



EB-2007-0050

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

AND IN THE MATTER OF an Application by Hydro One Networks Inc. pursuant to section 92 of the Act, for an Order or Orders granting leave to construct a transmission reinforcement project between the Bruce Power Facility and Milton Switching Station, all in the Province of Ontario;

AND IN THE MATTER OF Notices of Motion brought by Bordner Ladner Gervais on behalf of Powerline Connections, Fallis, Fallis and McMillan on behalf of a number of landowners, and Pollution Probe.

BEFORE: Pamela Nowina
Presiding Member and Vice-Chair

Cynthia Chaplin
Member

Bill Rupert
Member

DECISION AND ORDER ON MOTION The Leave to Construct Application

The Application

Hydro One Networks Inc. (the “Applicant” or “Hydro One”) has filed an Application (the “Leave to Construct Application”) with the Ontario Energy Board (the “Board”) dated March 29, 2007 under section 92 of the Act. The Applicant is seeking an Order of the Board to construct approximately 180 kilometres of double-circuit 500 kilovolt (“kV”) electricity transmission line adjacent to the existing transmission corridor (500 kV and/or 230 kV) extending from the Bruce Power Facility in Kincardine Township to Hydro One’s Milton Switching Station in the Town of Milton (the “Bruce-Milton Transmission

Reinforcement Project”). The Applicant also proposes to make modifications at the Milton, Bruce A and Bruce B transmission stations to accommodate the new transmission lines. The Board has assigned File No. EB-2007-0050 to this Application.

The proposed Bruce-Milton Transmission Reinforcement Project will require widening the existing transmission corridor by approximately 53 – 61 metres to accommodate construction of a double-circuit 500 kV electricity transmission line.

A Notice of Application for the Leave to Construct Application was published in various newspapers and was served on all directly affected landowners. Procedural Order No. 1 (“PO No. 1”) was issued on June 5, 2007. It established June 12, 2007 for the filings of motion records for those seeking an early ruling of the Board. Responses to the Motions were to be filed by June 19, 2007. PO No. 1 also set out timelines for Motions Day, Issues Conference, Issues Day, Intervenor Evidence, Interrogatories and an Oral Hearing. A draft Issues List proposed by Board Staff was attached to PO No. 1.

The Motions Proceeding

Three Notices of Motion were filed: one by Powerline Connections, a group of directly affected landowners represented by Bordner Ladner Gervais; one by a number of directly affected landowners in Bruce, Grey and Wellington Counties (“Landowners”) represented by Fallis, Fallis and McMillan; and one by Pollution Probe (together, the “Motions”).

Responses to the Motions were filed by Board Staff, the Association of Power Producers of Ontario (“APPrO”), Hydro One, the Power Workers Union (“PWU”) the Independent Electricity System Operator (“IESO”), and the Ontario Power Authority (“OPA”).

A Motions Day was held on June 25, 2007 and oral submissions were made by Powerline Connections, the Landowners, Pollution Probe, Hydro One, Board Staff, APPrO, OPA, IESO, the Ontario Federation of Agriculture (“OFA”), PWU, and Energy Probe Research Foundation (“Energy Probe”).

Motions were also filed in respect of Hydro One’s Access to Land Application under section 98 of the *OEB Act*. Those motions are dealt with in a separate decision.

The Motions addressed requests on four issues:

- To stay or adjourn the proceeding
- Procedural matters
- Additional information
- Costs

We will address each in turn.

Requests to Stay or Adjourn the Proceedings

Powerline Connections and the Landowners both requested a stay or adjournment of the Leave to Construct Application. Powerline Connections argued that section 12.2(2) of the *Environmental Assessment Act* (“EA Act”) prohibits the Board from issuing any authorizations at this time. It further submitted that there has been no public consultation, nor have the Terms of Reference for the Environmental Assessment (“TOR”) been set. In Powerline Connections’ view, the Board’s entire process would be wasted if the Environmental Assessment (“EA”) ultimately defines a different route, because the EA process requires the assessment of alternatives, but only one route is being included in the Leave to Construct Application. Powerline Connections further noted that the Integrated Power System Plan (“IPSP”) (being prepared by the Ontario Power Authority) has not been completed and filed with the Ontario Energy Board and that analysis would be relevant to this proceeding. For all these reasons, Powerline Connections submitted that the application should await completion of the EA, or, at a minimum, completion of the Terms of Reference. Without this, the application is deficient and premature in Powerline Connections’ view. The Landowners and the OFA supported these submissions.

