

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

**AND IN THE MATTER OF** applications by Centre Wellington Hydro, Veridian Connections Inc., EnWin Powerlines Ltd., Erie Thames Powerlines Corp., Chatham-Kent Hydro Inc., Essex Powerlines Corp., Cooperative Hydro Embrun Inc. and Hydro One Networks Inc. pursuant to subsection 74(1) of the *Ontario Energy Board Act*, 1998 to amend Schedule 1 of their Transitional Distribution Licences.

## **Application to Amend the Distribution Licence of Chatham-Kent Hydro Inc.**

# **Written Argument of The Corporation of the Municipality of Chatham-Kent as Intervenor**

### **1.0 Background**

- 1.1 The Corporation of the Municipality of Chatham-Kent (the “Municipality”) has undertaken a public process leading to the development of a business park at the Bloomfield Road interchange at Highway 401 in the Municipality of Chatham-Kent (the “Bloomfield Business Park”).
- 1.2 The public process undertaken by the Municipality included an economic opportunity study prepared by PricewaterhouseCoopers as a consultant to the Municipality . The economic opportunity study recommended the development of the Bloomfield Business Park , being a 300 acre industrial commercial park in order for the Municipality to have a significant industrial commercial presence on the Highway 401 artery.
- 1.3 The Bloomfield Business Park is a very significant initiative of the Municipality and is regarded by it’s CAO, Mr. Joseph Pavelka, as it’s penultimate goal to reverse erosion of jobs and population and to turn around the economy of the Municipality .

- 1.4 The Council of the Municipality adopted the Pricewaterhouse Coopers recommendation to establish the Bloomfield Business Park and proceeded to acquire ownership of approximately 120 acres of land within the proposed 300 acre business park.
- 1.5 The Municipality proceeded to designate and rezone the 300 acres of proposed business park for industrial commercial uses which public process was completed in June of 2002.
- 1.6 The Municipality also proceeded to develop its plans for servicing the Bloomfield Business Park with water, sanitary and storm sewers, natural gas, telecommunications and electricity.
- 1.7 The Municipality has completed its land acquisition and has proceeded with the servicing of the same all at an anticipated cost of \$11,000,000. All arrangements for the servicing have been finalized by the Municipality with the exception of the hydro service.

## **2.0 Request for Hydro Proposal**

- 2.1 The Municipality by letter of February 8<sup>th</sup>, 2002 to both Hydro One and Chatham-Kent Hydro indicated “we are currently completing a cost of servicing study and are requesting the costs to supply the development from Hydro One and Chatham-Kent Hydro “. The letter further requested specific information of each of Hydro One and Chatham-Kent Hydro if they “are interested in supplying the proposed industrial park”.
- 2.2 Each of Hydro One and Chatham-Kent Hydro replied to the Municipality’s letter of February 8<sup>th</sup>, 2002. The Municipality replied to the proposal of each of Hydro One and Chatham-Kent Hydro by letter of May 15, 2002 (a copy of which letters are included as Appendix “A” to this submission) indicating that Dillon Consulting Limited had been retained to evaluate the proposals and to obtain and receive information pertaining to the proposals in order to expedite the decision making process.
- 2.3 The responses of each of Hydro One and Chatham-Kent Hydro were evaluated by Stevens Associates, a sub-consultant to Dillon Consulting Limited to compare the

financial aspects of these proposals. The Stevens Associates report indicates on page 1 and page 3 that they had “subsequent communications with the two utilities” and “discussions with Hydro One and Chatham-Kent Hydro staff” with respect to their submissions.

2.4 Stevens Associates report recommends that Chatham-Kent Hydro make application to the Ontario Energy Board to have the Bloomfield Road/Highway 401 Commercial/Industrial Park removed from Hydro One’s service territory and added to Chatham-Kent Hydro service territory, for the following reasons:

- (a) the future occupants of the Park will pay significantly lower electricity rates if they are served by Chatham-Kent Hydro rather than Hydro One. There are no obvious differences in quality of service that would offset this advantage;
- (b) although the impacts on the developer, (the Municipality of Chatham-Kent) are mixed, the benefits (the commercial advantage of offering land with lower electricity rates, the possibly lower cost of future expansion in electricity supply capacity) probably outweigh the disadvantages (higher capital contributions even after considering rebates).

2.5 This recommendation was accepted by Council of the Municipality and Chatham-Kent Hydro made this application to the Ontario Energy Board .

