

# AIRD & BERLIS LLP

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**RECEIVED**

AUG 9 2007

ONTARIO ENERGY BOARD

August 9, 2007

## SENT VIA COURIER AND E-MAIL

Ontario Energy Board  
P.O. Box 2319  
27th Floor  
2300 Yonge Street  
Toronto, ON M4P 1E4

Attention: Kirsten Walli, Board Secretary

Dear Ms. Walli: *2010/8*

**Re: Ontario Energy Board ("Board") File No. EB-2007-0027  
Submissions of Township of South-West Oxford (the "Township")**

Please find enclosed the Township of South-West Oxford's submissions with respect to the above-referenced leave to construct application of Hydro One Networks Inc. We also enclose the requisite ten copies of same.

If you have any questions or comments regarding the application please contact the undersigned at your earliest convenience.

Yours very truly,

**AIRD & BERLIS LLP**



Scott Stoll  
SAS:kp  
Encl.

cc: Hydro One Networks Inc.  
Intervenors  
Allen Forrester

2325887.1

*EB-2007-0027*

OEB BOARD SECRETARY	
File No:	Sub File: <i>8</i>
Panel	<i>BR, PV, KQ</i>
Licensing	<i>RC, KS</i>
Other	
00/04	<i>AB</i>

**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 Hydro One  
Networks Inc., for an Order or Orders granting Leave to  
construct Transmission Facilities in the Woodstock Area.

## **SUBMISSIONS OF TOWNSHIP OF SOUTH-WEST OXFORD**

### **OVERVIEW**

1. The Township of South-West Oxford (the "Township") filed a Notice of Late Intervention in this proceeding on July 27, 2007. Hydro One Networks Inc. ("Hydro One" or the "Applicant") is seeking leave to construct certain transmission facilities (the "Project") in the Woodstock area, including several kilometres of transmission lines within the geographic area of the Township. As noted in the Township's Notice of Application for Intervenor Status, it is generally supportive of the Project and does not take issue with the overall need or the economic justification for the Project. The Township's concerns are focused upon the segment of the Project and the specific route chosen which is located within and adjacent to the municipal road allowance of Karn Road.
2. The Township requests that this Board grant leave to construct the Project subject to a condition to continue negotiations with the Township to determine a route acceptable to the Township. In the alternative, the Board could include a condition in the leave that would impose a minimum setback from the edge of

pavement for the proposed towers in order to enhance public safety and avoid unnecessary interference with any future upgrades to Karn Road.

#### **THE TEST FOR LEAVE TO CONSTRUCT**

3. The *Ontario Energy Board Act, 1998*, subsection 96(2) provides specific criteria for the granting of leave to construct of electricity transmission lines. The Township asserts that given the statutory requirements, leave to construct the Project should be granted subject to certain conditions regarding the detailed alignment along Karn Road.
  
4. Subsection 96(2) does not prohibit the inclusions of conditions upon the Applicant in granting leave to construct. The Board regularly grants leave to construct facilities with conditions placed upon the granting of such leave as the Board determines are appropriate in the circumstances. The Township submits that requiring Hydro One to develop a detailed route that is acceptable to the Township is reasonable in the circumstances.

#### **LETTERS OF COMMENT**

5. On April 24, 2007 the Township filed a letter of comment with the Board in this proceeding. In that letter, the Township identified several concerns with the proposed route including:
  - The existing 66' Hydro One right of way that was established 96 years ago overlaps the current 66' municipal right of way along Karn Road which contains a Hydro One distribution line.

- The close proximity of the proposed tower line is a potential safety concern as there have been incidents in which automobiles have crashed into the existing hydro towers.
  - The close proximity of the towers will adversely impact the Township's ability to reconstruct Karn Road to today's standards.
6. The Board Staff asked a number of questions as to how Hydro One was going to address the concerns of the Township and the status of discussions (IR#7, Supplementary IR#3). Clearly, the Township has concerns about the safety of the public and wishes to avoid a situation of building the transmission facility in a location that is problematic for future municipal road work.
7. On July 27, 2007, the Township filed a second letter of comment reiterating its concern regarding the use of the existing municipal right of way for the transmission line. Attached to this second letter was a petition that local residents had circulated among several of the residents of Karn Road stating their opposition to the use of the existing right of way and their offer to enter negotiations for relocation of the transmission line.