Pollution Probe also supported the Motion to stay or adjourn the proceeding and offered two grounds: the economics do not support the project; and the primary purpose for which it is being proposed is not being met. Pollution Probe proposed that the proceeding be stayed until such time as the TOR is produced and until additional evidence on the economics and the purpose of the project is developed.

Hydro One opposed the Motions to stay or adjourn the proceeding. Hydro One submitted that there is no conflict with section 12.2(2) of the *EA Act* for two reasons: section 12.2(1) makes provision for the types of activities which Hydro One plans to undertake; and the Board can and does typically issue leave to construct orders which are conditional on receiving all other required approvals and permits before beginning construction.

Regarding the EA process, the TOR completion and the timing of IPSP, Hydro One's position was that its approach to the sequencing of events was appropriate and that it would result in unnecessary delay to be required to complete the EA in advance of the leave to construct proceeding.

Hydro One also opposed Pollution Probe's reasons for adjourning the proceeding. Hydro One submitted that the evidence on project economics and project need are fundamental to the Board's consideration of the application and are issues to be considered in the course of the proceeding and do not form grounds for a stay.

APPRO made similar submissions, and expressed concern that a delay to the proceedings would have a potential adverse impact on generators. In APPRO's view, the IPSP is not required in order to proceed with the leave to construct application and the EA need not be completed prior to the Board granting leave to construct. The OPA also opposed the Motions to stay or adjourn the leave to construct application. The OPA stated that this project is not part of the IPSP and that the OPA already put on the record that the project is of critical importance and as such should precede the IPSP review.

Board Findings

The Board will not stay or adjourn the leave to construct proceeding.

Section 12.2(2) of the *EA Act* states:

No person shall issue a document evidencing that an authorization required at law to proceed with the undertaking has been given until the proponent receives approval under this act to proceed with the undertaking.

Both the Leave to Construct and the EA approval are required before the project may proceed, but neither process is completely dependent upon the other. There is the potential for conflicting results, but that potential arises no matter which process goes first. Therefore, the proponent and the agencies involved must manage these applications in an appropriate manner. As Hydro One pointed out, the Board's leave to construct orders are conditional on all necessary permits and authorizations being acquired, including a completed EA. In this way, the Board ensures that it is not in contravention of the *EA Act* but allows for the timely consideration of applications before it.

The Board, however, is of the view that the two processes should not be significantly out of step. For example, the leave to construct would be significantly affected if the EA Terms of Reference did not include the same route. Therefore, the Board will proceed with the Leave to Construct application, but we will reassess the matter in advance of the oral phase of the hearing if the Terms of Reference are still not approved at that time.

With respect to Pollution Probe's submissions, the Board finds that the issues raised are relevant to the hearing of the application, but do not represent grounds for a stay or adjournment.

Requests Related to Procedural Matters

Powerline Connections and the Landowners requested extensions to the time between procedural events so that counsel can communicate with and receive instructions from their clients. Specifically, Powerline Connections suggested the proceeding be extended by six months. The OFA and Pollution Probe supported this request. Hydro One suggested that the overall schedule could be extended by 1 to 2 months.

Pollution Probe also proposed that a Technical Conference be held. The OFA and Energy Probe supported the inclusion of a Technical Conference in the proceeding. Hydro One supported the addition of a Technical Conference to the proceeding provided that such an event was properly scoped and provided that it could be managed within a reasonable time frame.

Powerline Connections requested that the oral hearing be held at a location convenient to its members, namely Milton or Orangeville. The Landowners suggested Dufferin or Grey Counties, as those were the most convenient to those landowners.

The Landowners further submitted that the expropriation proceeding cannot commence without a more precise location of the transmission line in relation to lands and land rights required be determined. The Landowners also argued that the Board should consider candidate lands within a broader corridor. Hydro One argued that this was not appropriately part of a leave to construct proceeding and that the environmental and socio-economic impacts of the project would be addressed in the EA process.

APPrO pointed out that the *OEB Act* makes separate provision for leave to construct applications under section 92, expropriation proceedings under section 99, and access to land applications under section 98.

