Hydro One Networks Inc.
8th Floor, South Tower
483 Bay Street
Toronto, Ontario M5G 2P5
www.HydroOne.com

Tel: (416) 345-5700
Fax: (416) 345-5870
Cell: (416) 258-9383
Susan.E.Frank@HydroOne.com

Susan Frank
Vice President and Chief Regulatory Officer
Regulatory Affairs

BY COURIER

October 9, 2007

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

Dear Ms. Walli:

EB-2006-0189 - Hydro One Networks Connection Procedures pursuant to the Transmission System Code – Hydro One Networks' Notice of Motion

After receiving a number of comments and concerns from customers of Hydro One Networks Inc. ("Hydro One") as a result of the above-noted Decision and Order, and after careful consideration by Hydro One's Board of Directors, Hydro One has decided to request a Review of the Decision and Order.

Enclosed, therefore, are ten paper copies of a Notice of Motion to request the Review, pursuant to Rule 42 of the Board's Rules of Practice and Procedure.

As Hydro One was unable to submit the Notice of Motion within the prescribed time period, Hydro One respectfully requests that the Board accept the Notice of Motion for filing and for Review.

Sincerely,

ORIGINAL SIGNED BY SUSAN FRANK

Susan Frank

Attach.

EB-2006-0189

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S. O. 1998, c. 15, Schedule B;

AND IN THE MATTER OF a proceeding initiated by Hydro One Networks Inc. for the review and approval of its transmission connection procedures;

AND IN THE MATTER OF Rule 42 of the Rules of Practice and Procedure of the Ontario Energy Board.

NOTICE OF MOTION

Hydro One Networks Inc. ("the Applicant") 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 fixed by the Board.

The Motion is for:

1. A review of those parts of the Board's Decision and Order dated September 6, 2007 ("the Decision") pertaining to:

   (a) Section 3.3 of the Decision, which is in respect of Contestability--Competition for Customer-Owned Connection Assets; and

   (b) Section 3.5 of the Decision, which is in respect of Transmission Plans and Cost Responsibility for Connection Facilities.

2. An Order that:

   (a) the Applicant may enter into, and honour, contracts with third parties wherein the Applicant provides, to those third parties, services ancillary to or related to transmission and distribution;

   (b) there be no capital contribution responsibility on the part of transmission customers whenever the Applicant is constructing a line connection

facility serving multiple transmission customers (a "Local Area Supply facility").

3. An Order staying the implementation and effects of Sections 3.3 and 3.5 of the Board's Decision until a reasonable period of time after a decision has been rendered in respect of this Motion.

4. An Order extending from October 12, 2007, until a reasonable period of time after a decision has been rendered in respect of this Motion, the deadline by which the Applicant must file new Connection Procedures concerning matters affected by Sections 3.3 and 3.5 of the Board's Decision.

5. Such further and other relief as counsel may advise and the Board permit.

The grounds for the Motion are:

A. SECTION 3.3 OF THE DECISION: *CONTESTABILITY-- COMPETITION FOR CUSTOMER-OWNED ASSETS*

1. The Board erred in that there was incomplete evidence and information, which evidence and information could not have been discovered by reasonable diligence at the time or which were otherwise not brought to the attention of the Board, thereby raising a question as to the correctness of the Decision.

(a) The appropriateness of the Applicant's role as a contractor with respect to customer-owned connection assets was at no time identified as an issue in any of the Procedural Orders, nor could it reasonably have been expected to be an issue in the proceeding, which was intended to review specific Connection Procedures filed by the Applicant. Procedural Orders 1 and 2 did not identify any specific issues; and Procedural Order 3 referenced only the cost responsibility issue. The Applicant's role as contractor was raised only in three interrogatories (ECAO #1 and #2, and Board Staff #28). A meaningful discovery of the issues surrounding the contractor role did not occur, nor could it have occurred, in such a limited exchange, especially since the subject was, at best, tangential to the Connection Procedures that formed the subject of the proceeding.

(b) As tangential as the Applicant's role as a contractor with respect to construction of customer-owned connection assets was in the proceeding, it was even less possible for either the Applicant, intervenors or the Board to foresee issues regarding the numerous other contractual services provided by the Applicant to third parties, which contractual services could be gravely affected by the Decision. The consequence was that there was incomplete evidence and information before the Board on matters that did

not seem to be in issue in the proceeding, which could result in major effects on not only the Applicant, but also on third parties who are the beneficiaries of such services.

