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June 11, 2007

VIA: E-mail: [boardsec@oeb.gov.on.ca](mailto:boardsec@oeb.gov.on.ca)

The Ontario Energy Board,  
P.O. Box 2319, 27<sup>th</sup> Floor  
2300 Yonge Street,  
TORONTO, ON, M4P 1E4

Attention: Ms. Kirsten Walli - Board Secretary

Dear Ms. Walli:

**RE:OEB File No. EB-2007-0050  
OEB File No. EB-2007-0051**

As you are aware we act as solicitors for the list of Interveners who are set out on Page # 2 of this letter. We are scanning to you by e-mail the following documents, each of which are being filed with your Board, as requested, by June 11<sup>th</sup>. Copies of each are being sent by e-mail, or ordinary Canada Post mail if an e-mail address was not provided, as to the Applicants and the Intervener parties listed in Procedural Order No. #1, in Board File EB-2007-0050, a copy of which list is set out as item #4 below and is a constituent part of each of two *Notice of Motions*, herewith filed.

1. A copy of the original of this letter of June 11<sup>th</sup>, 2007
2. A copy of *Notice of Motion*, of the following Interveners, ( as listed on page 2 of this letter), for whom we act, *in File: EB-2007-0050*;
3. A copy of *Notice of Motion*, of the following Interveners, ( as listed on page 2 of this letter), for whom we act, *in File: EB-2007-0051*;
4. A copy of Applicant & List of Interveners, as set out and listed in Procedural Order No. #1, in Board File EB-2007-0050, which forms a constituent part of eachg of the above two *Notices of Motion*

If you have any questions, please do not hesitate to contact us. We remain,

Yours truly,

**FALLIS FALLIS & McMILLAN**



Peter T. Fallis

as solicitors for the following Intervenors:

**MERVYN WAYNE LEWIS, JENNIFER LYNNE LEWIS  
JOHN LESLIE FLANAGAN, PHYLLIS DIANNE FLANAGAN  
DEAN ALEXANDER FLANAGAN, ALLAN ERIC FOSTER  
KARYN FOSTER, JAMES DOUGLAS LEWIS  
PENNY JOANNE LEWIS, JOHN MULHALL  
CATHERINE BLANCHE MULHALL, CALVIN JOHN HUGHES**

**Personally, and on behalf of**

ALL LAND OWNERS OWNING LANDS WITHIN THE PROJECT CORRIDOR SELECTED BY THE APPLICANT FOR THE CONSTRUCTION OF TRANSMISSION FACILITIES BETWEEN THE BRUCE POWER FACILITY IN KINCARDINE AND THE APPLICANT'S SWITCHING STATION IN MILTON, WHO MAY OR MAY NOT HAVE RECEIVED AN *OEB* NOTICE OF APPLICATION FOR APPROVAL TO CONSTRUCT, BUT WHO, AS OF MAY 3<sup>RD</sup>, 2007, HAS YET TO FILE A '*LETTER OF INTERVENTION*' WITH THE *OEB*, WITH THE EXPRESS INTENTION THAT THE ABOVE INTERVENERS DO ALSO MAKE THIS '*LETTER OF INTERVENTION*' ON BEHALF OF EACH OF SUCH LAND OWNERS IN A REPRESENTATIVE CAPACITY, AS IF THE PROCEEDINGS WERE BROUGHT IN COURT UNDER THE '*CLASS PROCEEDINGS ACT, 1992*' TO CERTIFY THE PROCEEDINGS AS A CLASS PROCEEDING AND APPOINTING THE INTERVENERS AS A REPRESENTATIVE PARTY ON THEIR BEHALF

and

**DORIS ANNA CRESSMAN, KEITH CRESSMAN  
SAUGEEN MAPLE FARMS LTD., STEPHEN MEREDITH HODGES  
ORLAND MAGWOOD, GLORIA MAGWOOD  
1063755 ONTARIO LTD., JAMES MAGWOOD, IN TRUST  
ANDREW MAGWOOD, IN TRUST, DAVID JOHN MILNE  
MARY JOAN MILNE, DAVID MERVYN RAWN  
KAREN RUTH RAWN, THOMAS WILLIAM VISSER  
LAURA LEE HEATHER VISSER, ROBERT GEORGE YOUNGER**

PTF.mh  
Encls.

