

Our File: 186095

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January 26, 2007

VIA COURIER

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

Attention: Peter H. O'Dell, Assistant Board Secretary

Dear Mr. O'Dell:

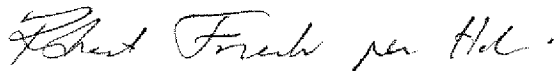
**Re: Written submissions of the Electrical Contractors Association of Ontario,
Great Lakes Power Limited (EB-2006-0200)**

Enclosed please find nine copies of the written submissions on behalf of the Electrical Contractors Association of Ontario and the affidavits of Eryl Roberts sworn December 15, 2006 and Wayne Gatién sworn December 14, 2006.

An electronic copy has been sent via e-mail in searchable Adobe Acrobat (PDF).

Yours truly,

MACLEOD DIXON LLP



Robert Frank

RF/ss

Enclosures

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

AND IN THE MATTER OF the Application of Great Lakes Power Limited for the review and approval of connection procedures.

THE ELECTRICAL CONTRACTORS ASSOCIATION OF ONTARIO (“ECAO”)

January 26, 2007

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Background to the ECAO

1. The Electrical Contractors Association of Ontario (“ECAO”) is a not-for-profit corporation established to represent electrical contractors across Ontario.
2. ECAO is committed to addressing the needs of the industry by providing a variety of services directly to the membership, and by making representations on behalf of the industry to government and regulatory bodies.
3. ECAO’s 850 member contractors provide services in the institutional, commercial, industrial, residential and electrical utility construction and maintenance marketplace. ECAO’s members are active in the provision of a broad range of electrical services, including: the planning, siting, construction and maintenance of power lines, poles and transformers; the construction and maintenance of substations; the construction and maintenance of power generation equipment and facilities (powerhouses and all related inside and interconnection wiring); and the construction and maintenance of interconnection facilities.
4. As such, ECAO’s members have a direct and significant interest in the electrical construction and maintenance businesses housed within, or affiliated with, regulated electrical transmission utilities, and the appropriate regulation of such utilities vis-à-vis such competitive businesses. ECAO’s members also have a direct interest in the regulation of standards in respect of electrical transmission, distribution and related interconnection facilities.

Issues

5. ECAO submits that:
 - (I) Great Lakes Power Limited (“GLPL”) should not be permitted to participate in the bidding process for connection construction work unless such work is bid for and to be undertaken through an affiliate; and
 - (II) GLPL’s Transmission Customer Connections Process work should be amended to clarify that work on existing GLPL-owned station sites and existing right-of-ways is contestable.

I. Contestable Work and Section 71(1) of the Ontario Energy Board Act, 1998

6. ECAO submits that in accordance with section 71(1) of the *Ontario Energy Board Act, 1998*, GLPL can only undertake connection construction work through an affiliate.
7. Section 71(1) of the *Ontario Energy Board Act, 1998* provides that “[s]ubject to subsection 70(9) and subsection (2) of this section, a transmitter or distributor shall not, except through one or more affiliates, carry on any business activity other than transmitting or distributing electricity.” [emphasis added]
8. ECAO submits that connection construction is a business activity that falls outside of the scope of the transmission of electricity.

Connection Construction Work Outside Scope of Transmitting Electricity

9. The electricity market in Ontario was restructured with the view that monopoly wires services would be performed by distributors and transmitters, whereas other competitive activities would be open to competition. In *A Framework for Competition*, the Advisory

Committee stated that “[t]he transmission of electricity is an example of a natural monopoly. It was a key part of Ontario Hydro’s vertically-integrated monopoly, during the time when demand was increasing as Ontario was electrified. It would be neither cost-effective, nor in the public interest, if competing companies built duplicate transmission grids.”

A Framework for Competition: The Report of the Advisory Committee on Competition in Ontario’s Electricity System to the Ontario Minister of Environment and Energy at page 24.

