

Osler, Hoskin & Harcourt LLP
Suite 2500, TransCanada Tower
450 - 1st Street S.W.
Calgary, Alberta, Canada T2P 5H1
403.260.7000 MAIN
403.260.7024 FACSIMILE

OSLER

June 19, 2007

James H. Smellie
Direct Dial: 403.260.7013
JSmellie@osler.com
Matter No. 1099714

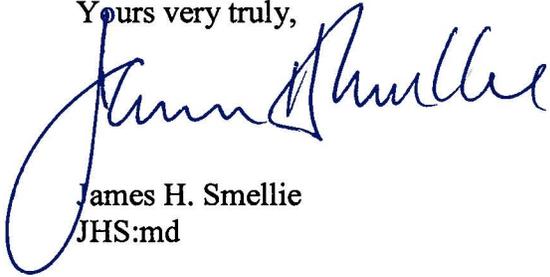
Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
27, Floor, 2300 Yonge Street
Toronto ON M4P 1E4

Dear Ms. Walli:

Hydro One Networks Inc. - Access to Lands Application March 30, 2007
Bruce - Milton Transmission Reinforcement Project
OEB File No. EB-2007-0050
Hydro One Networks Inc.
Response to Motions

Further to the Board's Procedural Order No. 1., please find enclosed Hydro One Networks Inc. response to Motions filed in respect of the above.

Yours very truly,



James H. Smellie
JHS:md

Encl.
cc: Intervenors

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 interim Order granting access to land in connection with the Applicant’s request for leave to construct a new transmission line between the Bruce Power Facility and the Milton Switching Station

**HYDRO ONE NETWORKS INC.
RESPONSE TO MOTIONS
JUNE 19, 2007**

OSLER HOSKIN & HARCOURT LLP
Suite 2500 – TransCanada Tower
450 – 1st Street S.W.
Calgary, Alberta T2P 5H1
Attention: James H. Smellie/Gordon M. Nettleton
Tel: (403) 260-7013/(403) 260-7047
Fax: (403) 260-7024

A. Introduction

1. Pursuant to Procedural Order No. 1 (the “Order”), Hydro One Networks Inc. (“Hydro One”) is responding to three motions in respect of the Leave to Construct Application made pursuant to section 92 of the *Ontario Energy Board Act* (“Act”) and which has been assigned Board file No. EB-2007-0050.
2. Specifically, this submission is in response to:
 - (a) The motion made on behalf of Pollution Probe dated June 12, 2007;
 - (b) The motion made on behalf of Powerline Connections (“PC Motion”) dated June 12, 2007; and
 - (c) The motion made on behalf of landowners represented by the law firm of Fallis Fallis and McMillan (“Fallis Motion”) dated June 11, 2007.

B. Response to Pollution Probe’s Motion

3. The Pollution Probe Motion seeks:
 - (a) An interim order to have Hydro One pay Board-approved cost claims for the retention of an expert in order to assist Pollution Probe in proceedings concerning EB-2007-0050. In the alternative, Pollution Probe requests that the Board establish a procedural process to hear from parties and to determine matters related to the advancement of funds/cost recovery request.
 - (b) Amendments to the Order to allow a Technical Conference to be convened after Issues Day but prior to the time for interrogatories from interveners to Hydro One.
 - (c) Amendments to the Order adjusting all filing deadlines subsequent to (but regardless of) a Technical Conference for the filing of intervener interrogatories to Hydro One and for the filing of intervener evidence.

Provision for Advanced Funding Awards

4. Section 30 of the Act provides the Board with the discretion to make orders respecting the recovery of costs incurred by interveners, based upon contributions and participation in Board proceedings. Section 30, conversely, does not grant to the Board the necessary jurisdiction for it to make advanced funding awards. Section 5 of the Board's Practice Direction on Costs confirms this point. The Practice Direction sets out the factors considered in granting cost claims, based upon an after-the-fact review of the conduct of the party in the proceeding. No provisions are found concerning the advancement of funds for cost-related purposes. Hydro One therefore submits that the relief sought in this regard by the Pollution Probe Motion cannot be granted.
5. In the alternative, and even if the Board finds it has the necessary jurisdiction to make advance funding awards, Hydro One submits that the Pollution Probe Motion Record does not provide a sufficient basis for the Board to determine whether advanced funding would provide any value to this proceeding. Simply put, there is a lack of information found in the Pollution Probe Motion to justify the relief sought. There is no information, for example, as to the nature and purpose of the expenses, estimates of the level of advanced funds, the timing of cost incurrence, and how the funded tasks relate to the matters referred to under section 96(2) of the Act. Pollution Probe's requested relief should therefore fail.