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

**AND IN THE MATTER** 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 new transmission line between the Bruce Power Facility and the Milton Switching Station

## **NOTICE OF MOTION**

TAKE NOTICE that a Motion will be brought before the Ontario Energy Board (“the “Board”), on June 26<sup>th</sup>, 2007 at the Board Offices on Tuesday June 26<sup>th</sup>, 2007 for:

1. That subject to the following Orders herein sought, an Order that the following proceedings be stayed until further Order of the Board
  - A. Board File: EB - 2007-0050
  - B. Board File: EB-2007-0051
  
2. An Order declaring that potential candidate lands, (“Candidate Lands”), for the construction of a double circuit 500KV electricity transmission line, (the “ Proposed New Line”), adjacent to the existing transmission corridor which extends from Bruce Power Facility in Kincardine Township, (“The Bruce”), to Milton Switching Station in the Town of Milton, (“Milton), consists of, and includes a corridor of land from The Bruce to Milton that has a corridor width of 2 kilometers form either side of the centre line the existing transmission corridor, (combined transmission lines if applicable), from the Bruce to Milton, save an except the Town of Hanover in the County of Grey where the construction location shall only lie within a 2 kilometer distance of the centre line of the existing transmission corridor lying to the north-east of such combined transmission corridor.

3. An Order requiring the Applicant provide to each of the owners of the Candidate Lands the following information by registered mail:
  - i) a photo base map/orthophoto map prepared for the Candidate Lands which will have a photo width of 4 kilometres along the centre line of the existing transmission corridor, and that has a photo length of at least 2.5 kilometres from each of the extremities of the Candidate Lands of each of the owners thereof, ( the “Surrounding Area”), prepared as follows:
    - (a) on a measured scale that readily allows each owner of Candidate Lands to locate his/her/its buildings, improvements, or significant land features and attributes thereon and to determine the distance thereof from centre line of the existing transmission corridor.
    - (b) that locates and separately identifies the existing 230 KV and/or 500 KV transmission lines and transmission towers within the existing transmission corridor by enhanced markings thereon coded to identify the separate line types and separate tower types, also identifying thereon the proposed location of the Applicant’s intended 500KV transmission line and proposed tower locations within the Candidate Lands.
4. An Order requiring the Applicant to provide to each owner of Candidate Lands the names, addresses, lot, concession, Plan and PIN number, if applicable, of the owners of the adjacent Candidate Lands within the photo base map/ortho photo map area within the area identified in the surrounding area of each owner of the Candidate Lands, (“Candidate Land Owner Information”).
5. An Order requiring the Applicant to lodge with each Municipality in which the Candidate Lands are located a complete set of all photo base maps/ orthophoto maps for the entire

Candidate Lands within the entire proposed transmission corridor from the Bruce to Milton together with a list setting out all the Candidate Land Owner Information for the entirety of such Candidate Lands.

