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September 4, 2012

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

Dear Ms Walli:

EB-2012-0181 - Application for Service Area Amendment by Orangeville Hydro Limited

This letter is the response on behalf of Hydro One Networks Inc. ("Hydro One") to three letters sent to the Board regarding the above-noted proceeding:

(A) a letter dated August 28, 2012, sent by Andrew J. Roman of Miller Thomson, solicitors for the developer, Thomasfield Homes Development Inc. ("the developer"); and

(B) a letter dated August 29, 2012, sent by David N. Germain of Thomson Rogers, solicitors for the Township of East Luther Grand Valley (the "Municipality"); and

(C) a letter dated August 31, 2012, sent by Tyler J. Moore, solicitor for Orangeville Hydro Limited ("OHL"), the Applicant.

Hydro One's Response to Letter (A) above

There have been no delays in this proceeding on the part of Hydro One. To the extent, if any, that the proceeding has been delayed, such delay has been caused by the developer's change of plans (number of houses being built, etc.), which resulted in both LDCs' having to issue revised Offers To Connect. Hydro One specifically denies that it has been inflexible in any way or that its Offer To Connect represents a higher cost than OHL's.

Contrary to the impression left by Letter (A), Hydro One has never taken the position that direct burying of cables is the only acceptable standard in Ontario. According to:

(1) *O. Reg. 22/04* under the *Electricity Act, 1998*;
(2) the *Ontario Electrical Safety Code*; and
(3) the Electrical Safety Authority, the sole Ontario regulatory body with jurisdiction over this subject matter;

both direct burying and duct-burying are approved.

Letter (A)'s allegation that Hydro One's position is that it is not releasing the southerly easement at this time because "the easement would be released as a single entity not in parts" is a misstatement. The fact is that on April 5, 2012, Hydro One informed the developer's lawyer that, based on discussions between the developer and Hydro One, Hydro One would be able to release portions, or perhaps all, of the easement as construction of the development necessitates, upon the entering into of agreements to energize all or a portion of the development and relocation of the existing power line.

Hydro One responds further to Letter (A) by stating that Hydro One has imposed no costs on the developer and that Hydro One has been scrupulous in following Board procedures and in complying with Board timelines. Hydro One also notes that a significant amount of time was lost by virtue of the fact that OHL filed an incomplete Application with the Board. (Please reference the Board's letter to OHL's solicitor dated April 20, 2012.)

The April 2012 Application was not the first time that OHL had filed an incomplete SAA Application for this subdivision to be built by Thomasfield Homes Limited: a year earlier, on May 27, 2011, OHL filed an SAA Application for this Thomasfield subdivision, under Board file no. EB-2011-0213. As was the case with the April 2012 Application, the Board responded that the 2011 Application was incomplete. (Please reference the Board's letter to OHL's consultant dated July 22, 2011.) That 2011 Application by OHL stated that the developer had not even contacted Hydro One to request an Offer To Connect. OHL subsequently withdrew the Application by letter to the Board dated September 9, 2011.

Hydro One therefore states that both OHL and the developer were very familiar with the Board's process and with the Board's timelines when the Application was filed for a third time in May 2012. Hydro One states that this Application has proceeded in accordance with Board process and in accordance with all Board Procedural Orders. Hydro One rejects Letter (A)'s statement that "there has been a five-month delay" or that there has been any delay at all. Hydro One also strongly rejects Letter (A)'s submission that Hydro One should bear the developer's costs.

Letter (A)'s allegation that Hydro One "makes life as difficult as possible for anyone seeking to change" [Hydro One's practice to] "not concede service area voluntarily" is not borne out by any facts. Numerous files at the Board show that Hydro One has consented to SAA applications in cases where an applicant LDC could serve the subdivision more economically.

Hydro One's Response to Letter (B) above

Hydro One states that Letter (B), having been sent to the Board well outside the Board-established timelines, should not even be considered by the Board. Consideration of that letter could delay this proceeding.

If the Board were to choose to consider Letter (B), Hydro One's response is that the fact that OHL bills residents for water on behalf of the Municipality is totally irrelevant to this Application. The cost of water billing is minimal and should have no bearing on this SAA proceeding, even if the *Ontario Energy Board Act, 1998*, were to be amended to permit an LDC to carry on water billing activities for various municipalities without the use of a subsidiary.

Hydro One responds below to the portion of the Municipality's letter that describes the Municipality's three-week-old "policy" as a "standard."

Hydro One's Response to Letter (C) above

The Notice of Written Hearing and Procedural Order No. 1 was issued by the Board on May 16, 2012. However, even before that date, Hydro One had sent the developer an Offer To Connect on April 16, 2012, based on a design for the number of homes which was the developer's intention to build at that time. Prior to issuing its Offer To Connect to the developer, Hydro One forwarded its design plan to the Municipality. Hydro One's design plan showed direct burying of distribution wires. On April 4, 2012, the Municipality approved Hydro One's design plan showing direct burying.

