

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 Horizon Utilities Corporation
for a Service Area Amendment

NOTICE OF MOTION

Hydro One Networks Inc. (“Hydro One”), the incumbent distributor and an intervenor, will make a motion to the Ontario Energy Board (“the Board”) at its offices at 2300 Yonge Street, Toronto, at a time and date to be set by the Board.

The Motion is for an Order:

1. striking out and dismissing Part I of the Applicant’s Updated Service Area Application dated October 24, 2012, which was filed with the Board on October 25, 2012 (“the Updated SAA”);
2. striking out and dismissing the Applicant’s Service Area Application dated June 15, 2012, as updated twice by replacement pages on August 16, 2012 (“the Original SAA”);
3. striking out and dismissing Parts II, III and V of the Applicant’s Updated SAA, and striking out the portion of Part IV of the Applicant’s Updated SAA that deals with a small parcel of undeveloped land;
4. staying, as premature and incomplete, the portion of Part IV of the Applicant’s Updated SAA that deals with the school that is being built that was wrongfully connected by the Applicant to the Applicant’s distribution system; and

5. requiring the Applicant to provide full cooperation to Hydro One to enable the completion of work described in Hydro One's letters to the Board dated October 15 and October 17, 2012.

The grounds for the Motion are:

- (a) the principles established by the Board in RP-2003-0044, being the Board's Decision in the Combined Service Area Amendments Proceeding;
- (b) the Board's Filing Requirements for Service Area Amendment Applications, dated March 12, 2007;
- (c) regarding item nos. 1 and 2 of this Notice of Motion, the fact that the customer that was and remains the basis of the Original SAA and the Updated SAA is inside the incumbent's licensed service territory, entered into a written agreement to connect to the incumbent LDC in September 2012, and does not wish to connect to the Applicant's distribution system;
- (d) regarding item no. 3 of this Notice of Motion,
 - a. Part II relates to existing customers served by Hydro One within Hydro One's licensed service territory;
 - b. Part III relates partly to existing customers served by Hydro One within Hydro One's licensed service territory, and partly to vacant land entirely within Hydro One's service territory where no prospective customer is requesting connection to the Applicant's distribution system;
 - c. the portion of Part IV that does not refer to the school relates to vacant land, entirely within Hydro One's service territory, where no prospective customer is requesting connection to the Applicant's distribution system; and

- d. Part V relates to vacant land, entirely within Hydro One's service territory, where no prospective customer is requesting connection to the Applicant's distribution system;
- (e) regarding item no. 4 of this Notice of Motion, the portion of Part IV that does not refer to vacant land relates to a school under construction, wrongfully connected by the Applicant to its distribution system, which school has only now requested permanent connection to the Applicant and has only recently on Sept. 28th requested Hydro One to provide an Offer to Connect, (and Hydro One has not yet completed the Offer to Connect, so that neither the school nor the Board has the cost information necessary to make a comparison), thereby making the school portion of Part IV premature and incomplete according to the Board's Filing Requirements for Service Area Amendment Applications dated March 12, 2007; and
- (f) regarding item no. 5 of this Notice of Motion, the Applicant's withdrawal of cooperation with Hydro One on a pre-arranged outage scheduled for October 16, 2012, to enable the stringing of the lines of both the Applicant and Hydro One, on poles owned by Bell Canada, to enable service to the respective customers of all three of those entities.

The following documents will be used at the hearing of the motion:

1. the attached excerpt from the Board's Decision in RP-2003-0044;
2. the Board's Filing Requirements for Service Area Amendment Applications, dated March 12, 2007;
3. Hydro One's letters to the Board dated October 15 and October 17, 2012;
4. the submissions of Multi-Area Developments Inc. by letter to the Board from Goodmans LLP dated October 19, 2012;
5. the attached submissions of Hydro One dated today, in support of this motion;
6. the Original SAA; and
7. the Updated SAA, together with the covering letter of Aird & Berlis dated October 24, 2012.

October 30, 2012

HYDRO ONE NETWORKS INC.

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(see next page)

ATTACHMENTS AND SUBMISSION FOR MOTION BY HYDRO ONE NETWORKS INC.

Excerpt from the Board's Decision in RP-2003-0044

(Bolding and italicizing below have been done by Hydro One)

from paragraph 241

Similarly, proposals to align service areas with municipal boundaries are ill-considered unless the proponent can *provide concrete evidence that the extended area is needed to provide service to actual customers in the area* using assets and capacity in a manner that optimizes existing distribution assets, and *does not prejudice existing customers of the utility. Amendments need to be anchored by real customers*, with an economic case for the extension that is convincing. Some parties argued that aligning the service areas with municipal boundaries advances distribution system planning. *The Board does not regard such alignment to be inherently beneficial.* It is apparent that the decoupling of the electrical utilities from municipal government, which is one of the signal reforms in the recent development of the electricity market, will continue to evolve. It is not unlikely that the pursuit of efficiencies will lead to the continuing consolidation of the distribution industry in Ontario, and any alignment of service areas to specific municipalities will be increasingly irrelevant.

From paragraph 267

...Service Area amendments should not result in the Board-mandated transfer of customers from one distributor to another. Such transfers should be the subject of bilateral arrangements between distributors, wherein all of the issues engaged by such transfers can be addressed. Such issues involve appropriate compensation for any assets stranded as a result of the arrangement. In this way, the interests of the customers of the surrendering distributor can be reasonably protected. An applicant should file evidence to demonstrate all the effects on customers in the amendment area. Evidence on aspects such as service quality and reliability should be quantitative, not anecdotal.

