



EB-2007-0051

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 98 of the Act, for an Interim Order granting access to land in connection with the Applicant’s request for 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 and Fallis, Fallis and McMillan on behalf of a number of landowners.

BEFORE: Pamela Nowina
Presiding Member and Vice-Chair

Cynthia Chaplin
Member

Bill Rupert
Member

DECISION AND ORDER ON MOTIONS
The Access to Land Application

The Application

Hydro One Networks Inc. (the “Applicant” or “Hydro One”) has filed an application (the “Access to Land Application”) with the Ontario Energy Board (the “Board”) dated March 30, 2007 under section 98 of the *Ontario Energy Board Act* (“*OEB Act*”). The Board has assigned File No. EB-2007-0051 to this Application. The Access to Land Application is related to an application by Hydro One for leave to construct a transmission

reinforcement project between the Bruce Power Facility and Milton Switching Station (the Leave to Construct Application) which was assigned Board File No. EB-2007-0050.

The Bruce to Milton Transmission Reinforcement Project involves the proposed construction of approximately 180 kilometres of double-circuit 500 Kilovolt (“kV”) electricity transmission line adjacent to the existing transmission corridor (500 kV and/or 230 kV). The proposed transmission line extends from the Bruce Power Facility in Kincardine Township to Hydro One’s Milton Switching Station in the town of Milton, requiring related modifications at the Milton, Bruce A and Bruce B transmission stations. The target in-service date is the fall of 2011.

The Access to Land Application seeks an Interim Order allowing Hydro One and its agents access to land affected by the proposed Bruce to Milton Transmission Reinforcement Project. The stated purpose is to conduct legal and engineering surveys, soil testing, property appraisals, biological and archeological surveys and environmental investigations together with route access for testing-related vehicles and equipment. Hydro One indicated that delaying collection of information, beyond the spring, summer and fall of 2007, would delay the proposed in-service date of the Bruce-Milton Transmission Reinforcement Project beyond 2011.

A Notice of Application for the Access to Land Application was served on all directly affected landowners. Procedural Order No. 1 (“PO No. 1”) was issued on June 5, 2007. It established June 11, 2007 for the filing of motion records for those seeking an early ruling of the Board. Responses to the Motions were to be filed by June 18, 2007. PO No. 1 also set out timelines for a Motions Day, Issues Day and written interrogatories process. A draft Issues List proposed by Board Staff was attached to PO No. 1.

The Motions Proceeding

On June 11, 2007 Notices of Motion were filed by Powerline Connections, a group of directly affected landowners represented by Borden Ladner Gervais, and by certain directly affected landowners in Bruce, Grey and Wellington Counties (“Landowners”) represented by Fallis, Fallis and McMillan.

Responses to the Notices of Motion 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, the Landowners, Pollution Probe, Hydro One, Board Staff, APPrO, OPA, Ontario Federation of Agriculture (“OFA”) and PWU.

The Motions addressed requests on two issues:

- To stay or adjourn the proceeding
- Procedural matters

We will address each issue in turn.

Requests to Stay or Adjourn the Proceedings

Powerline Connections and the Landowners both requested a stay or adjournment of the Access to Land 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 been set. For these reasons, Powerline Connections submitted that the Leave to Construct Application should await completion of the Environmental Assessment (“EA”), or, at a minimum, completion of the Terms of Reference, and that, as a result, the Access to Land application should be stayed or adjourned as well. The Landowners and the OFA supported these submissions.

Powerline Connections also submitted that Hydro One’s application was deficient in a number of areas because it did not address issues such as notice provisions, routes for vehicle access, access to test results, damage and longer term impacts.

Hydro One opposed the motions to adjourn or stay the proceedings. Hydro One argued that under section 98(1.1) of the *OEB Act*, the only requirement for an application for access to land is that a leave to construct application has been made. With respect to the *EA Act* proceeding, the completion of Terms of Reference for the EA, and the timing of the Integrated Power System Plan (being prepared by the Ontario Power Authority), Hydro One’s position was that these have no bearing on the Board’s decision to grant access to land. Hydro One further submitted that proceeding with Access to Land Application would not bias or predetermine the Leave to Construct Application.

Hydro One also submitted that the activities it proposes under early access are consistent with section 12.2(1)(c) of the *EA Act* which reads: “ The person may prepare a feasibility study and engage in research in connection with the undertaking”. Hydro One also indicated that the results of the early access activities will provide more information on the proposed location of the project, which was a concern identified by the Landowners. Hydro One explained that it expects that an Interim Order of the Board on the Access to Land Application would specify the terms and conditions of access so that all of the affected landowners are treated in an open and transparent and uniform way.