Board Findings

The Board will adjust the schedule to allow for additional time. Hydro One did not oppose an extension to the schedule, and the additional time will facilitate landowner communications. However, the Board finds that an extension of six months is excessive in the circumstances. Specific dates will be established by way of procedural order (to be issued shortly) and it is expected that the oral hearing will take place in mid-January. While this is somewhat later than suggested by Hydro One, the Board sees no merit in beginning the oral proceeding in the period directly before the December holiday season. The Board will hold part of the oral hearing in a location along the proposed route, and the location will be set out in the procedural order.

The Board notes that there was no opposition to including a technical conference, and one will be included in the revised schedule.

The Board will not consider alternative locations for the route, in terms of the impact on individual landowners, as part of the leave to construct application. Section 96(2) establishes the scope for a leave to construct application quite explicitly:

In an application under section 92, the Board shall only consider the interest of consumers with respect to prices and the reliability and quality of electricity service when, under subsection (1), it considers whether the construction, expansion or reinforcement of the electricity transmission line or electricity distribution line, or the making of the interconnection, is in the public interest.

Therefore, while the Board considers alternatives to the project, those alternatives are assessed in the context of the specific factors listed in Section 96(2). These factors do not include the impact on individual landowners, except to the extent that the impact could materially effect the price (economics), reliability or quality of service to consumers generally as described in section 96(2). The environmental and socio-economic impacts of alternative routes are considered in the EA process. Individual land rights are considered in the context of a proceeding under the expropriations process.

Requests for Additional Information

The Landowners requested the following additional information:

- photo-based mapping at a sufficient level of detail that landowners may easily examine the location of the proposed line in relation to the existing line and in relation to their properties and buildings;

- additional maps showing property lines, property ownership and physical structures along the right-of-way and in a broader band around the right-of-way centre line;
- additional study of the proposed transmission route in the Hanover area;
- a list of Hydro One's expert witnesses and statements or their qualifications, one month in advance of their appearance.

Board Findings

The Board finds that the request for more detailed photo-based mapping is a reasonable one. Hydro One is directed to file photo-based mapping showing the existing line and structures along the proposed route. Hydro One will not be required to extend the mapping to a broader corridor because that would be beyond the scope of the Board's consideration of the application, as expressed above.

The Board's practice is that any expert testimony be accompanied by a list of the expert witnesses and their qualifications. The Board expects Hydro One to follow this practice and that this will address the Landowners' concern.

Pursuant to the *Freedom of Information and Protection of Privacy Act* ("FIPPA"), the Board cannot release the names and addresses of landowners along the proposed route, unless these landowners have indicated to the Board that they wish to participate in the hearing. As this information is personal information under FIPPA, the Board will not require Hydro One to release the requested information.

The Board notes that the issues regarding the proposed route through Hanover may be explored through the interrogatory phase of the proceeding. The Board will not make any order regarding that issue at this time.

Requests for Interim Cost Awards

Pollution Probe requested that an award of costs be made for its proposed expert witness and that the award be made in advance of the work being completed. Pollution Probe submitted that the Board could still conduct its normal assessment process. Energy Probe supported Pollution Probe's request for interim funding for expert witness participation.

The Landowners also requested that the Board consider awarding interim costs.

Hydro One opposed what it characterized as advance funding or the provision of financial commitments for intervenor expert witnesses.

Board Findings

The Board will not guarantee in advance that Pollution Probe will be able to recover the costs for its expert. This would be contrary to Board practice and the principles of costs awards, which contemplate an after-the-fact assessment of the party's contribution. The Board does understand that cost awards can be a lengthy process and that this places a significant burden on participants in a lengthy proceeding. Therefore, for this proceeding, the Board will institute a staged cost awards process. We will accept cost claims upon completion of the following milestones: the filing of intervenor evidence (for all costs up until that point); the completion of the oral proceeding; and the completion of argument. The claims may include the costs of counsel, consultants and expert witnesses.

THE BOARD ORDERS THAT:

1. The motions for a stay or adjournment of the proceeding are denied.
2. The schedule for the proceeding will be extended and will include a Technical Conference and an oral hearing at a location along the proposed route. Details regarding the schedule and the oral hearing will be contained in a future Procedural Order.
3. Hydro One will file and serve on all parties photo-based maps which indicate the location of existing lines and structures along the proposed route.

DATED at Toronto, July 4, 2007
ONTARIO ENERGY BOARD

Original Signed By

Peter H. O'Dell
Assistant Board Secretary