10. The principle behind this conclusion is that while it is generally not cost-effective to open up regulated monopoly activities such as transmission to competition, other activities, such as connection construction work, could and should operate in a competitive environment.
11. In RP-1999-0044, during its cross-examination on ‘Treatment of New Load Connection Investments’, Ontario Hydro Networks Company Inc. agreed with the following statements:
 - (i) the transmission of electricity would have to be carried out in a company separate from companies providing competitive business activities; and
 - (ii) a competitive business activity is an activity where more than one entity provides that activity and where a customer has the option of choosing more than one entity to provide that activity.
(Tr. 7, p.1209, lines 12-17)
12. Certainly connection construction work can and is provided on a competitive basis. Therefore, connection construction work is a competitive business activity and should be carried out in a company separate from the transmission company. If GLPL intends to provide connection construction work, it should be provided through an affiliate.

Competitive Connection Construction Market Currently Exists

13. In RP-1999-0044, the Board considered the issue of a transmitter performing competitive connection construction work in its own right rather than through an affiliate.

14. In considering whether the *Electricity Act* permitted Ontario Hydro Networks Company Inc. to undertake new load connection investments, the Board stated in its decision that:

“[t]he Board recognizes that the *Electricity Act* does not provide definitive answers as to what constitute transmission or distribution activities. In the case of transmitters, in the absence of any formal review or direction at this time, the Board has been guided by the practical considerations of the issue. In that regard, the Board is mindful of the need to assist in the transition of the electricity market to its new structure in an orderly way.” (para. 3.5.15)

15. The Board based its findings on the practical realities of the electricity market at the time, and the concern that a competitive connection construction market had not yet developed. The Board did not determine what business activities would constitute “transmitting” electricity.
16. More than five years have passed since that decision was issued, and the state of the competitiveness of the connection construction market has changed considerably. ECAO submits that the practical considerations of the Board in RP-1999-0044 are no longer of concern.¹

Paragraph 5 of the affidavit of Eryl Roberts sworn on December 15, 2006 at page 2.

17. It is submitted that Section 71(1) of the *Ontario Energy Board Act, 1998* is in place in order to limit the potential for abuse of the transmitter’s monopoly position with respect to competitive business activities. There are no remaining practical considerations which justify the continued performance of connection work directly by a transmitter. As a result, such activities should be carried out through an unregulated affiliate in accordance with section 71(1) of the *Ontario Energy Board Act, 1998*.

¹ As noted in the evidence of Eryl Roberts in the Hydro One proceeding combined with this proceeding (EB-2006-0189), there are numerous electrical contracting companies that can and do perform connection work, including high voltage electrical contracting services for transmitters throughout Ontario such as Great Lakes Power Limited, Brookfield Power, Five Nations Energy Inc. and NB Power (New Brunswick).

II. Compliance with the Transmission System Code

18. ECAO submits that work on existing GLPL-owned station sites and existing rights-of-way should be contestable on the basis of the wording of the Code. ECAO respectfully submits that GLPL's position is simply not supported by the underlying facts.

The Application of the Transmission System Code

19. Section 6.6.2(a) of the Code provides that a contestability procedure shall establish "what work can be done by the transmitter only, on its own existing facilities, including conceptual design (uncontestable work)".
20. Contrary to the Code, GLPL's Customer Connections Process state that uncontestable work consists of the following:
 - 2.1.2 Design and build (excluding design technical requirements and specifications) new transformation and/or line connection facilities to be owned by GLPL which do not utilize existing station sites or existing rights-of-way.
21. The Code does not exclude work on an existing station site or an existing right-of-way over which the transmitter has ownership, easement or other land rights.
22. The Board undertook extensive consultations prior to the implementation of the current Transmission System Code. Twenty stakeholders, including GLPL, provided comments on the initial draft, and had the opportunity to comment on subsequent drafts. However, the issues raised now by GLPL were not raised during the Transmission System Code proceeding.

