

August 28, 2012

Delivered Via Email & Courier

Ms. Kristen Walli
Board Secretary
Ontario Energy Board
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File: 67419.28

Dear Ms. Walli:

Re: Ontario Energy Board File No. EB-2012-0181 - Application for Service Area Amendment

This is the response of Thomasfield Homes to the letter of Hydro One Networks Inc. ("HONI") dated August 23, 2012 filed with the Board.

In its letter, HONI points out an error in my letter to the Board of August 21, 2012 stating that Orangeville Hydro Limited ("OHL") commenced its OEB application on March 23, 2011, when the correct date was one year later. The date in my letter was taken from the OEB's Procedural Order No. 2, which contains a keyboarding error for the year the application was filed. Despite this error, this relatively straightforward OEB application ought to have taken no longer than a week or two to resolve. We have now passed the five-month mark without any decision on the application, which risks becoming moved through the simple passage of time. A decision is still required by September 7, 2012.

Our client must begin construction of its homes and wire them for electricity as soon as possible. It is being prevented from doing so because of this application. The reason for the now five-month delay in coming to a decision on wiring is HONI's continued inflexibility – its insistence on following its own wiring policy regardless of the consequences, as well as its insistence on bringing a useless motion in this proceeding which caused several weeks of delay, and which was ultimately dismissed. That motion should never have been brought.

The housing construction in question is a relatively small development. The matters at issue are not complex. In fact, the proceeding is so straightforward that the OEB has delegated a staff member to decide the application, instead of convening a full panel of the Board. One would expect that given the small scale of the project, and the rather obvious fact that OHL can provide the same service at considerably less cost, HONI would have consented to the service area amendment. Unfortunately, territoriality triumphed over logic.

With respect to the four specific points set out in HONI's letter, Thomasfield Homes responds as follows:

1. HONI justifies its motion as having been conducted within the Board-set time limits. Yes, it was done in compliance with the rules, but no, it was not necessary. It simply imposed upon our client considerable costs as a result of the delay it caused. Unfortunately, those costs are not recoverable from HONI.
2. Based on discussions with OHL, our client was led to understand that OHL has a small incremental area within the Subdivision lands that permitted the signing of the OHL Offer to Connect. In any event, HONI's statement that it is the OEB-licensed utility for the land in question is irrelevant. The question is not "who is the current OEB-licensed utility for this area?", the answer to which is a matter of fact, but rather "who SHOULD BE the OEB-licensed utility for this area?" The answer to that question is OHL.
3. Our client does not dispute HONI's comment related to the Electrical Safety Authority and the direct bury installation of the electrical cables. However, that is not the only acceptable standard. Most urban municipalities request that the utility cables (hydro, telephone, cable TV) be placed in conduit to minimize the disruption to residents, driveways, landscaping and other street furniture in the event of cable failure and the need for repair. The municipality is guided by a reasonable objective of avoiding unnecessary tearing up of the municipal right-of-way. There is no reason why HONI should not find that acceptable.

HONI requires that the Engineer (Gamsby and Mannerow), the Developer (Thomasfield Homes) and the Municipality (the Township of East Luther Grand Valley) provide approval of the HONI design before it will issue the Offer to Connect. Our client, the Developer, is required to comply with the Township's standards and HONI's requirements to be able to register the development. Our client's problem is that it cannot simultaneously satisfy both parties, when the two have divergent criteria.

4. HONI suggested that delay was caused by radical changes in design. HONI has prepared three sets of design drawings. The first, dated February 2012 made the connection to the Subdivision at Mill Street servicing 99 single family homes and 16 on-street townhouses. It required the relocation of the feeder line to the rural part of the Township to an external location outside of the Subdivision Boundaries (no Offer to Connect was released to the Developer).

The second set of drawings dated April 2012 was provided following a meeting in March 2012 with HONI staff to review other alternatives for the location of the rural feeder line. This design connected to the Subdivision through a block of land owned by HONI approximately 50 metres south of Mill Street and routed the rural feeder line through the Subdivision underground to reconnect to the overhead rural line on Amaranth Street. There were no other noted changes to the design, which was to service 99 single family homes and 16 on-street townhouses. The Offer to Connect was provided to Thomasfield Homes with this design.

The third set of drawings was provided on August 14, 2012 following a request for our client to reduce the number of on-street townhouse units from 16 to 15 to meet



municipal road safety requirements and to mount the meters for the on-street townhouse on the front of the units rather than being gang mounted on the end of the units. The request was also made to have the electrical cable installed in ducts to satisfy requests from the municipality. The connection point to the Subdivision, the routing of the rural feeder cable in duct underground through the Subdivision and the balance of the design was unchanged from the first or second set of drawings. This design services 99 single family homes and 15 on-street townhouses. HONI indicated in its accompanying email that the REVISED Offer to Connect addressed the change of one less service and would be released once the approval of the design was received from the Engineer, the Developer and the Municipality.

Finally, on the issue of the easement, for the Board's information, our client agrees that currently HONI is using the northerly third of the easement to service the rural area of the Township. HONI removed all plant from the southerly part of the easement approximately two years ago. Our client's request was that the southerly part of the easement be released removing any restriction on the single family lots. The information provided by HONI staff was that the easement would be released as a single entity not in parts.

Overall, none of the matters set out above are of sufficient gravity to warrant a five-month delay in determining the appropriate utility for the subdivision in question. The courts of law in Ontario apply a rule that if a party refuses or fails to concede what it should have conceded, it may be required to pay the other parties' litigation costs. The courts also apply the principle of proportionality, so that a party should not require the other parties to make massive efforts out of proportion to the issues at stake in the litigation. These are sound principles of conflict resolution, and there is nothing in the legislation governing the Board which would prevent it from applying these principles.

HONI should long ago have conceded that OHL's connection requirements are as reasonable as its own, if not conceding the main point that OHL is better suited to provide electricity distribution in this area. Likewise, given the timing requirements in issue, it should not have brought its ill-fated motion. Accordingly, Thomasfield Homes would respectfully request the Board to take into account the fact that HONI has imposed significant construction, engineering and legal costs upon our client, for no good reason other than that it can do so. From a strategic standpoint, HONI sends the message to other developers and LDCs that it will not concede service area voluntarily, even if it should, and will make life as difficult as possible for anyone seeking to change that. Therefore, a cost award should be made in our client's favour to compensate it for at least the additional legal and consulting costs it has had to incur as a result of HONI's inflexibility.

Yours truly,

Andrew J. Roman

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