6. An Order requiring the Applicant to provide to the Board and to each owner of each of the Candidate Lands lying within 3 kilometers to the north, west and east of the centre line of the existing combined transmission lines as it is proposed to be constructed within the Town of Hanover, in the County of Grey, full comprehensive, detailed, planning and economic study reports fully justifying the electrical, planning and economic reasons why such construction should be undertaken within the present municipal boundaries of that Town, within the future urban growth area of the Town of Hanover, and the potential adjacent urban fringe growth areas for adjacent urban uses for the balance of the 21<sup>st</sup> Century, and not otherwise be constructed within an identifiable candidate transmission corridor land area lying to the north thereof located within lands designated in the Grey County Official Plan as being Agricultural and Rural.
7. An Order that the Board shall first initially approve, (as an “Interim Location Order”), the exact location of the Proposed Transmission Line within the entirety of Candidate Lands within The Bruce to Milton Transmission Corridor, subject to the completion of an environmental assessment under the *Environmental Assessment Act*, and the receipt of Approval from the Minister of Environment, (the “Minister”), for the construction of the line through any such approved section of Candidate Lands of any land owner thereof, whereupon a “Final Location Order” shall issue by the Board for any section(s) of Candidate Lands of any such owner or owners thereof, as otherwise so approved by the Minister .
8. An Order that an ‘Order for Access to Land’ , as made by the Applicant and brought under Application EB-207-0051, shall not issue for any Candidate Lands until time as this Board has issued a Final Location Order, after approval by the Minister, in respect to such

approved Candidate Lands of any such owner or owners thereof.

9. An Order that the Applicant shall now identify and disclose to all owners of Candidate Lands adjacent to every parcel of land now identified by the Applicant as a candidate parcel for full fee simple acquisition, the names, addresses, lot, concession and PIN number of such owners thereof, and a copy of the photobase map /ortho photo map prepared for such property owner, showing other alternate locations for such Proposed Transmission Line that could avoid the need of such fee simple acquisition, including an economic costing estimate for such alternative proposed routing, and for such original routing for the Proposed Transmission Line, with support documentation for each type of acquisition.
10. An Order requiring the Applicant to provide to each owner of Candidate Lands, within 30 days of such Order, or first Notice to each Candidate Owner, whichever date shall later occur, a list of each of the expert witnesses that the Applicant intends to call at any scheduled Oral Hearing established by this Board, with a summary of the evidence to be given by such experts, the dates of engagement of such experts, the date of such reports, a report summary, and requiring that the Applicant shall provide to any Candidate Lands owner a copy of any such report as such owner may request.
11. An Order setting aside the "Timetable" set out by the Board in Appendix 'C' to Procedural Order No. #1, herein dated June 5<sup>th</sup>, 2007, to be adjusted after consideration of the contents of this Motion.
12. An Order that any future scheduled Oral Hearings be conducted in either the Town of Orangeville, in Dufferin County or the Town of Durham, in Grey County
13. An Order that the Interveners approved by the Board for recovery of their legal costs shall be at liberty to forthwith submit their first interim legal costs to date incurred through the day of the Return of the Motion on June 26<sup>th</sup>, 2007 before this Board.

14. Such other Order as the Interveners may request and may seem just to this Board.

**THE GROUNDS FOR THIS MOTION ARE AS FOLLOWS:**

A. The Act specifically provides that:

- S. 89** “electricity transmission line” means a line . . . for conveying electricity at voltages higher than 50 kilovolts; and that “work” means an electricity transmission line.
- S. 92(1)** “No person shall construct . . . an electricity transmission line . . . without first obtaining from the Board an order granting leave to construct. . .”
- S. 97** In an application under section 90, 91 or 92, leave to construct shall not be granted until the applicant satisfies the Board that it has offered or will offer to each owner of land affected by the approved route or location an agreement in a form approved by the Board. 1998, c. 15, Sched. B, s. 97
- S.98(1)** The following persons may enter on land at the intended location of any part of a proposed work and may make such surveys and examinations as are necessary for fixing the site of the work:
1. Any person who has leave under this Part or a predecessor of this Part to construct the work.
  2. Any person who is exempted under section 95 from the requirement to obtain leave to construct the work.
  3. Where the proposed work is the expansion or reinforcement of a transmission or distribution system, any person who is required by the Board, pursuant to a condition of the person’s licence, to expand or reinforce the transmission or distribution system.
  4. The officers, employees and agents of a person described in paragraph 1, 2 or 3. 2006, c. 33, Sched. X, s. 2 (1)
- S. 98(1.1)** The Board may, upon application, issue an interim order authorizing a person and the officers, employees and agents of that person to enter on land at the intended location of any part of a proposed work and to make such surveys and examinations as are necessary for fixing the site of the work and as are specified in the order if,
- (a) the person has applied for leave under section 90 or 92 and has complied with section 94;
  - (b) the person has applied to the Board for an exemption under section 95; or
  - (c) the Board has commenced a proceeding to determine whether to require the person, pursuant to a condition of the person’s licence, to expand or reinforce a transmission or distribution system. 2006, c. 33, Sched. X, s. 2 (2).
- S. 99(1)** The following persons may apply to the Board for authority to expropriate land for a work:
1. Any person who has leave under this Part or a predecessor of this Part.
  2. Any person who intends to construct, expand or reinforce an electricity transmission line