Schedule Amendments to allow for a Technical Conference

6. Hydro One understands the purpose of a Technical Conference would be to foster the exchange of information and to promote a better understanding of the applied-for project. Presumably, this is so that future hearing process steps may be focused and potential timing efficiencies may ensue. If this understanding is correct, Hydro One is not opposed, in principle, to the Board amending the Order to allow for a Technical Conference in advance of the intervener interrogatories. However, before such a step is taken, further clarification is needed as to the precise issues that are intended to be discussed, to ensure such matters are germane to this application and in particular the

determinations that must be made pursuant to section 96(2) of the Act, and that such a step is likely to have the desired effects concerning the balance of the process.

Procedural Schedule Amendments for the Extension of Deadlines

7. Hydro One has two concerns with respect to Pollution Probe's request for extensions of time to the Order Timeline, namely (1) that the purpose of preparing evidence appears to be in part for matters that are beyond the scope of this proceeding, and (2) that significant time extensions could delay the project's in-service date.
8. With respect to the first concern, paragraph 6 of the Affidavit of Jack Gibbons filed in support of Pollution Probe's Motion states:

“For this proceeding, I believe that the Board will need to consider highly specialized issues due to the fact that the application is for the construction of a new transmission line. *Such issues include, but are not limited to* economic analyses, reliability analyses, and routing analyses associated with the proposed transmission line.” (emphasis added)
9. With respect, the view provided by Mr. Gibbons and adopted by Pollution Probe appears to be inconsistent with the express wording of section 96(2) of the Act. Section 96(2) informs the Board that (a) the interests of consumers with respect to prices; and (b) the reliability and quality of electricity service are the only matters relevant to the question of whether granting leave to construct the applied-for project is in the public interest.
10. The approach adopted by Hydro One in seeking necessary regulatory authorizations for its project is one that provides for appropriate sequencing of the applicable issues. Price, reliability and quality of service are issues relevant to this section 92 application. These are discrete issues from those matters that are relevant to environmental assessment approvals for the project. Similarly, the present issues are discrete from those which touch on and concern relief that may be sought for the expropriation of land rights.
11. The present Order Timeline properly takes into account the scope of the issues arising under this section 92 application. Timely consideration of each sequence allows for the project to proceed in a fair manner and will ensure that the overall need and contemplated in-service date for the Project are preserved. Hydro One notes that the normal schedule

flexibility included in major projects of this type has been largely eliminated already under the current timetable established for Hydro One's Early Access Application, and as a result of the aggressive need date. Therefore, further delays to the project's approvals processes must have significant benefits to offset the negative impacts on the public interest in terms of timely completion of the project.

12. Hydro One continues to re-evaluate its sequencing and is now planning to make adjustments to proceed with any applications for expropriation relief after determinations are made under the *Environmental Assessment Act*. This change is intended to allow more time for the negotiation process to ensue with landowners. This change, however, does not significantly alter the overall scheduling requirements and thus the need to have this Application proceed in a timely and fair manner.
13. Notwithstanding the above, Hydro One is agreeable to some extension of the Order Timeline for the Leave to Construct Application in order to accommodate Pollution Probe's requests for a Technical Conference and to provide more time for the production of expert evidence, if the Board believes it would be assisted by doing so. Hydro One notes that there are approximately 7 weeks between Motions Day and the date when interrogatories are due to Hydro One, in which the current schedule could be adjusted for a Technical Conference to be convened. Hydro One suggests that an additional one to two months, if added to the timeline, should be sufficient to accommodate the remainder of Pollution Probe's requests and would not have an undue impact on the project.

C. Response to Powerline Connections Motion

14. PC asserts that Hydro One's section 92 Application must be rejected because it is premature. In the alternative, PC argues that the Board should adjourn the Application and discard the present timelines described in Appendix C to the Order until such time as the following events have occurred: (a) Ontario Power Authority's ("OPA") Integrated Power System Plan ("IPSP") has been reviewed and approved; and (b) the Terms of Reference ("TOR") for the environmental assessment of the Bruce to Milton Project have been submitted to the Ministry of the Environment and reviewed by the public.

