

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,
Hydro One Networks Inc. (EB-2006-0189)**

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 Gatien 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 Hydro One Networks Inc. 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) Hydro One Networks Inc. (“Hydro One”) 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) Hydro One’s Transmission Connection Procedures should be amended to comply with the Transmission System Code (the “Code”).

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

6. Hydro One’s Transmission Connection Procedures provide that “Hydro One may be part of the bidding process to act as a contractor to the connecting customer if hired by the customer.”

Transmission Connection Procedures, Option 3, para. 3 at p.43

7. ECAO submits that in accordance with section 71(1) of the *Ontario Energy Board Act, 1998*, Hydro One can only undertake connection construction work through an affiliate.
8. 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]

9. 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

10. 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.

11. 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.
12. 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)
13. 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 Hydro One intends to provide connection construction work, it should be provided through an affiliate.

Competitive Connection Construction Market Currently Exists

14. 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.

15. 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)

16. 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.

17. 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. 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).

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

18. Prior to deregulation, independent electrical contractors performed work on the transmission assets now owned by Hydro One. While Hydro One does not currently

contract out work to independent contractors, this is not because independent contractors lack the necessary qualifications. Rather it is because of Hydro One's policy to use internal resources to perform such work.

Paragraph 6 of the affidavit of Eryl Roberts sworn on December 15, 2006 at page 2.

19. 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 only through an unregulated affiliate in accordance with section 71(1) of the *Ontario Energy Board Act, 1998*.

II. Compliance with the Transmission System Code

20. ECAO submits that work on new connection facilities for the sole benefit of the connecting customer and work on existing Hydro One-owned station sites and existing rights-of-way should be contestable on the basis of the wording of the Code. ECAO respectfully submits that Hydro One's position is simply not supported by the underlying facts.

The Application of the Transmission System Code

21. 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)".
22. Contrary to the Code, Hydro One's Transmission Connection Procedures state that contestable work consists of:

New connection facilities that are for the sole benefit of the connecting customer(s) that do not involve:

- (a) The modification of or expansion of the transmitter's existing assets, or,
- (b) The utilization of an existing station site or an existing right-of-way over which the transmitter has ownership, easement or other land rights.

Compliance with the Code

- 23. The Code does not limit the category of new connection facilities to those that are for the “sole benefit of the connecting customer(s)”, nor does the Code exclude work on an existing station site or an existing right-of-way over which the transmitter has ownership, easement or other land rights.
- 24. The Board undertook extensive consultations prior to the implementation of the current Transmission System Code. Twenty stakeholders, including Hydro One, provided comments on the initial draft, and had the opportunity to comment on subsequent drafts.
- 25. The initial draft of the proposed Code contained a reference to new “dedicated” connection facilities. The reference to “dedicated” was subsequently deleted in the second draft, indicating that new connection facilities do not have to be for the sole benefit of the connecting customer.
- 26. 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:
 - (a) connection construction work for the sole benefit of the connecting customer is uncontestable; or

- (b) work on an existing station site or an existing right-of-way over which the transmitter has ownership, easement or other land rights is uncontestable,

therefore, such work is contestable work.

Hydro One's Arguments

27. Hydro One, in its responses to interrogatories, stated that:

[W]ork on Hydro One facilities is not contestable as per section 6.6.29(a) of the Code. Hydro One supports this position in the Code for the following reasons:

- There are significant safety concerns with contractors who are not familiar with working inside Hydro One transformer stations or on Hydro One right-of-ways.
- There are strict operating procedures controlled by the OGCC for work on any Hydro One assets and for maintaining up-to-date information for all equipment for real time operations on the system.
- A clear, unambiguous, asset delineation is critical for maintaining and operating the system and for the integrity of the information and operating systems referred to above.
(ECAO Interrogatory #4/Ontario Energy Board Interrogatory #24)

28. As stated above, all of these issues 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 them. In any event, there is no basis to support the position that Hydro One has taken in its responses to interrogatories, as is outlined below.

29. Since the deregulation of the electricity market in Ontario, it has been the policy of Hydro One not to tender out work to independent contractors.

Paragraph 6 of the affidavit of Eryl Roberts sworn on December 15, 2006 at page 2.

30. Hydro One's policy with respect to such work is a business decision, and does not relate to the ability of independent electrical contractors to perform work on Hydro One assets.

Independent electrical contractors are fully qualified, and their personnel are as equally well-trained trained as Hydro One employees.

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

31. No significant safety concerns exist with respect to independent electrical contractors performing work on existing station sites or right-of-ways. Even if a transmitter did have concerns, however, such concerns could be addressed by pre-qualifying electrical contractors who have proven experience performing in the type of work in issue.

Paragraph 7 of the affidavit of Wayne Gatien 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.

32. There are no standards or operating procedures that are particular to Hydro One and which would prevent independent electrical contractors from performing work on existing station sites and right-of-ways.