or an electricity distribution line or make an interconnection and who is exempted from the requirement to obtain leave by the Board under section 95 or a regulation made under clause 127 (1) (f). 1998, c. 15, Sched. B, s. 99 (1).

- (2) The Board shall set a date for the hearing of the application, but the date shall not be earlier than 14 days after the date of the application. 1998, c. 15, Sched. B, s. 99 (2).
  - (3) The applicant shall file with the Board a plan and description of the land required, together with the names of all persons having an apparent interest in the land. 1998, c. 15, Sched. B, s. 99 (3).
  - (4) Repealed: 2003, c. 3, s. 67.
  - (5) If after the hearing the Board is of the opinion that the expropriation of the land is in the public interest, it may make an order authorizing the applicant to expropriate the land. 1998, c. 15, Sched. B, s. 99 (5).
- B. The Act fully contemplates that the Board must determine and approve the exact metes and bounds description for the location of the Proposed Transmission Line, and that such approval, of necessity, must be determined under Application EB-2007-0050, in advance of the approval of the Minister under the *Environmental Assessment Act* within each of the Candidate Lands along the entirety of the proposed transmission corridor for the Proposed Transmission Line.
- C. The Board must first determine and approve the Interim Location Order for the Proposed Transmission Line within the Candidate Lands before an Application is made to the Minister under the *Environmental Assessment Act* for the Minister's Approval for the use of such Lands for the Proposed Transmission Line, before the Board issues a Final Location Order for the Proposed Transmission Line within the Candidate Lands .
- D. To grant to the Applicant, by an Interim Order of this Board, an right of early access to the lands under a s. 98 Application EB-2007-0051, ( that the Applicant contemplates acquiring before final approval of the Board), could expose this Board to criticism, as it could be alleged that the Board has granted early access because "the end justifies the means", and thereby have allowed the Applicant to achieve its immediate desire to secure additional power corridor transmission lands, because of the Applicant's delay failures to initiate the process of securing approvals for the acquisition of such lands in past calendar years



coincident with the contractual undertaking for such obligations given under written agreement(s) with the owners of the Bruce Power Facility, namely to provide the very electrical transmission capabilities for additional electrical power to be generated from its facilities.

- E. The material filed by the Applicant with the Board contemplates an Approval by the Minister under the *Environmental Assessment Act* by September 2008, which is over 15 months from the Motion date, and which will require the Applicant to prepare and circulate, with dispatch, any photobase map/orthophoto mapping otherwise ordered by this Board in Order to achieve the decision approvals from this Board, and the Minister to achieve that target date for such approval by the Minister.
- F. The Board should not subject itself to the potential of criticism that it might attract for giving in to the Applicant's request of urgency because of the self-imposed time s pressures of the Applicant. occasioned by the avoidable delays of the Applicant in bringing this Application under the Act, thereby tending to lessen and diminish the standards and quality of evidence that the Applicant must otherwise produce to this Board, at the expense of the rights of landowners given to them by the Legislature under the *Expropriations Act*, to have a full and proper inquiry undertaken thereunder, (s. 7(5) thereof), as to whether the taking of the lands or any part of the lands of an owner or of more than one owner of the same lands is fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority.
- G. It has been previously decided in the Ontario Supreme Court that in such an inquiry under the *Expropriations Act* an Inquiry Officer has lawful authority to recommend to the approving authority that adjustments be made to any candidate lands proposed for expropriation by Ontario Hydro so as to lessen the impact or avoid the impact of an expropriation of lands of individual land unit owner(s) if a suitable and reasonable alternative might avoid or lessen such a taking.