(c) Examples of facts that were not discovered at all in this proceeding or were only partially discovered are as follows. All of these aspects merit a fuller discovery and the opportunity for parties other than the ECAO and Board Staff to place evidence on the record in the proceeding. Given the scope of the proceeding, it could not reasonably be expected that such parties would have seen either an opportunity or the appropriateness of submitting such evidence:

- The Applicant acts as a contractor and service provider to meet the needs and demands of its customers, which needs and demands are often unique and cannot be easily met by other parties, particularly at nuclear facilities.
- The Applicant prices all of its external work using transparent, fully-allocated costs and by including a margin on top of those costs.
- The Board's Decision states, "The effect of the transmitter competing in the marketplace for the construction of customer-owned connection facilities is to raise the spectre of potential cross-subsidization of these unregulated activities by the regulated transmission revenue requirement." However, the work in question is costed in a rigorous and transparent manner as noted above, with the specific intent and effect of avoiding cross-subsidization.
- The Applicant's provision of "contractor" services to customers actually reduces rates through external revenues, and specifically through the margins that are added to the fully-allocated costs and through the absorption of fixed overheads.
- The Applicant's ability to provide external transmission services improves efficiency and resource utilization.
- A cessation of such work could cause significant hardship and risk for parties that use and rely on the Applicant for such services.
- Customers and contractors often request the Applicant to install protection and control equipment on new load and generator equipment on the customer's assets, because of the critical need for such assets to communicate effectively with the transmitter's corresponding equipment and because of the Applicant's unique skills in this field.
- The Applicant's contractor role is not limited only to connection assets. The contractual services provided by the Applicant to third parties, which services may or may not be on customer premises, include:

  (i) E*ngineering and construction for new or modified customer-owned transmission lines and stations (including protection and control)*

  (ii) *MSP services*- Services for Metered Market Participants to maintain compliance with IESO Market Rules

(iii) *Station maintenance*- Routine maintenance on breakers, transformers, switches, etc.

(iv) *Protection and Control Maintenance*- Routine maintenance on relay panels, current transformers, potential transformers, etc.

(v) *Overhaul and Repair*- Major overhaul and repair activities on breakers, transformers, switches, etc., including specialized services for transportation (e.g. "Schnable" rail car) and machining (e.g. low-pressure spindles for nuclear) requirements

(vi) *Miscellaneous*- Minor services, such as fleet repair & inspection, specialty tool rentals, special studies, training, etc.

2. The Board erred in that, in large part because of the absence of evidence and information referred to the in the preceding ground, the Board failed to protect the interest of consumers, thereby raising a question as to the correctness of the Decision.

The Board was unable to consider the effect on consumers (not only the third parties to whom the Applicant provides services but also the Applicant's ratepayers who benefit from the Applicant's provision of such services to other third parties) of forbidding the Applicant from providing services to third parties.

3. The Board's interpretation of Section 71 of the *Ontario Energy Board Act, 1998*, occurred in the absence of relevant evidence before the Board, thereby raising a question as to the correctness of the Decision.

Because of the absence of relevant evidence and information as to the Applicant's services performed for third parties, the Board was without facts and submissions showing that the services provided by the Applicant are ancillary to, or related to, transmission and distribution, and therefore permissible.

B. SECTION 3.5 OF THE DECISION: *TRANSMISSION PLANS AND COST RESPONSIBILITY FOR CONNECTION FACILITIES*

1. The Board erred in fact and in law in the Decision by not considering a Transmission System Code ("TSC")-based conclusion that could have been reached and instead basing its conclusion on principles and definitions not found in the TSC.

(a) Section 6.3.6 of the TSC specifically requires a transmitter to "develop and maintain plans to meet load growth and maintain the reliability and integrity of its transmission system"; and Section 6.2.5 requires a transmitter to "ensure that there is sufficient available capacity" to satisfy the requirements of its customers. These plans are the ones referenced in section 6.3.6 of the TSC, for which capital contributions are

exempted. Section 3 (Cost Responsibility) in the *Synopsis of Changes to the TSC* further states, "Such plans are expected to be developed by transmitters to address growing demand, system reliability and integrity. These plans will also be essential to determine whether a particular connection project is truly triggered by the needs of a specific customer." Such plans are Local Area Supply plans as defined in the Applicant's Connection Procedures, so such facilities should therefore be exempt from the requirement for capital contributions. The Board erred by not reaching a conclusion on the basis of the TSC, as is required.