Suddenly, two weeks ago, in a letter to the Board dated August 21, 2012, the developer's lawyer submitted to the Board a copy of the Municipality's "Policy 12-02" created and dated seven days earlier. The "policy," which suddenly specifies a method of burying underground distribution wires where no such specification had ever been made previously by the Municipality in its history, is not even stated to apply to the entire Municipality, only to certain parts. Hydro One has doubts as to the timing of this "policy" and questions whether it was created on August 14th as a result of discussions between the Municipality and OHL.

The Municipality has no authority to specify the method of burying electricity distribution wires. Hydro One believes that the title of the August 14th document ("policy", rather than "by-law") shows that the Municipality is aware of its lack of authority to regulate such activity in Ontario. The Municipality has no authority to pass either a by-law or a "policy." The distributor's *right to place* the underground distribution wires is governed by the *Electricity Act, 1998*; and the *design, specifications, safety requirements, and method of burying* distribution wires are governed by *O. Reg. 22/04* and by the *Ontario Electrical Safety Code*, both made under the *Electricity Act, 1998*. *O. Reg. 22/04* applies *specifically* to distribution systems.

Regarding the statute itself, subsection 41(1) of the *Electricity Act, 1998*, states, *"A transmitter or distributor may, over, under or on any public street or highway, construct or install such structures, equipment and other facilities as it considers necessary for the purpose of its transmission or distribution system, including poles and lines."*

Regarding *O. Reg. 22/04* and the *Ontario Electrical Safety Code*, the sections establishing the all-encompassing standards for underground distribution wires are too numerous to include in this letter, but they encompass design, construction, installation, protection, installation, proximity to other facilities, and other characteristics.

It is Hydro One's respectful submission that the Board has no jurisdiction to convene a hearing, oral or written, to determine whether the August 14th "policy" of the Municipality is *intra vires* the Municipality and whether it has any effect on the determination of the Service Area Amendment Application; and if the Board does have such jurisdiction, it should choose not to exercise it in this particular instance. Hydro One submits that there is not even a Municipal standard for the Board to consider (nor could there be), despite Letter (C)'s reference to the new "policy" in some places in the Letter as a "standard," in another place as a "preference," and in another place as a "policy." Hydro One therefore submits that this proceeding should continue

with the dates already established by the Board in Procedural Order No. 3 and that the Board should not consider the hurried "policy" created on August 14, 2012, and provided to the Board on August 21.

Hydro One rejects Letter (C)'s allegation that Hydro One's design seeks to impose a direct burying requirement or any condition whatever. On the contrary, Hydro One has no objection to OHL's design that incorporates ductwork, as OHL is entitled to do. Furthermore, OHL's lawyer has confirmed in Letter (C) that Hydro One's direct burial standard is an acceptable method. If anyone is attempting to impose a requirement as to the method of burying, it is neither Hydro One nor OHL, but rather the Municipality, which has no authority to do so.

Hydro One also rejects Letter (C)'s allegation that direct burying of distribution wires is "an anti-competitive stratagem that has no other purpose than to force the developer to contract with it." Not only is direct burying approved under the Regulation, the *Ontario Electrical Safety Code*, and by the Electrical Safety Authority, but also Hydro One follows this practice all over Ontario. Never before has this Province-wide approved method been characterized as "an anti-competitive stratagem." Furthermore, unlike the Municipality's three-week-old "policy," the Electrical Safety Authority's approval of direct burying and Hydro One's following of that practice have been in effect since the ESA was created in 1999, and had been approved by the ESA's predecessor for decades before 1999.

Hydro One's final comment with respect to Letter (C), as stated above, is to request the Board to hold to Procedural Order No. 3's previously-established timelines and to reject OHL's request for an interlocutory determination of the powers of Ontario municipalities or an interlocutory consideration of the three-week-old "policy." In the alternative, Hydro One asks the Board to determine that the Municipal "policy" has no effect on this proceeding and that the "policy" is *ultra vires* the Municipality.

Yours very truly,

ORIGINAL SIGNED BY MICHAEL ENGELBERG

Michael Engelberg

cc: Miller Thomson LLP, att'n: Mr. Andrew J. Roman (by e-mail)
T. J. Moore Law Professional Corporation, att'n: Mr. Tyler J. Moore (by e-mail)
Thomson Rogers, att'n: Mr. David N. Germain (by e-mail)
Ms Irina Kuznetsova, Ontario Energy Board (by e-mail)