H. Such other grounds as the Interveners may submit

Made at Durham Ontario, this 11<sup>th</sup> day of June, 2007

**FALLIS FALLIS & McMILLAN**  
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N0G 1R0

**Peter T. Fallis, (LSUC #12371W)**

Solicitors for:

**MERVYN WAYNE LEWIS**  
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**PENNY JOANNE LEWIS**  
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**CATHERINE BLANCHE MULHALL**  
**CALVIN JOHN HUGHES**

**Personally, and on behalf of**

ALL LAND OWNERS OWNING LANDS WITHIN THE PROJECT CORRIDOR SELECTED BY THE APPLICANT FOR THE CONSTRUCTION OF TRANSMISSION FACILITIES BETWEEN THE BRUCE POWER FACILITY IN KINCARDINE AND THE APPLICANT'S SWITCHING STATION IN MILTON, WHO MAY OR MAY NOT HAVE RECEIVED AN *OEB* NOTICE OF APPLICATION FOR APPROVAL TO CONSTRUCT, BUT WHO, AS OF MAY 3<sup>RD</sup>, 2007, HAS YET TO FILE A '*LETTER OF INTERVENTION*' WITH THE *OEB*, WITH THE EXPRESS INTENTION THAT THE ABOVE INTERVENERS DO ALSO MAKE THIS '*LETTER OF INTERVENTION*' ON BEHALF OF EACH OF SUCH LANDOWNERS IN A REPRESENTATIVE CAPACITY, AS IF THE PROCEEDINGS WERE BROUGHT IN COURT UNDER THE '*CLASS PROCEEDINGS ACT, 1992*' TO CERTIFY THE PROCEEDINGS AS A CLASS PROCEEDING AND APPOINTING THE INTERVENERS AS A REPRESENTATIVE PARTY ON THEIR BEHALF

and

**DORIS ANNA CRESSMAN  
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SAUGEEN MAPLE FARMS LTD.  
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**To:**

The Ontario Energy Board;  
**P.O. Box 2319, 27<sup>th</sup> Floor**  
**2300 Yonge Street**  
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**Attention: Ms. Kirsten Walli - Board Secretary**

Via: E-Mail: [natasha.sookmangal@oeb.gov.on.ca](mailto:natasha.sookmangal@oeb.gov.on.ca)  
[boardsec@oeb.gov.on.ca](mailto:boardsec@oeb.gov.on.ca)

**And To:**

**Applicant & List of Intervenors, (list as attached),**

(as prepared by the O.E.B- June 5, 2007)  
(see Procedural Order No. 1, EB-2007-0050)

**HYDRO ONE NETWORKS INC.  
LEAVE TO CONSTRUCT  
ACCESS TO LAND PRIOR TO APPROVAL OF LEAVE TO CONSTRUCT  
EB-2007-0050  
APPLICANT & LIST OF INTERVENORS**

**June 5, 2007**

**Applicant**

**Rep. and Address for Service**

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**Intervenors**

**Rep. And Address for Service**

1. Association of Power Producers  
of Ontario ("APPRO")

Jake Brooks  
Executive Director

- 2 -

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14. Independent Electricity System  
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Phyllis Dianne Flanagan  
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Karyn Foster  
James Douglas Lewis  
Penny Joanne Lewis  
John Mulhall  
Catherine Blanche Mulhall  
Calvin John Hughes
- Peter T. Fallis  
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- Thomas Murtagh and Glenis Falbo  
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AND

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