(b) The Decision erred in fact and in law by stating that the only exemptions available to customers are the cost responsibility exemptions associated with "Unique System Elements" and "System Reliability Plans". The Applicant can find no basis in the TSC for exemptions related to those two categories, yet those two categories seem to be not only the basis for the Decision but also essential to the basis of the Decision, because they serve as mechanisms to mitigate the effects (on the customer) of unreasonable cost allocations. Without the benefit of such mitigation measures, the Applicant states that the Decision would be impractical to implement and, according to the Ontario Power Authority, would have the potential to result in distorted planning and suboptimal system infrastructure.

Nowhere in the TSC is there a basis for the Board to find that "unique" system elements can serve to exempt a customer from the requirement to make a capital contribution. The Decision references section 6.3.8 of the TSC, but section 6.3.8 addresses the overbuilding of facilities, not unique system elements. Therefore, uniqueness, as an exemption for capital contribution, is not TSC-based. Additionally, the Decision references section 6.3.6 of the TSC as a basis for the concept of a "System Reliability Plan", but section 6.3.6 contains no mention of a system reliability-only plan, nor is there any reference to such a plan anywhere else in the TSC. The result is that the concept of a System Reliability Plan is also not TSC-based.

The TSC rightly does not contemplate a system reliability-only plan since, even as the Decision acknowledges, there can be ambiguity between system reliability and customer-driven plans. Having acknowledged this ambiguity, the Decision nevertheless fails to adequately address the issue. Intervenor submissions noted that plans to address reliability and load growth are inexorably intertwined. To require a capital contribution from one customer who requests an enhancement on certain connection facilities, while exempting contribution from another customer who does not request it – even if the facilities are identical and serve the same purpose. – is simply unfair. Similarly, it is unfair to require a capital contribution from one customer who participates in a joint study with Hydro One on certain connection facilities, while exempting contribution from another customer who does not participate in such a study. The fact that the consequences of the Decision implicitly assign cost responsibility in identical circumstances based on the mechanics of the process by which the plan was developed rather than based on who benefited calls into question the correctness of the Decision.

2. The Decision failed to protect the interest of consumers and was contrary to regulatory principles, thereby raising a question as to the correctness of the Decision.

Section 3.5 of the Decision states:

> *It is clear that, taken as a whole, section 6.3 of the Code (including the sections referenced above) provides that in almost all cases where the transmitter is enhancing its equipment to accommodate the needs of a line connection, a capital contribution will be required from the customer or customers who benefit from the enhancement.*

and further states:

> *Hydro One's interpretation of section 6.3.6 of the Code is not one adopted by the other transmitters, nor is it one that is without a fairly high degree of complexity and artifice.*

The Decision fails to recognize or adequately address the following:

(a) Local Area Supply Facilities are primarily for the benefit of the pool, and this benefit is directly related to system reliability and integrity.

(b) The risk that properly planned Local Area Supply facilities will not be placed in service because of one or more customers' inability to raise the capital for contributions.

(c) A substitute for the Applicant's [rejected] definition of a rule-based contribution policy that would exempt Local Area Supply facilities from a contribution. Instead, the Decision adopts a case-by-case approach for determining whether a plan meets the criteria giving rise to an exception, thereby introducing an unmanageable level of regulatory uncertainty and financial risk that is inconsistent with other aspects of the TSC.

(d) The TSC was not intended to assign cost responsibility based on "who spoke to whom" but rather based on benefits. The nature of the discussions leading to new or modified facilities is irrelevant to cost responsibility.

The following documentary evidence will be used at the Motion:

1. Those portions of the record of the proceeding pertaining to Sections 3.3 and 3.5 of the Decision.

2. Additional evidence and information to be filed by the Applicant, insofar as such additional evidence and information were not provided to the Board at, or prior to, the rendering of the Decision.