SUBMISSION OF HYDRO ONE NETWORKS INC.

(The references to “Part I,” “Part II,” “Part III,” “Part IV” and “Part V” of the Updated SAA refer to those parts of the Applicant’s Updated SAA that are identified on page 2 of the October 24, 2012, letter of Aird and Berlis to the Board.)

1. Hydro One submits that to grant any portion of the Original SAA or the Updated SAA would change the face of electricity distribution in Ontario and would involve the reopening, revision and reversal of the principles that formed the basis of the Board’s Decision in RP-2003-0044, all of which would be major events that should be considered only in the context of a new generic hearing open to all LDCs in the Province.

2. Hydro One submits that to grant any portion of the Original SAA or the Updated SAA would initiate a major change to the face of electricity distribution in Ontario by:

- (a) enabling a non-incumbent LDC to force an incumbent LDC to transfer (to an adjacent LDC) not only service territory but also a new customer who has a binding contract to connect to his or her incumbent LDC;
- (b) enabling a non-incumbent LDC to force an incumbent LDC to transfer (to an adjacent LDC) existing, long-standing customers and service territory in situations where those customers have not even requested to be severed from their existing service provider;
- (c) enabling a non-incumbent LDC to force an incumbent LDC to transfer vacant land, with no prospective customers, to an adjacent LDC;
- (d) enabling a non-incumbent LDC to solicit existing customers of an incumbent LDC, akin to the business model of electricity retailers; and

- (e) initiating “open season” on the Ontario map of distribution service territories by allowing any LDC to use the SAA process to cherry-pick the existing customers and vacant lots within an incumbent LDC’s service territory, to disregard written connection agreements between an incumbent LDC and its customers, to approach existing customers of an incumbent LDC to persuade them to leave their supplier, to act in the manner of Ontario retailers seeking new and existing customers, and to generally obtain acquisitions of customers and service territories without going through a negotiated purchase-and-sale process that creates benefit on both sides by compensating one utility with fair market price for giving up customers and vacant land that will be subject to future customer growth.

3. Regarding the Original SAA and Part I of the Updated SAA, Hydro One submits that it was never contemplated by the RP-2003-0044 Decision that an incumbent LDC with a new customer inside its service territory -- a new customer who already signed an agreement with the incumbent LDC to be connected to, and served by, the incumbent LDC -- would be forced by means of an SAA to transfer that new customer to an adjacent LDC. That is exactly what the Applicant is seeking in the Original SAA and in Part I of the Updated SAA. The customer inside Hydro One’s service territory who already signed an agreement to connect to Hydro One is Multi-Area Developments Inc., whose lawyer wrote a letter to the Board dated October 19, 2012, stating that Multi-Level (the developer of Summit Park Phase 7) does not wish to be forced to connect to the Applicant and that it wishes Hydro One’s work to be completed as soon as possible.

4. The said lawyer’s letter on behalf of Multi-Level reads in part as follows, at page 2 of the letter:

“With respect to the Project, our client is seeking service from the *in-territory* distributor. No doubt a regime where a distributor can try to “poach” new developments without an invitation from the customer will

lead to considerable uncertainty for developers and distributors, and an increased caseload for the Board.”

5. Part II of the Updated SAA relates to existing Hydro One customers, inside Hydro One’s service territory. None of those customers is requesting to be connected to the Applicant or to be severed from Hydro One’s service territory.

6. Part III of the Updated SAA relates partly to existing Hydro One customers, inside Hydro One’s service territory, and partly to vacant land entirely within Hydro One’s service territory where no prospective customer is requesting to be connected to the Applicant or to be severed from Hydro One’s service territory.

7. Part IV has two components:

- (a) The first part relates to a new school within Hydro One’s service territory, which school was wrongly connected by the Applicant to the Applicant’s distribution system, in contravention of the Applicant’s licence. The school has only now requested permanent connection to the Applicant and has only recently on Sept. 28th requested Hydro One to provide an Offer to Connect, (and Hydro One has not yet completed the Offer to Connect, so that neither the school nor the Board has the cost information necessary to make a comparison), thereby making the school portion of Part IV premature and incomplete according to the Board’s Filing Requirements for Service Area Amendment Application dated March 12, 2007. This first part of Part IV should therefore be stayed.
- (b) The second part relates to vacant lots entirely within Hydro One’s service territory where no prospective customer is requesting to be connected to the Applicant or to be severed from Hydro One’s service territory.

8. Part V relates to vacant land entirely within Hydro One's service territory where no prospective customer is requesting to be connected to the Applicant or to be severed from Hydro One's service territory.

Regarding Hydro One's request (in item no. 5 of the Notice of Motion above) that the Board issue an Order requiring the Applicant to provide full cooperation to Hydro One to enable the completion of work described in Hydro One's letters to the Board dated October 15 and October 17, 2012:

9. Hydro One states that the Applicant abruptly withdrew from cooperation with Hydro One on a pre-arranged outage scheduled for October 16, 2012, to enable the stringing of the lines of both the Applicant and Hydro One, on poles owned by Bell Canada, to enable service to the respective customers of all three of those entities, and the Applicant has asked the Board for a "stop-work order" against Hydro One.

10. Hydro One's submissions in support of an Order requiring the Board to mandate the Applicant to provide cooperation to Hydro One for the completion of the work are found in Hydro One's letters to the Board dated October 15 and October 17, 2012.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

ORIGINAL SIGNED BY MICHAEL ENGELBERG

Michael Engelberg, counsel to Hydro One Networks Inc.
(Intervenor, Moving Party, and Incumbent LDC)