23. Further, on the basis of a governing principle of statutory interpretation, *expressio unius est exclusio alterius*, an inference can be drawn that since the Code does not provide that this work is uncontestable, it is therefore included as contestable work.

GLPL's Argument

24. GLPL, in its responses to interrogatories, stated that:

GLPL owns little land on which its transmission system is located. GLPL has obtained property rights from private landowners and the Crown pursuant to various agreements. These agreements pertain to GLPL and its agents. They do not apply to third parties such as load customers or the agents of load customers. Therefore, any work performed on land over which GLPL has a right-of-way must be performed by GLPL or its agents and has therefore been included in the scope of uncontestable work by GLPL.

25. As stated above, this issue could and should have been raised and considered during RP-2004-0220, the Transmission System Code proceeding, at which time other stakeholders would have had the opportunity to address it. In any event, there is no basis to support the position that GLPL has taken in its responses to interrogatories, as is outlined below.

26. Historically, GLPL's major capital work has been performed by independent electrical contractors. More specifically, over the last thirty years, independent electrical contractors performed nearly 100% of work in relation to transmission lines (including new construction, repair, emergency repair and rebuild).

Paragraphs 5 and 6 of the affidavit of Wayne Gatien sworn on December 14, 2006 at page 2 and paragraph 5 of the affidavit of Eryl Roberts sworn on December 15, 2006 at page 2.

27. Given that nearly 100% of GLPL's work in relation to transmission lines was performed by independent electrical contractors, it is difficult to understand how there is any obstacle to the performance of work by independent electrical contractors.

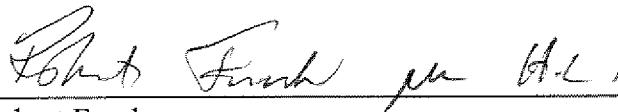
28. Moreover, ECAO members who perform connection construction work on GLPL assets are not aware of any agreements between GLPL and other parties, (including private landowners and the Crown) that would prevent independent contractors from performing work on GLPL assets.

Paragraph 8 of the affidavit of Wayne Gaten sworn on December 14, 2006 at page 2 and paragraph 7 of the affidavit of Eryl Roberts sworn on December 15, 2006 at page 2.

Conclusion

29. ECAO requests that the Board:
- (i) order that GLPL is not permitted to participate in the bidding process for connection construction work unless such work is bid for and to be undertaken through an affiliate; and
 - (ii) order GLPL to revise its Transmission Customer Connections Process to provide that work on existing GLPL-owned station sites and existing right-of-ways is contestable in accordance with the Transmission System Code.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS
26th DAY OF JANUARY, 2007.**



Robert Frank
Macleod Dixon LLP
Counsel for ECAO

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

AND IN THE MATTER OF the Application of Great Lakes Power Limited for the review and approval of connection procedures.

**AFFIDAVIT of ERYL ROBERTS
(Sworn December 15, 2006)**

I, Eryl Roberts, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

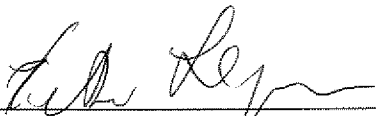
1. I am the Executive Vice-President of the Electrical Contractors Association of Ontario ("ECAO"), and therefore have personal knowledge to the facts hereinafter deposed to. Where I do not have personal knowledge of the facts set out herein, I have been informed of such and do verily believe them to be true.
2. One of ECAO's primary objectives with respect to the electrical contracting market in Ontario is to ensure that electrical contractors are able to compete on a level playing field vis-à-vis transmitters such as Great Lakes Power Limited ("GLPL").
3. I have examined GLPL's Transmission Customer Connections Process filed with the Ontario Energy Board for its review and approval (the "Connection Process"), and wish to comment on the limitations on contestable work set out in this Connection Process.