**EVIDENCE IN THIS PROCEEDING**

8. The Township is concerned about the completeness of the evidentiary record that has been provided to the Board and the ability of the Board to make a fully informed decision. The Township's concerns with the evidence would impact the types of conditions the Board should impose in granting the leave to construct.

9. Hydro One indicated that a Draft Environmental Study Report (the "Draft ESR") would be ready approximately mid-June 2007. Although the Draft ESR has been completed, it has not been submitted in evidence as part of this proceeding. Therefore, the Board has no information on the record as to the environmental impact of the various alternatives that were considered as part of the Draft ESR.
10. As such, no substantive questions could be posed about the contents of the Draft ESR in this proceeding. For instance, was the environmental impact of a realignment of the transmission facilities considered and if so, how? While Hydro One considered multiple routes for installing a 230 kV line to the south of Woodstock, it did not consider any route other than the existing Hydro One right of way for the preferred route, even though the preferred alternative necessitates the installation of a temporary line and is not necessarily the shortest alternative.
11. Section 4.3.6 of the Ontario Energy Board Filing – *Requirements for Transmission and Distribution Applications*, there is a requirement to file specific information regarding the land requirements for the project. The Township notes that Hydro One has failed to include in the evidence the detailed information regarding existing land rights and the necessary detail regarding future land rights. The detailed information does not appear to be available as Hydro One has yet to determine the actual requirements for the construction of the Project. The proposed route requires new permanent easements. Hydro One will determine the need and extent of new easements after the legal and engineering survey is completed (Ex. B, Tab 6, Sched 8, p. 1 of 5, ll. 22-25). The Board is in the position of not knowing the full impact of the Project.

12. Hydro One has stated that part of the cost of the Project is attributable to an increased number of towers as compared to the optimal number. In response to Interrogatory #3(i), Hydro indicated that the use of the proposed narrow-based towers will require approximately 40% more towers. Therefore, such a significant cost may be avoidable if an alternate route was utilized or a different tower design chosen. More towers will increase the likelihood of an accident involving a tower. There is no evidence on the record of the impact, cost or environmental of the extra towers and whether such a re-alignment could avoid any such impacts.

**PROVINCIAL POLICY STATEMENT**

13. Hydro One makes assertions that the proposed Project is consistent with the Provincial Policy Statement (the "Policy"). In general the Township acknowledges that the continued use of existing utility corridors is preferred. Section 1.6.2 and 1.6.3 of the Policy requires the optimization of existing facilities and the co-location of public service facilities where feasible. These are not absolute requirements, but issues to be considered among the total objectives of the Policy.

1.6.2. The use of existing *infrastructure* and *public service facilities* should be optimized, wherever feasible, before consideration is given to developing new *infrastructure* and *public service facilities*.

1.6.3. *Infrastructure* and *public service facilities* should be strategically located to support the effective and efficient delivery of emergency management services.

Where feasible, *public service facilities* should be co-located to promote cost-effectiveness and facilitate service integration.

14. Further, the Township cautions the Board against reading the Policy in too narrow a fashion and requests the Board examine the Project in light of the entire Policy. The Township submits that the Board should consider other aspects of the Policy including:

Land use must be carefully managed to accommodate appropriate development to meet the full range of current and future needs, while achieving efficient development patterns.....<sup>1</sup> [emphasis added]

It is equally important to protect the overall health and safety of the population.....<sup>2</sup>

Long-term prosperity, environmental health and social well-being should take precedence over short-term considerations.<sup>3</sup>

15. Section 1.7.1(e) of the Policy states that economic prosperity is supported by proper planning so the major facilities are appropriately buffered or separated from each other and the risk to public health is minimized. The Township submits that locating the Towers within the road allowance where crashes involving towers have been known to occur is inconsistent with this section of the Policy and the **minimization** of risk to the public. Further, the longer term planning would tend toward a location that will not constrict future upgrading of Karn Road.