2.6 The submission of Hydro One of March 14, 2002 in response to the request from the Municipality of February 8<sup>th</sup>, 2002 indicated the following:

- (a) Hydro One can supply 1MW of load assuming that individual customer transformation does not exceed 500kva;
- (b) Hydro One can supply an additional 5MW by constructing a 6 kilometre line extension at a preliminary cost estimate of \$750,000 ;
- (c) Hydro One can supply a total load not exceeding 18MW at a preliminary cost estimate of \$2,000,000. Mr. Gee in his testimony indicated that this was a quote for two feeders (line 1754 of the transcript);
- (d) Upon execution of the contract, Hydro One would acquire all approvals and construct the circuit to the site within 12 calendar months.

- 2.7 In response to the Chatham-Kent Hydro application to the Board, which clearly set out the capital costs originally requested by the Municipality in its letter of February 8<sup>th</sup>, 2002 including the cost of a dual feeder supply, Hydro One's submission filed with the Board on February 21, 2003 indicates that the 1MW supply would be available immediately at a cost of \$100,000 to the Municipality and that an additional 1 to 9 MW would be available to the Municipality within 12 months at an additional cost of \$400,000. There is no amendment to the cost of the dual feeder of \$2,000,000 as admitted by Mr. Gee at lines 1767 and 1768 of the transcript.
- 2.8 In the Hydro One supplementary evidence filed May 5, 2003 with the Board, Hydro One makes a further amendment to their proposal indicating on page 4 "Networks can provide the entire 10MW of supply, should the Municipality desire within 8 weeks from the time an offer to connect is signed and appropriate capital contribution is provided. It can provide the expected 1MW immediately. Networks response of 12 months was , and remains, a prudent response based upon the absence of bona fida service request". This submission of Hydro One does not amend the cost of \$2,000,000 for the dual feeder as aforesaid.
- 2.9 Hydro One in its oral submission before the Board, now indicates that they can supply a dual feeder supply for approximately \$1,200,000 as a preliminary estimate conditional upon talking to the customer and identifying their needs (line 1784 to 1787).
- 2.10 In its fifth submission dated May 21, 2003, Hydro One has now indicated that it can supply the dual feeder for \$750,000 , being \$2,000,000 less than their original proposal.
- 2.11 The Hydro One witnesses have admitted that they have no record of anyone from Hydro One contacting the Municipality seeking clarification of their needs for purposes of refining their proposal to the Municipality, (lines 1749 and 1750 of the transcript) notwithstanding that:
- (a) the Municipality's letter of May 15, 2002 to Hydro One clearly indicates that it has retained a consultant to evaluate the proposals and to obtain and receive

information pertaining to the proposals in order to expedite the decision making process; and

(b) the Stevens Associates report clearly references dialogue with Hydro One regarding it's proposal.

Nevertheless, Hydro One has modified their proposal 4 times during this proceeding before the Board and has stated at the hearing that their proposal is still preliminary until it has an opportunity to fully identify the customer's needs.

2.12 It has been clear that Hydro One is not interested in identifying, responding and catering to the customer's needs since the beginning of this process being the letter of February 8, 2002 from the Municipality to Hydro One and Chatham-Kent Hydro. Rather than recognizing that the Municipality as the customer has the right to determine its own needs, and that Hydro One should attempt to accommodate those needs, Hydro One has indicated the following:

- (a) in it's letter of March 14, 2002 to the Municipality, rather than answering all of the Municipality's questions, sought to remind the Municipality that the Bloomfield Business Park was within Hydro One's licensed service territory and that Chatham-Kent Hydro could not connect the load without obtaining approval for licence amendment from the Ontario Energy Board and further advising that they would object to such an application for amendment;
- (b) in it's submission filed with the Board on February 21, 2003 Hydro One indicates that "Networks submits that the Board should give little weight to the evidence filed by Chatham-Kent regarding the planning objectives of the local Council;
- (c) in Hydro One's submission of May 5, 2003 to the Board it indicates on page 4 of the submission "Networks response of 12 months was, and remains , a prudent response based upon the absence of a bona fida service request." Further, the submission states "the Municipality's intention is to have Chatham-Kent build electrical facilities to the development's entrance, which facilities would stand idle until required, and then install additional facilities to connect any customers who materialize. Networks

has provided a prudent and less costly approach of providing supply to the proposed development, with any additional requirements supplied over time as needed”.

