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June 12, 2007

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
P.O. Box 2319  
27<sup>th</sup> Floor  
2300 Yonge Street  
Toronto, Ontario  
M4P 1E4

Dear Ms. Walli:

**Re: Hydro One Networks Inc. – Leave to Construct Application of 03/29/2007  
Bruce – Milton Transmission Reinforcement Project  
OEB File No. EB-2007-0050 & OEB File No. EB-2007-0051**

**Preliminary Motion of Powerline Connections -  
Directly Affected Landowners  
Response to OEB Procedural Order No. 1, dated June 5, 2007**

Please find attached hereto the Motion of those directly affected landowners calling themselves Powerline Connections, in response to the Ontario Energy Board’s Procedural Order No. 1, dated June 5, 2007, relating to the Application for Leave to Construct.

Powerline Connections is comprised of those individuals listed at numbered paragraph one, on the following page. That list has grown since Powerline Connections filed with the Board its Written Submissions on May 14, 2007.

Yours very truly,

Stephen F. Waqué / Evan A. Cooke  
SFW/EAC:jr

cc: Mr. Glen MacDonald (via email)  
cc: Mr. James H. Smellie (via email)

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Toronto  
Ottawa  
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Calgary

## ONTARIO ENERGY BOARD

*In the matter of the Ontario Energy Board Act, 1998;*

**And in the matter of** an Application by Hydro One Networks Inc., pursuant to section 92 of the *Ontario Energy Board Act, 1998*, 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.

### PRELIMINARY MOTION OF POWERLINE CONNECTIONS

#### **Directly Affected Landowners:**

1. William Allison, Janet Allison, Robert Barlow, Bruce Barrett, Mary Jane Barrett, Mark Bergemann, Janet Bergemann, Edward Bird, Maribeth Bird, Wayne Church, Susan Church, Dave Clifford, Anne Clifford, Nelson Cole, Joanne Coletta, Fernando Coletta, Maria Coletta, Rosa Nucci, Vittorio Nucci, Jim Dinatale, Eileen Dinatale, Pat Crouse, Steve Crouse, Ralph Cunningham, Viviean Cunningham, Peter Curtis, Rose Curtis, Dave D'Auria, Michelle D'Auria, Leslee Einmann, Scott Einmann, John Eppenberger, Rhonda Eppenburger, Paul Fisher, Pat Fisher, John Hofing, John Jenkins, Julia Jenkins, Steven Joyce, Anne Joyce, J. Earl Lennox, Barbara Lennox, John MacLeod, Melanie MacLeod, Robert McClure, Susan McClure, Tom Murtagh, Glenis Falbo, Joseph Rice, Ivan Rice, Verna Rice, Rice & McHarg Limited, Robert Ridler, Carolyn Ridler, Garry Sterritt, Mary Jean Sterritt, Bonnie Neely, Perry Stuckless, Elaine Stuckless, and Trevor Wilson, (collectively "Powerline Connections") are all "directly affected landowners" as described in the Ontario Energy Board's (the "Board") Notice of Application and Written Hearing, dated April 12, 2007 ("Notice").
2. Powerline Connections oppose Hydro One Networks Inc.'s ("Hydro One") Application for Leave to Construct, bearing Board file number EB-2007-0050 (the "Application for Leave to Construct").



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### Procedural History:

3. On March 29, 2007, Hydro One made its Application for Leave to Construct approximately 180 kilometres of double-circuit 500 kV electricity transmission line adjacent to the existing transmission corridor from Bruce to Milton.
4. On March 30, 2007, Hydro One made an Application for Access to obtain access to private lands to perform pre-construction testing (“Application for Access”).
5. On April 23, 2007, the Board served members of Powerline Connections with the Notice document, and provided 10 days for directly affected landowners to make a written request for an oral hearing relating to the Application for Access. The Notice provided 21 days for directly affected landowners to make full written submissions regarding the Application for Access. The Notice expressly stated that the Board would not deal with argument relating to the Application for Leave to Construct at that time.
6. On May 3, 2007, Powerline Connections filed a Request for Oral Hearing of the Application for Access (the “Request for Oral Hearing”).
7. On May 14, 2007, Powerline Connections filed full written submissions opposing the Application for Access which elaborated on the reasons set out in the Request for Oral Hearing (the “Written Submissions”). At the same time, Powerline Connections also filed an Application for Intervenor Standing and a Request for Eligibility to Claim Costs.
8. By letter of May 23, 2007, the Board granted Powerline Connections Intervenor Standing to participate in the Application for Access and affirmed Powerline Connections’ Eligibility to Claim Costs.