Prematurity Characterization and Rejection/Adjournment Relief

15. Hydro One submits that its Leave to Construct Application is not premature and neither has PC offered any basis for the Board to either reject the application outright, or to adjourn the application as PC suggests.
16. PC's prematurity characterization in part turns on the proper interpretation of Ontario Regulation 424/04 under the *Electricity Act, 1998* ("O. Reg 424/04"). If PC's position is to be given any credence, clear and express language would be found in either O. Reg 424/04 or the *Electricity Act, 1998* to preclude the Board from receiving or hearing applications made pursuant to section 92 of the Act in these circumstances.
17. However, that is simply not the case. O. Reg 424/04 simply refers to the matters that the OPA must take into account in the development of its IPSP. No limitations or restrictions are found that preclude section 92 applications from being heard and determined by the Board while the IPSP is under development. Indeed, the Board's December 27, 2006, Report on the IPSP process specifically contemplates that transmission projects such as this may be the subject of a leave to construct proceeding "prior to the approval of the IPSP".
18. Neither is there any express or implied limitation found under section 25.30 of the *Electricity Act, 1998* that would prohibit section 92 applications from being heard and considered by the Board in this circumstance.
19. Applications made pursuant to section 92 have been filed and considered by the Board notwithstanding the present status of the IPSP, and decisions have been rendered by the Board.
20. Furthermore, it is not uncommon for applications made pursuant to section 92 to be heard and determined before environmental assessment requirements have been considered. The imposition by the Board of appropriate conditions to ensure that necessary environmental approvals are in place prior to the commencement of any construction is a reasonable and practical way to ensure that the overall public interest is served and that

regulatory applications may be sequenced and considered in a timely and efficient manner.

21. The issues relevant to this Leave to Construct Application are informed by the express wording and limitations prescribed in section 96(2) of the Act. The TOR will concern matters that are beyond the scope of the Board's interest in this project, namely the scope of the environmental assessment, a matter which will involve the Ministry of the Environment and public consultation. However, those matters need not be undertaken or completed before this Board considers applications which are squarely within its jurisdiction, namely, the Leave to Construct Application.
22. As applicant, Hydro One is entitled to frame its case in the manner it so chooses. If the environmental assessment process results in determinations that cause the need for amendments to be made to any relief granted by this Board in respect of this Leave to Construct Application, Hydro One accepts that there will potentially be a need for further applications and process before this Board to consider such matters. However, that is a matter of pure speculation at this time. Hydro One submits that its Leave to Construct Application is complete and comports with the Board's filing requirements, and may be dealt with in the manner proposed by the Board.
23. As a result, there is no reasonable basis for the Board to accept the suggestion that Hydro One's Leave to Construct application is "premature". Furthermore, there is no reasonable basis to suggest that an apprehension of bias would arise in the event the Board proceeded to consider the Leave to Construct Application in the manner set out in the Order. Thus, there is simply no reasonable basis for the Board to find that the application should be adjourned or summarily rejected altogether.

D. Response to Fallis Motion

24. As concerns the section 92 Application, the Fallis Motion generally seeks relief that would require Hydro One to produce and disclose additional information asserted to be relevant to the Leave to Construct Application. With respect, Hydro One objects to all relief requested by the Fallis Motion.

1. **Relief Pertaining to a “Candidate Lands” Corridor**

25. The Fallis Motion starts at Paragraph 2 by seeking declaratory relief to have all lands within a 2 kilometer width boundary of the proposed project between the Bruce Power Facility and the Milton Switching Station designated as “Candidate Lands”. The purpose of this declaration appears in Paragraph 4 of the Motion whereby orders are requested to have Hydro One obtain and disclose certain information regarding the identity and addresses of such landowners who fall within the so-called Candidate Lands corridor.
26. Hydro One does not have all of this information. The information that is sought goes beyond that which is relevant to the relief sought in the Leave to Construct Application. Hydro One acknowledges that it is in possession of some of the requested information, as the proposed route of the Project is adjacent to the existing transmission corridor. The broad definition of “Candidate Lands” is the creation of the Fallis Motion, and while it may have some purpose, it is not one which Hydro One adopts, nor is it relevant for purposes of its Leave to Construct Application. It would therefore be improper for the Board to grant orders in effect compelling Hydro One to collect and disclose the requested information unless it were first demonstrated that the information is relevant for the conduct of this proceeding and will assist the Board in doing so. Moreover, it is respectfully submitted that the Fallis Motion is being brought as a means of obtaining information that would otherwise not be available as a result of Ontario’s *Freedom of Information and Protection of Privacy Act* (“FIPPA”) and the federal *Personal Information Protection and Electronic Documents Act* (“PIPEDA”). Hydro One is governed by both pieces of legislation, and both prohibit the disclosure of personal information except under limited circumstances -- none of which would apply here.
27. Hydro One respectfully submits that the relevance of the requested information has not been demonstrated. The Leave to Construct Application concerns the public interest considerations described in section 96(2) of the Act. The elements described therein have not been demonstrated to relate to matters pertaining to route selection or impacts upon lands 1 kilometer adjacent to the location of the proposed project.