3. Such further and other evidence as counsel may advise and the Board permit.

October 9, 2007

HYDRO ONE NETWORKS INC.
483 Bay Street, North Tower, 15th Floor
Toronto, Ontario M5G 2P5

Michael Engelberg
Assistant General Counsel

Phone: (416) 345-6305
Fax: (416) 345-6972
e-mail: mengelberg@HydroOne.com

AND

HYDRO ONE NETWORKS INC.
438 Bay Street, South Tower, 8th Floor
Toronto, Ontario M5G 2P5

Glen MacDonald
Senior Advisor – Regulatory Research
and Administration

Phone: (416) 345-5913
Fax: (416) 345-5866
e-mail: regulatory@HydroOne.com

TO: **ONTARIO ENERGY BOARD**
2300 Yonge Street, etc.

AND TO

1. **Great Lakes Power Limited**
Mr. Viggo Lundhild
General Manager
Great Lakes Power Limited
2 Sackville Road
Sault Ste. Marie ON P6B 6J6
Tel: 705-941-5661
Fax: 705-941-5600
Email: vlundhild@glp.on.ca

AND
Ogilvy Renault LLP
Suite 3800, Royal Bank Plaza
South Tower
200 Bay Street, P.O. Box 84
Toronto ON M5J 2Z4
Fax: 416-216-3930
Mr. Charles Keizer
Tel: 416-216-2342
Email: ckeizer@ogilvyrenault.com
Mr. Andrew Taylor
Tel: 416-216-4771
Email: ataylor@ogilvyrenault.com

2. **Association of Major Power Consumers in Ontario**
Mr. Adam White
President
Association of Major Power Consumers in Ontario
595 Bay Street
Suite 1201, P.O. Box 69
Toronto ON M5G 2C2
Tel: 416-260-0225
Fax: 416-260-0442
Email: awhite@ampco.org

AND
Mr. J. Mark Rodger
Borden Ladner Gervais LLP
Scotia Plaza, 40 King Street West
Toronto ON M5H 3Y4
Tel: 416-367-6190
Fax: 416-361-7088
Email: mrodger@blgcanada.com

3. **Association of Power Producers of Ontario**
Mr. Jake Brooks
Executive Director
Association of Power Producers of Ontario
25 Adelaide Street East
Suite 1602
Toronto ON M5C 3A1
Tel: 416-322-6549
Fax: 416-481-5785
Email: Jake.Brooks@appro.org

4. **Electrical Contractors Association of Ontario**
Mr. Eryl Roberts
Executive Vice-President
Electrical Contractors Association
of Ontario
460, 170 Attwell Drive
Toronto ON M9W 5Z5
Tel: 416-675-3226 Ext. 311
Fax: 416-675-7736
Email: eroberts@ecao.org

AND
MACLEOD DIXON LLP
Toronto-Dominion Centre
Canadian Pacific Tower
100 Wellington Street West
Suite 500
Toronto ON M5K 1H1
Fax: 416-360-8277
Mr. Robert Frank
Tel: 416-202-6741
Email: robert.frank@macleoddixon.com

Ms. Heather Landymore
Tel: 416-202-6702
Email: heather.landymore@macleoddixon.com

5. **Hydro Ottawa**
Ms. Lynne Anderson
Director, Regulatory Services
Hydro Ottawa
3025 Albion Road North, P.O. Box 8700
Ottawa ON K1G 3S4
Tel: 613-738-5499 ext. 527
Fax: 613-738-6403
Email: lynneanderson@hydroottawa.com

6. **Independent Electricity System Operator**
Mr. Carl Burrell
Independent Electricity System Operator
655 Bay Street, Suite 410
P.O. Box 1
Toronto ON M5G 2K4
Tel: 416-506-2858
Fax: 416-506-2847
Email: carl.burrell@ieso.ca

7. **Ontario Power Generation Inc.**
Mr. Tony Petrella
Senior Advisor, Regulatory Affairs
Ontario Power Generation Inc.
700 University Avenue, H18-E1
Toronto ON M5G 1X6
Tel: 416-592-3036
Fax: 416-592-8519

9. **Power Workers' Union**
Mr. John Spracket
Staff Officer, President's Office
Power Workers' Union
244 Eglinton Avenue East
Toronto ON M4P 1K2
Tel: 416-322-4787
Fax: 416-481-7914
Email: spracket@pwu.ca

AND
Ms. Judy Kwik
Senior Consultant
Elenchus Research Associates (ERA)
34 King Street East, Suite 610
Toronto ON M5C 2X8
Tel: 416-348-8777
Fax: 416-348-9930
Email: jkwik@era-inc.ca

