



Hydro One Networks Inc.

**Application for leave to construct: reconductoring of
transmission lines and associated transmission station
work in the Ottawa area.**

**PROCEDURAL ORDER NO. 3
February 12, 2021**

Hydro One Networks Inc. (Hydro One) applied to the Ontario Energy Board (OEB) on December 2, 2020 under sections 92 and 97 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B), for an order or orders granting leave to reductor existing transmission circuits M30A and M31A between Hawthorne transmission station and Merivale transmission station, and perform related transmission station enabling work. If the application is approved, Hydro One will replace the M30A and M31A circuits with dual-bundled conductor. Hydro One has also applied to the OEB for approval of the form of land use agreements it offers to landowners for the routing and construction of the project.

Procedural Order No. 1 was issued on February 2, 2021. It granted intervenor status to the Independent Electricity System Operator (IESO), Environmental Defence (ED), and the Ottawa International Airport Authority (OIAA), established that ED is eligible to apply for an award of costs, and established the Application's procedural schedule, including the filing of OEB staff and intervenor interrogatories by February 12, 2021 and the filing of interrogatory responses by Hydro One by February 26, 2021. The OEB approved Nav Canada as an intervenor on February 4, 2021.

Procedural Order No. 1 directed OIAA to file additional information by February 5, 2021 before a determination could be made on its cost award eligibility. OIAA provided additional information by email and letter dated February 9, 2021.

On February 3, 2021, ED advised that it wishes to file evidence regarding Hydro One's assessment of project alternatives.

Through Procedural Order No. 2 issued on February 11, 2021, the OEB denied ED's request. The OEB encouraged Hydro One to provide interrogatory responses specific to the examination of Alternatives 3 and 4 in advance of February 26, 2021, if it is reasonably able to do so. Procedural Order No. 2 also established a tentative date of

Wednesday March 3, 2021 for a transcribed technical conference to clarify matters arising from the interrogatories related to Alternatives 3 and 4 only.

On February 12, 2021, ED filed a renewed request to provide evidence in this proceeding, and addressed matters related to the timing of the proceeding. First, to address the OEB's concern about the potential for a lengthy and unnecessary delay in the proceeding as a result of ED's request, ED proposed to submit evidence within seven business days after receiving Hydro One's interrogatory responses. Second, ED proposed to defer the date of the technical conference from March 3, 2021 to March 10, 2021 to accommodate a scheduling conflict.

ED's renewed request to provide evidence and request to revise the date of Technical Conference

The OEB grants ED's updated request. The OEB agrees with ED that its proposal would require only a minimal change to the current schedule for this proceeding. The OEB again encourages Hydro One to provide interrogatory responses specific to the examination of Alternatives 3 and 4 in advance of February 26, 2021, if it is reasonably able to do so.

OIAA Cost Eligibility Request

In its letter of February 9, 2021, OIAA advised (in part) that it is a not-for-profit corporation mandated to manage, operate and develop the Ottawa International Airport "in a safe, secure, efficient, cost effective and financially viable manner with reasonable user charges" pursuant to a lease with the Federal Minister of Transport. OIAA submitted that it does not receive funding from any level of government; that it must self-fund in order to manage its operation through rents and user fees; and that costs borne by the OIAA must be recovered through increased fees or rent to users of the facility.

OIAA addressed the OEB's Practice Direction on Cost Awards (Practice Direction) in its submission, and in particular section 3.05, which sets out parties that will not be eligible for a cost award (although the Practice Direction does contemplate certain exceptions to that prohibition). OIAA advised that:

The OIAA is managed by a community Board comprised of nominees from certain selecting bodies such as community organizations, tourism associations, federal, municipal and provincial governments. Although all three levels of government have a nominee on the Board, once elected, such nominees owe their fiduciary duty to the OIAA and do not owe any further duties to their

nominating entities once elected. Of the 14 member Board, 2 members are nominated by the Federal Minister of Transport, 1 member is nominated by the Province of Ontario, 1 member is nominated by the City of Ottawa and 1 member is nominated by the City of Gatineau. Consequently, there is no government control over the OIAA by any level of government, as contemplated by 3.05(k) of the Practice Direction.