Production and Disclosure of Photo Base Map/Orthophotos

28. At Paragraph 3 of the Fallis Motion, orders are also requested to have photo base map/orthophoto maps prepared for the “Candidate Lands”, identifying all buildings, improvements or significant land features as well as existing and proposed transmission infrastructure, and to have such maps delivered by registered mail to the owners of the Candidate Lands.
29. At Paragraph 5, the Fallis Motion also requests such map information be placed or lodged with each municipality in which the Candidate Lands are located, together with a list setting out all Candidate Land Owner Information.
30. Hydro One respectfully submits there are no grounds provided in support of this request. Hydro One has taken appropriate consultative steps through its Public Information Centre (“PIC”) process and other consultation activities to promote public awareness of the proposed project location and impacts upon existing developments and infrastructure. At the PICs, detailed orthographic maps of the potentially affected properties along the proposed widened corridor were available for landowners to view. Many availed themselves of this opportunity and also discussed the Project’s impacts with Hydro One’s representatives.
31. Paragraph 6 of the Fallis Motion seeks orders from the Board to compel Hydro One to provide landowners within the Candidate Lands lying within 3 kilometers to the north, west and east of the centreline of the existing combined transmission lines in the vicinity of the Town of Hanover in the County of Grey, with information regarding route selection and alternatives. Again, such information is not germane and relevant to the Leave to Construct Application and the enumerated matters found in section 96(2) of the Act.

“Interim Location” and “Final Location” Order Relief

32. Paragraph 7 of the Fallis Motion requests the Board to first issue what is referred to as an “Interim Location Order”. Apparently this Order would specify the exact location of the

proposed Transmission Line and would be subject to the completion of an environmental assessment under the *Environmental Assessment Act, 1998*. Once environmental assessment approvals have been granted, the Fallis Motion then requests the Board to issue what is referred to as a “Final Location Order”. Paragraph 8 of the Fallis Motion further suggests that no Order from the Board could be made pursuant to section 98(1.1) unless and until a “Final Location Order” has issued.

33. As it concerns the Leave to Construct Application, Hydro One respectfully submits that the proposed Interim and Final “Location Orders” are not consistent with any of the relief sought in the application, the legislative scheme under which this Leave to Construct Application has been made, nor the issues which the Board must take into consideration in order to make the determinations sought under section 96(2).
34. The Fallis Motion presupposes that it is in the public interest to adopt an entirely new approach as to how the Board conducts its affairs under its enabling legislation. Hydro One submits there are no grounds to support such dramatic changes. Furthermore, it is apparent that if the suggested Interim and Final Locational Order approach were followed, it would have the effect of nullifying altogether the purpose of the relief available under section 98(1.1), namely to obtain early entry upon lands for limited surveying and other early access activities. These purposes are intended to facilitate non-destructive data collection for purposes related to environmental assessment and other regulatory requirements. To suggest that an “Order For Access to Land” could not be made until after a “Final Location Order” obviously means that the environmental assessment process would be hamstrung by not being able to take into account data otherwise available from the early access activities. Whether that is the intended outcome of this motion, nevertheless it would not be in the overall public interest.

2. **Miscellaneous Relief**

35. In paragraphs 9 through 13 of the Fallis Motion, orders are requested concerning a variety of miscellaneous matters. Comments provided in paragraphs 8 and 9 of this Response are applicable to the request found in paragraph 11 of the Fallis Motion (i.e., setting aside the Board’s proposed Order Timetable).

36. Hydro One does not understand the relief sought in paragraph 12 of the Fallis Motion.
37. With respect to paragraph 13, Hydro One submits that section 30 of the Act affords interveners the opportunity to seek the recovery of costs, and therefore no special order is required to provide interveners with this right.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of June, 2007.

HYDRO ONE NETWORKS INC.

By its counsel

ORIGINAL SIGNED BY JAMES H. SMELLIE/GORDON M. NETTLETON
JAMES H. SMELLIE/GORDON M. NETTLETON

TO: Klippensteins
160 John Street, 3rd Floor
Toronto, ON M5V 2E5
Attention: Murray Klippenstein/Basil Alexander
Counsel for Pollution Probe

AND TO: Borden Ladner Gervais LLP
Scotia Plaza
40 King Street West
Toronto, ON M5H 3Y4
Attention: Steven Waqué
Counsel for Powerline Connection

AND TO: FALLIS FALLIS & MCMILLAN
Barristers & Solicitors
195 Lambton Street East
Durham, ON N0G 1R0
Attention: Peter Fallis

AND TO: Intervenors
Per: Procedural Order No. 1 Appendix A