9. By Procedural Order No. 1, dated June 5, 2007, the Board requested that any directly affected landowners who wished to file a motion to have the Board rule on how the Application for Access should proceed, do so on or before June 11, 2007 (the "Access Procedural Order"). Powerline Connections filed a preliminary motion relating to the Application for Access procedure on June 11, 2007 (the "Preliminary Motion Re: Access").
10. By a second procedural order, dated June 5, 2007, the Board requested that any directly affected landowners who wished to file a motion to have the Board rule on how the Application for Leave to Construct should proceed, do so on or before June 12, 2007 (the "Leave to Construct Procedural Order").
11. This Motion is accordingly filed in response to the Leave to Construct Procedural Order.

**Preliminary Motion Regarding Application for Leave to Construct:**

***Summary of Argument Regarding Prematurity of Application for Leave to Construct***

12. Powerline Connections submits that the Application for Leave to Construct has been made prematurely as:
  - (a) The EA process has not yet begun and the TOR have not yet been submitted to the MOE or to the public. Moreover, meaningful study of alternative routes is lacking and Hydro One intends to promote a route it has already selected, despite the EA requirement that there be discussion on that very issue;
  - (b) The Board has not yet completed its review of the Ontario Power Authority's (the "OPA") IPSP as required by section 25.30(5) of the *Electricity Act, 1998*;
  - (c) The Minister's Letter explicitly mandated that the IPSP comply with O. Reg. 424/04, which in turn mandated that all IPSPs comply with the *Environmental Assessment Act*. The OPA does not have the authority to advance projects that do not comply with O.Reg. 424/04 or the *Environmental Assessment Act*;

13. To allow Hydro One to accelerate standard procedure to suit its own timeline would be prejudicial to directly affected landowners, including Powerline Connections, would condone Hydro One's attempt to avoid meaningful public consultation, and would make the TOR, EA, and IPSP processes nothing but formalities. In sum, Powerline Connections submit that Hydro One's proposed course is highly prejudicial to the established statutory and common law rights of directly affected landowners. The issuance of the Leave to Construct Procedural Order and the Timeline contained therein is also premature, and serves to accelerate an application process that is already ahead of itself.

**Relief Requested:**

14. Powerline Connections request that the Board reject, or alternatively adjourn, Hydro One's Application for Leave to Construct until such time as the IPSP has been reviewed and approved, Hydro One's TOR have faced public and MOE scrutiny, alternative routes for the proposed line have been properly considered, and the EA process is complete.
15. Powerline Connections request that the Leave to Construct Procedural Order and Timeline be withdrawn pending the completion of oral argument of this motion, on the basis that they are premature and presuppose the outcome of the motion.
16. Powerline Connections request that any timelines established by future Procedural Orders take into consideration the fiscal imbalance between the parties and provide longer filing periods for materials.
17. Powerline Connections reserve its right to pass comment on the IPSP and the TOR, participate in the EA process, and to avail itself of any and all rights available at law to challenge the expropriation of the lands of the directly affected landowners.



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**Grounds of Motion:**

***(a) Timeline Prejudicial to Powerline Connections***

18. Powerline Connections submit that the timelines adopted by the Board in the proceedings relating to the Application for Access and the Application for Leave to Construct have been onerous and prejudicial to directly affected landowners. Only seven days were provided for directly affected landowners to instruct counsel, for counsel to prepare and file these motion materials, and Powerline Connections question the appropriateness of such short timelines.
19. Powerline Connections submit that in view of the financial imbalance between themselves and Hydro One, the timetable at Appendix C (the “Timetable”) to the Leave to Construct Procedural Order should be amended to provide more time for preparation and for obtaining the funding required to protect the property rights of directly affected landowners.
20. Powerline Connections express concern that the Timetable and the Leave to Construct Procedural Order appear to presuppose the outcome of this motion and disregard Powerline Connections’ arguments relating to prematurity of the Application for Access and the Application for Leave to Construct, as set out below. A timetable should only be considered and adopted after a fair adjudication of the preliminary issues.

***(b) Leave to Construct Procedural Order & Timetable Presuppose Outcome of Submissions as to Prematurity***

***(i) No Approved Terms of Reference***

21. The Application for Leave to Construct is premature because there are no approved Terms of Reference (“TOR”), the Environmental Assessment (“EA”) process is not even under way, and that process has not yet identified which route is to be selected for the proposed transmission corridor.



