES SERVICES  
CORPORATION**

Per:

\_\_\_\_\_  
Chair

\_\_\_\_\_  
President

**ERIE THAMES POWERLINES  
CORPORATION**

Per:

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Vice-President & General Manager



**Schedule A****THE POWERLINES CORPORATION Service Area**

The POWERLINES CORPORATION Service Area is that specified in Interim Electricity Distribution System Licences issued by the Ontario Energy Board for the former municipal utilities serving Aylmer, Central Elgin, Ingersoll, Norwich, South-West Oxford, Tavistock, and Zorra. These interim licences will be replaced by Erie Thames Powerlines Corporation Distribution Licence once issued by the Ontario Energy Board.

## Schedule B

### Monthly Charges

#### Part 1: OM&A Charge per Customer Connection per Month:

THE SERVICES CORPORATION shall invoice THE POWERLINES CORPORATION the following amounts per customer connection per month for each rate class:

Customer Class	2001 charge/mth/customer	2002 charge/mth/customer	2003 charge/mth/customer
Residential	\$7.92	\$7.76	\$7.61
General Service (less than 50 kW of demand)	\$4.39	\$4.30	\$4.22
General Service (greater than 50 kW of demand)	\$306.60	\$300.47	\$294.46
Special	\$3,815.43	\$3739.12	\$3664.34
Sentinel Lights	\$1.47	\$1.44	\$1.41
Street lights	\$0.18	\$0.18	\$0.17

#### Part 2: Vehicle, Tools and Equipment Charge per Customer per Month:

THE SERVICES CORPORATION shall invoice THE POWERLINES CORPORATION \$1.63 per customer connection per month for vehicle, tools and equipment.

**AMENDMENT TO JANUARY 1, 2001 SERVICES AGREEMENT BETWEEN:**

**(Erie Thames Services Corporation)**

(hereinafter referred to as the Services Corporation)

**OF THE FIRST PART**

- and -

-

**(Erie Thames Powerlines Corporation)**

(hereinafter referred to as the Powerlines Corporation)

**OF THE SECOND PART**

**WHEREAS** the parties have reviewed the costs incurred by THE SERVICES CORPORATION for the fiscal year ended December 31, 2002 related to the services provided to THE POWERLINES CORPORATION and have jointly determined that THE JANUARY 1, 2001 SERVICES AGREEMENT did not contemplate certain costs that are required to maintain and repair THE POWERLINES CORPORATION's electrical distribution system.

**ACCORDINGLY** the Parties covenant and agree, and with each other, as follows:

**1. Additional costs to be reimbursed**

- 1.01 It is agreed that THE POWERLINES CORPORATION shall reimburse THE SERVICES CORPORATION for costs that were not contemplated in the original agreement, as mutually agreed, on the same basis as outlined in Article 5.04 Capital Works Costs of the January 1, 2001 SERVICES AGREEMENT.
- 1.02 For further clarification, it is agreed by the parties the following terms used in Article 5.04 Capital Works Costs of the January 1, 2001 SERVICES AGREEMENT

*“direct labour, material costs, engineering design and review costs and vehicle and equipment variable operating costs”*

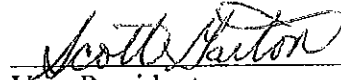
include direct overheads such as Payroll Burden, Stores Operation, Rolling Stock Operation and Engineering as outlined in the Ontario Energy Board Accounting Procedures Handbook Article 340 – Clearing Accounts.

**IN WITNESS WHEREOF** the Parties have duly executed this Amendment on June 12, 2006

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**THE SERVICES CORPORATION**

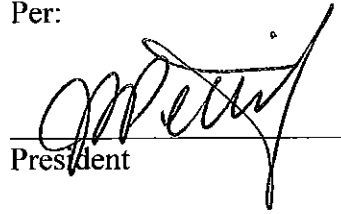
Per:

A handwritten signature in cursive script, appearing to read "Scott Burton", written over a horizontal line.

Vice President

**THE POWERLINES CORPORATION**

Per:

A handwritten signature in cursive script, appearing to read "M. Petri", written over a horizontal line.

President