AND
Mr. Richard Stephenson
Counsel
Paliare Roland
250 University Avenue, Suite 510
Toronto ON M5H 3E5
Tel: 416-646-4325
Fax: 416-646-4335
Email: Richard.Stephenson@paliareroland.com

10. **Cambridge and North Dumfries Hydro**
Mr. John Grotheer
President and CEO
1500 Bishop Street
PO Box 1060
Cambridge ON N1R 5X6

Tel: 519 621-3530
Fax: 519 621-0383
Email: jgrotheer@camhydro.com

11. **Guelph Hydro Electric Systems Inc.**
Mr. Arthur Stokman
President
104 Dawson Road
Cambridge ON N1H 1A7
Tel: 519 837-4715
Fax: 519 836-1055
Email: astokman@guelphhydro.com

12. **Kitchener-Wilmot Hydro Inc.**
Mr. Jerry Van Ooteghem
President and CEO
301 Victoria Street South
Kitchener ON N2G 4L2
Tel: 519 745-4771
Fax: 519 571-9338

13. **Waterloo North Hydro Inc.**
Mr. Rene Gatien
President and CEO
PO Box 640
300 Northfield Drive East
Waterloo ON N2J 4A3
Tel: 519 886-5090
Fax: 519 886-8592
Email: rgatien@wnhydro.com

14. **Coalition of Large Distributors**
c/o Ms. Kathi Litt
Manager - Rates and Regulatory
Enersource
3240 Mavis Road
Mississauga ON L5C 3K1
Tel: 905 283-4247
Fax: 905 566-2737
Email: klitt@enersource.com

AND
Ms. Lynne Anderson
Director, Regulatory Services
Hydro Ottawa
3025 Albion Road North, P.O. Box 8700

Ottawa ON K1G 3S4
Tel: 613-738-5499 ext. 527
Fax: 613-738-6403
Email: lynneanderson@hydroottawa.com

AND
Mr. George Armstrong
Manager of Regulatory Affairs and Key Projects
Veridian Connections Inc.
55 Taunton Road East
Ajax ON L1T 3V3
Tel: 905-427-9870
Fax: 905-619-0210
Email: garmstrong@veridian.on.ca

AND
Ms. Paula Conboy
Director- Regulatory and Government Affairs
Powerstream Inc.
2800 Rutherford Road
Vaughan ON L4K 2N9
Tel: 905-417-6900
Fax: 905-303-2006
Email: paula.conboy@powerstream.ca

AND
Mr. Cameron McKenzie
Director - Regulatory Services
Horizon Utilities
55 John Street North
PO Box 2249
Hamilton ON L8N 3E4
Tel: 905-317-4785
Fax: 905-522-6570
Email: chmckenzie@hamiltonhydro.com

AND
Mr. Colin McLorg
Manager - Regulatory Affairs
Toronto Hydro
14 Carlton Street
Toronto ON M5B 1K5
Tel: 416 542-2513
Fax: 416 542-2776
Email: cmclorg@torontohydro.com

15. **Electricity Distributors Association**
Mr. Richard Zebrowski
Vice-President, Policy and Corporate Affairs
3700 Steeles Avenue
Suite 1100
Vaughan ON L4L 8K8
Tel: 905 265-5300
Fax: 905 265-5301
Email: email@eda-on.ca

16. **Five Nations Energy Inc.**
Mr. Richard J. King
Ogilvy Renault LLP
200 Bay Street
Suite 3800, Box 84
Royal Bank Plaza, South Tower
Toronto ON M5J 2Z4
Tel: 416 216-2311
Fax: 416-216-3930
Email: rking@ogilvyrenault.com

17. **Ontario Power Authority**
Mr. Michael Lyle
120 Adelaide St. W., Suite 1600
Toronto ON M5H 1T1
Tel: 416-969-6035
Fax: 416-967-1947
Email: michael.lyle@powerauthority.on.ca

18. **Woodstock Hydro Services Inc.**
Mr. Jay Heaman
Manager, Engineering, Growth & Conservation
16 Graham Street
Box 245 Stn Main
Woodstock, ON N4S 7X4
Tel: (519) 537-3488
Fax: (519) 537-5081
Email: jheaman@woodstockhydro.com