Paragraph 8 of the affidavit of Wayne Gatien sworn on December 14, 2006 at page 2 and paragraphs 8 and 9 of the affidavit of Eryl Roberts sworn on December 15, 2006 at page 2.

33. Further, there is no basis to support the contention that the performance of connection work by independent contractors would impact upon the purported need for a delineation of assets in order to purportedly maintain and operate Hydro One's system or the integrity of Hydro One's operating systems, which are bald assertions by Hydro One.

Conclusion

34. ECAO requests that the Board:
- (i) order that Hydro One 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;
 - (ii) order Hydro One to amend its Transmission Connection Procedures to remove the reference to Hydro One being “part of the bidding process to act as a contractor to the connecting customer if hired by the customer”; and
 - (ii) order Hydro One to amend its Transmission Connection Procedures by deleting the restrictions on contestable work to allow work on new connection facilities for the sole benefit of the connecting customer and work on existing Hydro One-owned station sites and existing right-of-ways to be 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 Hydro One Networks Inc. 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:

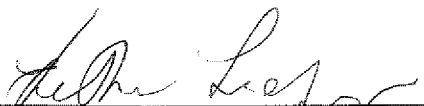
1. I am the Executive Vice-President of the Electrical Contractors Association of Ontario ("ECAO"), and therefore have personal knowledge to the facts hereinafter deposed to. Where I do not have personal knowledge of the facts set out herein, I have been informed of such and do verily believe them to 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 Hydro One Networks Inc. ("Hydro One").
3. I have examined Hydro One's Transmission Connection Procedures filed with the Ontario Energy Board for its review and approval (the "Connection Procedures"), and wish to comment on the limitations on contestable work set out in these Connection Procedures.

Contractors Capable of Performing Work Identified as Uncontestable

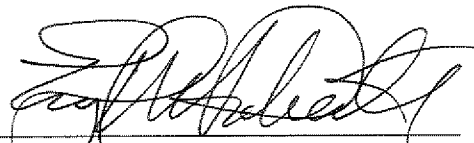
4. Based on my experience and knowledge of the industry, there is no reason why work on existing Hydro One-owned station sites or existing right-of-ways is not contestable.
5. I have spoken with appropriate representatives of a number of electrical contracting companies, such as Black & McDonald Limited, K-Line Maintenance & Construction Limited, PowerTel Utilities Contractors Limited and Eptcon Ltd., who have confirmed that they are fully qualified, and their personnel are as well trained as the employees of Hydro One. These electrical companies provide high voltage electrical contracting services to other transmitters such as Great Lakes Power Limited, Brookfield Power, Five Nations Energy Inc. and NB Power (New Brunswick).
6. Since the deregulation of the electricity market in Ontario, it has been the policy of Hydro One not to tender out work to independent contractors. Prior to deregulation, independent electrical contractors performed work on the transmission assets now owned by Hydro One when such work was tendered.
7. I have been advised and verily believe that there are no significant safety concerns with contractors performing work on existing station sites or right-of-ways. If a transmitter did have concerns however, such concerns could be addressed by pre-qualifying electrical contractors who have proven experience working in that type of environment.
8. I have been advised and verily believe that ECAO members who perform connection construction work are not aware of any standards or operating procedures that are particular to Hydro One assets.

9. There is no distinction between working on Hydro One assets and working on other electricity system assets. This work 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 work is inspected by the ESA to ensure compliance with all applicable standards and regulations.
10. 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 LINDY MOORE

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Eryl Roberts

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 Hydro One Networks Inc. 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 Hydro One Networks Inc. ("Hydro One")'s Transmission Connection Procedures filed with the Ontario Energy Board for its review and approval (the "Connection Procedures"), and wish to comment on the limitations on contestable work set out in these Connection Procedures.

Contractors Capable of Performing Work Identified as Uncontestable

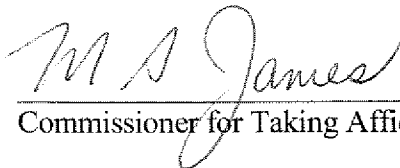
5. Based on my experience and knowledge of the industry both locally and regionally in the province, there is no reason why work on existing Hydro One-owned station sites or existing right-of-ways is not contestable.
6. Since the deregulation of the electricity market in Ontario, it has been the policy of Hydro One not to tender out work to independent contractors. Prior to deregulation, PowerTel performed work on Hydro One assets when such work was tendered.
7. I am not aware of any safety concerns with respect to connection construction work performed by independent contractors on Hydro One's existing station sites or right-of-ways.
8. I am not aware of any standards or operating procedures that are particular to Hydro One assets. Working on Hydro One assets is similar to working on other transmission assets and is performed to the same standard as any other electrical contracting work.


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 14, 2006.


Commissioner for Taking Affidavits

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Wayne Gatiem