The PWU also opposed the motions to stay or adjourn the Access to Land Application. In particular, the PWU submitted that most of the matters identified by the moving parties were either procedural matters or issues of substance to be addressed in the proceeding itself. The PWU submitted that an access to land approval would not constitute an approval to proceed with an undertaking.

Board Staff submitted that a stay should only be granted in a proceeding if the application is seriously flawed. It was the position of Board Staff that the Access to Land Application meets all of the statutory requirements. Board Staff pointed out that Powerline Connections and the Landowners had raised important issues of substance, but Board Staff submitted that these are the matters to be explored and addressed in the hearing itself.

Board Findings

The Board will not stay or adjourn the Access to Land proceeding. The Board has already determined that it will not stay or adjourn the Leave to Construct Application. The Board’s decision on the Leave to Construct Application Motions is being issued simultaneously with this decision. In that decision, the Board explains why it is not necessary to await the completion of the EA process, the Terms of Reference for the EA, or the IPSP, in advance of hearing the Leave to Construct Application. The same reasons apply in this Access to Land Application. However the Board’s concern expressed in the Leave to Construct Application Motions decision regarding the timing of the approval of the terms of reference of the EA does not apply in this case due to the limited scope and impact of the Access to Land Application,

The Board finds that proceeding with the Access to Land Application in no way prejudices or predetermines the outcome of the Leave to Construct Application. The legislative scheme explicitly contemplates the granting of an Interim Order allowing access to land in advance of the completion of a leave to construct application. The only prerequisite to the consideration of such an application is that a leave to construct application be filed. Hydro One has met that requirement.

Powerline Connections has raised a number of concerns regarding the specifics of Hydro One's Access to Land Application. The Board agrees that these are potentially relevant concerns, and expects these matters to be addressed during the course of the proceeding. The Board will also consider what conditions might be appropriate in the event that it approves Hydro One's application.

Requests Related to Procedural Matters

Powerline Connections and the Landowners requested that the timelines between the procedural events be extended so that counsel can communicate with and receive instructions from their clients. Powerline Connections and the Landowners argued that the proceeding is moving too quickly. Hydro One, OPA, APPrO and IESO were against any delays and opposed expanding the timeline for the proceedings.

Powerline Connections and the Landowners also requested that an oral hearing be held and that it be held at a location convenient to the affected landowners along the proposed route. They noted that if the Board is not prepared to adjourn or stay the proceeding, the oral hearing on the Access to Land Application is necessary to provide an opportunity for the landowners to address a number of their concerns related to property and owner impacts of access to land activities.

Hydro One questioned whether having an oral hearing in a location along the proposed route would cause a greater delay in the Board's review. Hydro One submitted that all the issues can be dealt with by a written interrogatory process already scheduled by the Board. As an alternative, Hydro One suggested that internet web broadcasting may be a good tool to involve local communities in an oral hearing.

The Landowners requested photo-based mapping, including the existing line and building and the proposed line, along with landowner name and address information. Hydro One did not oppose providing more detailed mapped information to interested parties. However, Hydro One emphasized that this should be done in the course of the proceeding.

Board Findings

The Board will not extend the schedule for the Access to Land Application. The Board has extended the schedule for the Leave to Construct Application to accommodate the concerns of landowners. However, the issues to be considered in the Access to Land Application are more limited, and the Board is of the view that the current schedule is appropriate.

The Board does agree, however, that an oral hearing should be held for the Access to Land Application. The Board also agrees that it should be held in a location that is reasonably convenient to the affected landowners. The hearing will take place in Orangeville on July 30 and 31, 2007. Further details will be contained in a procedural order to be issued shortly.

The Board has already addressed the issue of photo-based mapping in its decision on the Motions in the Leave to Construct Application. In brief, Hydro One has been directed to provide photo-based mapping, showing the existing line, existing buildings, and the proposed line.

Cost Awards

The Board has adopted a staged cost awards process for the Leave to Construct Application because that proceeding is expected to be long and complex. The same circumstances do not apply to the Access to Land Application, and therefore the Board will follow its standard practice of considering cost claims at the completion of the proceeding.

THE BOARD ORDERS THAT:

1. The Motions requesting a stay or adjournment of the Access to Land Application are denied.

DATED at Toronto, July 4, 2007

ONTARIO ENERGY BOARD

Original Signed By

Peter H. O'Dell
Assistant Board Secretary