1.7.1 Long-term economic prosperity should be supported by:

- e) planning so that major facilities (such as airports, transportation/transit/rail infrastructure and corridors, intermodal facilities, sewage treatment facilities, waste management systems, oil and gas pipelines, industries and resource extraction activities) and *sensitive land uses* are appropriately designed, buffered and/or separated from

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<sup>1</sup> The Policy, page 2.

<sup>2</sup> The Policy, page 3.

<sup>3</sup> The Policy, page 3.

each other to prevent *adverse effects* from odour, noise and other contaminants, and minimize risk to public health and safety;

16. Therefore, it is incorrect to say that maintaining the existing alignment is in keeping with the Policy. The Policy is intended to provide for a balancing of interests such that the greater public interest is achieved by considering the project or issue within the specific context using the framework of tools provided. The Policy is not intended to result in a slavish devotion to a particular clause. For example, if maintaining the current alignment would adversely impact the reconstruction of Karn Road which could otherwise be avoided through a broader planning perspective, then the Policy would support the broader consideration.
17. The Township asserts that the Policy would be better served by a re-alignment of the proposed route such that the towers are not located within the municipal road allowance. Such a re-alignment would provide a safer design and “accommodate appropriate development to meet the full range of current and future needs” including the need to reconstruct Karn Road in the future.
18. It appears Hydro One has closed its mind to a re-alignment of the towers. In response to Interrogatory #7, Hydro One only committed to considering a possible measure (sandbags) to mitigate human safety concerns regarding crashes into large towers located in the municipal right of way and a review of preliminary locations prior to construction. Hydro One did not commit to considering “all reasonable alternatives” to minimize the potential safety concerns nor did it commit to developing tower locations with the Township prior to finalizing design. In fact Hydro One reiterated its statutory right to place equipment in the road allowance in the location of its choosing.

**SECTION 41 OF THE ELECTRICITY ACT**

19. In the event that leave is granted, the Township expects Hydro One would assert that subsection 41(10) of the *Electricity Act, 1998* exempts Hydro One from the need to obtain agreement from the Township regarding the location of the towers. As such, it is anticipated that Hydro One will take the position that imposing any such condition as requested by the Township is contrary to the statute.
20. Section 41 provides a scheme for locating a plant in the absence of a leave to construct proceeding and ensures that should a municipality and a transmitter or distributor not agree the Board will be the arbiter. Further, it provides that where leave to construct is obtained pursuant to section 92 of the *Ontario Energy Board Act, 1998* there is no need to have recourse to resolve a dispute about the location of the proposed facilities. Presumably, the issue would be fully canvassed during the leave to construct proceeding.
21. Had the Applicant filed detailed evidence of the impact of the proposed route upon the owner of the road as part of its application for the leave to construct, the Township would understand such a position. In those circumstances the Board would be able to consider all of the evidence and make a decision to grant leave subject to any conditions the Board determined appropriate in the circumstances. The interests and impact on the landowner would have been fully canvassed during the proceeding and any revisiting of the issue would be unnecessary.
22. In the present situation, the Applicant has chosen not to provide specific and detailed information regarding the location of the proposed transmission facilities. The evidence states the location of the towers and easements will be

determined in the future. An unconditional leave would provide Hydro One with the ability to install the transmission line anywhere within the municipal right of way and the Township would have no ability to dispute the location or to mitigate the impact. The legislature could not have intended the leave to construct would grant such overwhelming authority with so little consideration of the potential impact on the land owner.

**CONCLUSION**

23. In summary, the Township supports the need for the Project but wants to ensure the construction of the Project is completed in such a manner as will provide the most benefit to society in the long term. The Township is committed to working with Hydro One to find a solution that satisfies the timing and needs of Hydro One and its customers as well as serving the broader public interest.
  
24. In the event that this Board decides that Hydro One should be granted leave to construct the Project such leave should include a condition to achieve an alignment of the towers that is acceptable to the Township. In the alternative, the Township requests this Board include a condition in the leave to construct that would impose a minimum setback from the edge of pavement for the proposed towers. The imposition of such conditions will enhance public safety and help the longer term public interest without causing undue delay to the Project.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

TOWNSHIP OF SOUTH-WEST OXFORD

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