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22. The *Environmental Assessment Act* (“EA Act”) requires proponents of projects such as the proposed line, to consult with interested persons, and provide public notice of proposed Terms of Reference.<sup>1</sup> The TOR are key to identifying the relevant options to be considered, to carry out the undertaking, including the alternative routes for the transmission corridor. To approve the Application for Leave to Construct, before the TOR are in place, clearly demonstrates a prejudgment about the TOR. Moreover, the EA Act also states that any person who wishes to comment on the proposed TOR shall be entitled to do so by writing by a prescribed deadline. As no TOR have yet been made available to the general public or to the Ministry of Environment (“MOE”), and no opportunity has been given to provide comment on same, it would be premature to approve Hydro One’s Application for Leave to Construct.

23. The Ministry of Environment’s Code of Practice (“Code of Practice”)<sup>2</sup>, cited by Hydro One in the Application for Leave to Construct<sup>3</sup> states that:

The first step in the application for approval to proceed with an undertaking under the *Environmental Assessment Act* is the approval of a terms of reference by the Minister. The public and other interested persons will have an early opportunity to be involved in the terms of reference process to get information about proposals that may affect them, and allow them to decide early on about the level of their concern and their need for continued participation in the planning process.<sup>4</sup>

24. We respectfully submit that the Application for Leave to Construct should not have been brought, and certainly should not be approved, before directly affected landowners have had the opportunity to examine the TOR for the proposed line.

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<sup>1</sup> *Environmental Assessment Act*, R.S.O. 1990, c. E18, section 6.

<sup>2</sup> Code of Practice: Preparing and Reviewing Terms of Reference for Environmental Assessments in Ontario (Draft, October 2006).

<sup>3</sup> Reference to Code of Practice appears in the Environmental Assessment Status document (“EA Status Document”), filed March 29, 2007 as Exhibit B, Tab 6, Schedule 8 to the Application for Leave to Construct.

<sup>4</sup> Code of Practice at page 1.



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Directly affected landowners are not yet in a position to assess the merits of the proposed line.

25. The Code of Practice further states that:

At the heart of the environmental assessment planning process in Ontario is the comparative analysis of alternatives, assessing the advantages and disadvantages of the alternatives and determining the best alternative that is appropriate to address the problem or opportunity.

In the terms of reference, it is essential to set out a reasonable range of alternatives to be examined in the environmental assessment or the process by which a reasonable range of alternatives will be determined in the environmental assessment. This should be done in consultation with the ministry, other provincial and federal agencies, and other interested persons.<sup>5</sup>

26. It is instructive that Hydro One's EA Status Document acknowledges that "the Bruce to Milton route is the only alternative that meets (Hydro One's) needs and objectives."<sup>6</sup> It is evident that Hydro One does not intend to consider a "reasonable range of alternatives...in consultation with the ministry...and other interested persons". Hydro One has clearly stated that it has selected the route it intends to follow, and is presently seeking access to private land to commence pre-construction activities.
27. Hydro One acknowledges that it has set a target in-service date for the proposed line of December 2011, and upon working backwards has discovered that its timeline is not feasible if established EA procedure and public consultation practices are observed. Consequently, it appears an Application for Access has been filed to alter the standard access to land process in order to suit Hydro One's purposes, in a fashion that presupposes the approval of the Application for Leave to Construct, and ultimately the EA.

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<sup>5</sup> Ibid at p. 15.

<sup>6</sup> EA Status Document at page 2/3.





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28. The Ministry of Environment’s “Guide to Environmental Assessment Requirements for Electricity Projects”<sup>7</sup> states that “it is recommended that a proponent commence the screening process before project planning, site layout and facility design have progressed too far and before irreversible decisions or commitments are made”.<sup>8</sup>
29. Powerline Connections respectfully submit that Hydro One has essentially completed the project planning and design, without having published the TOR, and without having consulted the public.
30. Powerline Connections note that Hydro One has not yet submitted its TOR to the Ministry of Environment (“MOE”) as of the filing of this motion. Upon formally receiving the TOR, the MOE will have twelve weeks to decide whether to approve or reject them. The first thirty days of that twelve week period are reserved for comments from interested persons.
31. It is not until the MOE approves the TOR that Hydro One will submit an EA for approval. In view of the fact that no TOR have been submitted, and submission of an EA to the MOE is many months off, Powerline Connections restate its position that advancing the Application for Leave to Construct by setting out issues for the hearing, and setting a date for the hearing of the Application, are premature.