Contractors Capable of Performing Work Identified as Uncontestable


4. Based on my experience and knowledge of the industry in Ontario, there is no reason why work on existing GLPL-owned station sites and existing right-of-ways should not be contestable.
5. In fact, historically, GLPL's major capital work has been performed by independent electrical contractors. More specifically, over the last 30 years, independent electrical contractors performed nearly 100% of work in relation to transmission lines (including new construction, repair, emergency repair and rebuild).
6. From my knowledge of the industry and from speaking to appropriate representatives of a number of electrical contracting companies that perform connection construction work, there is no distinction between working on GLPL assets and working on other electricity system assets. It is performed to the same high standard as any other electrical contracting work. Independent electrical contractors must obtain permits from the Electrical Safety Authority (the "ESA"), and then the work is inspected by the ESA to ensure compliance with all applicable standards and regulations.
7. I am advised and do verily believe that ECAO members who perform connection construction work are not aware of any agreements between GLPL and other parties, (including private landowners and the Crown) that would prevent independent contractors from performing work on GLPL assets.

8. I make this affidavit in support of ECAO's submissions with respect to this proceeding and for no improper purpose.

Sworn before me at the City of
Toronto, in the Province of Ontario,
on December 15, 2006.



Commissioner for Taking Affidavits
HEATHER LANDYNORE

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Etyl Roberts

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

AND IN THE MATTER OF the Application of Great Lakes Power Limited for the review and approval of connection procedures.

AFFIDAVIT of WAYNE GATIEN
(Sworn December 14th, 2006)

I, Wayne Gatien, of the Town of Whitefish, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am the President of PowerTel Utilities Contractors Limited ("PowerTel"), and therefore have personal knowledge to the facts hereinafter deposed to. Where I do not have personal knowledge of the facts set out herein, I have been informed of such and do verily believe them to be true.
2. PowerTel is located in Whitefish, Ontario, and is one of the largest high voltage transmission and substation contracting companies in Ontario. PowerTel and its predecessor, Central Canada Construction, have been in the high voltage electrical contracting business for 53 years.
3. I have been President of PowerTel since 1987 and have been in the high voltage electrical contracting business in Ontario for 31 years.

4. I have examined Great Lakes Power Limited ("GLPL")'s Transmission Customer Connections Process filed with the Ontario Energy Board for its review and approval (the "Connection Process"), and wish to comment on the limitations on contestable work set out in this Connection Process.

Contractors Capable of Performing Work Identified as Uncontestable

5. Based on my experience and knowledge of the industry both locally and regionally in the province, there is no reason why work on existing GLPL-owned station sites and existing right-of-ways is not contestable.
6. In fact, GLPL almost always tenders connection construction work. As a result, independent contractors often perform work on GLPL assets. Over the last 30 years, nearly 100% of work in relation to transmission lines (including new construction, repair, emergency repair and rebuild), was performed by independent contractors.
7. In the last 5 years, PowerTel alone has completed numerous projects for GLPL in relation to transmission lines.
8. I am not aware of any agreements between GLPL and other parties, including private landowners and the Crown, that would prevent independent contractors from performing work on GLPL assets. To my knowledge, there has not been any landowner issues with respect to the performance of work by independent contractors on GLPL assets that have not been amicably resolved.

Negative Impact

- 9. As an independent electrical contractor, I am concerned about actions that will weaken the existing regulatory scheme which I believe is in place to guard against abuses by transmitters of their dominant position.

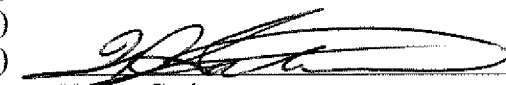
- 10. I make this affidavit in support of the Electrical Contractors Association of Ontario's submissions with respect to this proceeding and for no improper purpose.

Sworn before me at the ^{CITY /} ~~Town~~ of
GREATER SUDBURY in the Province of Ontario,
on December 14th, 2006.



Commissioner for Taking Affidavits

MARTIN JAMES

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Wayne Gatién