OIAA concluded by submitting that “Especially due to the OIAA’s financial position during the pandemic, with passenger traffic down more than 90%, any costs incurred in this process will create an undue burden on operational costs which would, in turn, increase the cost of flying to carriers and the travelling public.”

Having considered OIAA’s submissions, the OEB approves OIAA’s request for cost eligibility in this proceeding. The OEB is satisfied that OIAA is a not-for-profit corporation that does not receive funding from any level of government; there is no government control over OIAA by any level of government; and that government representation on its Board of Directors (one for each level of government) represents only 3 of 14 members. The OEB expects the OIAA’s participation to be limited to specific issues that may have a direct impact on the OIAA. This will typically take the form of asking interrogatories, attending hearings and/or other live elements of the proceeding (whether in-person or virtually) and making submissions as required. The cost claims are made using a standard OEB form with specific categories and should be supported by receipts and other documentation as applicable. OIAA should refer to the OEB’s *Practice Direction on Cost Awards* for further information in this regard.

The OIAA’s letter of February 9, 2021 refers to “legal and professional fees, costs of attending committees and costs due to operational impacts, which may be incurred by the OIAA.” The OEB is not clear as to what is meant by “costs due to operational impacts” but it should be clear that any indirect costs incurred by the OIAA will not be eligible for recovery. It should also be noted that Procedural Order No. 1 in this proceeding, which was issued on February 2, 2021, stated that “Cost-eligible intervenors should be aware that the OEB will not generally allow the recovery of costs for the attendance of more than one representative of any party, unless a compelling reason is provided when cost claims are filed.” Procedural Order No. 1 also stated that “Being eligible to apply for recovery of costs is not a guarantee of recovery of any costs claimed. Cost awards are made by way of OEB order at the end of a hearing.”

It is necessary to make provision for the following matters related to this proceeding. Further procedural orders may be issued by the OEB

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. ED shall file any evidence regarding Hydro One's assessment of project alternatives by **March 9, 2021**, with focus on Alternatives 3 and 4. This date reflects ED's proposal to submit evidence within seven business days after receiving Hydro One's interrogatory responses by February 26, 2021 as planned.
2. The OEB is setting a date of **Wednesday March 10, 2021** for a transcribed technical conference that will start at 9:30 a.m. to clarify matters arising from the interrogatories related to Alternatives 3 and 4 only. The technical conference will be a virtual event and details on how to participate will be provided at a later date.
3. Any written submissions from OEB staff and intervenors shall be filed with the OEB and served on all parties by **March 15, 2021**.
4. Any written reply submissions from Hydro One shall be filed with the OEB and served on intervenors by **March 22, 2021**.

Parties are responsible for ensuring that any documents they file with the OEB, such as applicant and intervenor evidence, interrogatories and responses to interrogatories or any other type of document, do not include personal information (as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*), unless filed in accordance with rule 9A of the OEB's *Rules of Practice and Procedure*.

All materials filed with the OEB must quote the file number, **EB-2020-0265**, and be submitted in a searchable/unrestricted PDF format with a digital signature through the OEB's web portal at <https://p-pes.ontarioenergyboard.ca/PivotalUX/>. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <https://www.oeb.ca/industry>. If the web portal is not available parties may email their documents to registrar@oeb.ca.

All communications should be directed to the attention of the Registrar at the address below and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Andrew Pietrewicz at Andrew.Bishop@oeb.ca and OEB Counsel, James Sidlofsky at James.Sidlofsky@oeb.ca.

Email: registrar@oeb.ca
Tel: 1-888-632-6273 (Toll free)
Fax: 416-440-7656

DATED at Toronto, **February 12, 2021**

ONTARIO ENERGY BOARD

Original signed by

Christine E. Long
Registrar