(ii) ***The Integrated Power System Plan Has Not Been Approved***

32. Hydro One attributes the need to have the proposed line in service by 2011 to anticipated demand figures provided to Hydro One by the Ontario Power Authority (“OPA”). Hydro One states that it was advised by the OPA that Hydro One must work “as quickly as possible” to initiate the activities necessary to construct the proposed line, in order to meet the “earliest possible in-service date of December 2011.

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<sup>7</sup> MOE Environmental Assessment and Approvals Branch, March 2001.

<sup>8</sup> Ibid at page 7.



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33. Hydro One filed as part of the Application for Leave to Construct a letter from Dwight Duncan, the Minister of Energy of Ontario, that directed OPA to create an Integrated Power System Plan (“IPSP”) pursuant to section 25.30 of the *Electricity Act, 1998* (the “Minister’s Letter”). That letter, dated June 13, 2006, requested that the IPSP meet a series of goals, one of them being an analysis of how the transmission system in Ontario can be strengthened. The final line of the Minister’s Letter states that the IPSP “should comply with Ontario Regulation 424/04 as revised” (O. Reg. 424/04”).

34. O. Reg. 424/04 sets out the particulars of the development of IPSPs. Section 2(1) of O. Reg. 424/04 states that:

In developing an integrated power system plan under subsection 25.30(1) of the Act, the OPA shall follow directives that have been issued by the Minister under subsection 25.30(2) of the Act and shall do the following:

2(1)(8) Ensure that for each electricity project recommended in the plan that meets the criteria set out in subsection (2), the plan contains a sound rationale including,

(i.) an analysis of the impact on the environment of the electricity project, and

(ii.) an analysis of the impact on the environment of a reasonable range of alternatives to the electricity project. O. Reg. 277/06, s. 1.

2(2) For the purposes of paragraph 8 of subsection (1), the following are the criteria:

(1.) An environmental assessment of the electricity project under Part II of the *Environmental Assessment Act* must be required.

35. Section 25.30(1) of the *Electricity Act, 1998* directs that IPSPs should be submitted to the Board for review, so that the Board may ensure they comply with any directions issued by the Minister and that the IPSPs are economically prudent and cost effective.



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36. Powerline Connections submit that the IPSP that was released in preliminary format in February 2007, and review by the Board is not yet complete. The IPSP notes under the heading Putting the Plan into Action that:

The plan will be put into action once the Ontario Energy Board (OEB) approves it. The OPA will submit the plan in 2007 to the OEB, which will review it through an open process that includes public hearings. The OEB's role is to ensure that the plan complies with government policy and is cost effective.

37. While the Board has not completed the IPSP review, the OPA has indicated to Hydro One by letter of March 23, 2007 that the proposed line should be advanced despite the IPSP not having been approved:

Although this project is consistent with the IPSP, we do not believe that it can await the outcome of the IPSP proceeding if it is to meet the earliest possible in-service date, which Hydro One staff have indicated is December 1, 2011.

38. While the OPA has the power under section 25.2(5)(e) of the *Electricity Act, 1998* to "take such steps as it considers advisable to ensure there is adequate transmission capacity as identified in the integrated power system plan", Powerline Connections submit that the OPA does not have the authority to circumvent the IPSP process or the *Environmental Assessment Act* to ensure there is adequate transmission capacity. Moreover, Powerline Connections submit that the OPA does not have the authority to direct Hydro One to act on recommendations contained in a preliminary IPSP.



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**Restatement of Relief Requested:**

39. Powerline Connections request that the Board reject, or alternatively adjourn, Hydro One's Application for Leave to Construct until such time as the IPSP has been reviewed and approved, Hydro One's TOR have faced public and MOE scrutiny, alternative routes for the proposed line have been properly considered, and the EA process is complete.
40. Powerline Connections relies on paragraphs 15-17 above as further particulars of the relief requested.
41. Powerline Connections request that a copy of all documents filed with the Board continue to be served on Powerline Connections and Powerline Connections' counsel, as follows:
- a) **Mr. Robert Barlow**  
Powerline Connection Coordinator  
10416 22<sup>nd</sup> Side Road  
R.R. # 1 – Halton Hills (Limehouse)  
Ontario, L0P 1H0  
  
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- b) **Mr. Stephen Waqué**  
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