- 2.13 These are clear indications that Hydro One :
- (a) have sought to negotiate a deal before the Board after the competitive position of the other service provider has been disclosed;
  - (b) has sought to avoid the request for proposal process instituted by the Municipality , as the customer; and
  - (c) is not interested in identifying and attempting to accommodate customer needs but rather wishes to continue to be in a position to dictate to the customer what their needs should be.
- 2.14 It should have been very clear to Hydro One that the Municipality was obtaining all of the required information in order to make an educated decision on the appropriate electricity provider for the Bloomfield Business Park based upon the following:
- (a) the letter to Hydro One from the Municipality of February 8, 2002;
  - (b) the letter from the Municipality of May 15, 2002 to Hydro One indicating that the Municipality had retained Dillon Consulting Limited to evaluate the proposals and obtain and receive information pertaining to the proposals in order to expedite the decision making process;
  - (c) subsequent conversations and dialogue between the Municipality’s consultant, Stevens Associates, and Hydro One leading to the completion of the Stevens Associates report;
  - (d) all of the publicity surrounding the Municipality’s Bloomfield Business Park in the local Chatham-Kent media, including newspaper and cablecast (lines 94 to 96 and lines 123 to 132 of the transcript).
- 2.15 The Municipality proceeded on the basis that it had obtained from Hydro One it’s proposal for providing electricity to the Bloomfield Business Park.

### **3.0 Urgency**

- 3.1 The Bloomfield Business Park is the cornerstone of the Chatham-Kent economic growth strategy. Chatham-Kent has committed an \$11,000,000 capital investment to this project. The purpose of the strategy is to immediately attract new business and employers to Chatham-Kent thereby creating jobs and economic growth for the Municipality. It is the objective of the Municipality to offer for sale fully serviced sites in the Municipality's Bloomfield Business Park immediately.
- 3.2 It is part of the Municipality's business plan for the Bloomfield Business Park to recover its capital costs of development from the proceeds received from lot sales. It is necessary to know the actual cost of the provision of services to the Bloomfield Business Park in order to determine the price for lot sales. Chatham-Kent Hydro has provided a fixed definite quote with respect to capital costs which has remained unchanged throughout. Hydro One has changed their quote four times with the last submission of May 21, 2003 being \$2,000,000 less than its first submission of March 14, 2002. This significant variance raises concerns about the reliability of all of the Hydro One submissions.
- 3.3 The Municipality and its potential customers for the purchase of lots at the Bloomfield Business Park require certainty with respect to the electricity service available to a prospective site as follows:
  - (a) certainty of the electrical capacity immediately available to the business park;
  - (b) certainty of the capital costs associated with the electricity service;
  - (c) certainty of the electricity rate consumption costs.
- 3.4 The Municipality will have great difficulty in marketing its Bloomfield Business Park without being able to provide this certainty to its potential customers. The Municipality has already had an experience with losing a potential large industrial customer for its business park, namely Brose International, where one of the determining factors was the Municipality's inability to provide certainty of site services.
- 3.5 Another customer need of not only the Municipality but potential customers for sites at the Business Park is reliability of electrical service. The Municipality's target customer for the Bloomfield Business Park is a high- tech company which

will require a clean reliable source of power. For this reason , the Municipality has determined to install immediately a 10MW dual feeder electricity supply to the business park.

- 3.6 Therefore, the Municipality requires an immediate determination as to it's electricity distributor and such electricity distributor must be able to provide the certainty of immediate installation of a 10MW dual feeder capacity and at a fixed reliable capital cost. Further, the Municipality must be able to advise their prospective customers with certainty as to what they can expect for their hydro rate consumption costs.
- 3.7 There is no viable interim solution to meet the aforesaid needs of the Municipality and the needs of their prospective customers. The interim solution suggested by Chatham-Kent would not allow the Municipality to quote distribution charges to the end user with any degree of certainty. This will severely hamper the Municipality in it's marketing of the Bloomfield Business Park. The Hydro One interim solution to provide only 1MW supply to the business park is not viable in that the Municipality will also be very severely hampered in their marketing efforts with respect to the business park since they will not be able to provide representations to prospective purchasers with certainty that:
  - (a) the required 10MW dual feeder electrical capacity will be immediately available to the business park;
  - (b) the capital costs associated with the electricity service ; and
  - (c) electricity rates consumption to the end user.

#### **4.0 Customer Preference**

- 4.1 The Municipality prefers to have Chatham-Kent Hydro provide the distribution services for the Bloomfield Business Park.
- 4.2 The electricity distribution charges to the end user are significantly lower from Chatham-Kent Hydro than the rates charged by Hydro One. This will be a significant benefit to not only the end user but also to the Municipality in that lower consumption costs are a marketing tool for the Municipality in its sale of the building sites.



- 4.3 The capital costs to the Municipality for the installation of a 10MW dual feeder are provided with certainty by Chatham-Kent Hydro and would appear to be subject to change with Hydro One. Chatham-Kent Hydro has indicated that there will be no additional capital cost when a greater than 10MW load requirement materializes as the Bloomfield Business Park expands to the balance of the 300 acres. It is unclear from the submissions of Hydro One as to whether there will be additional capital costs in the range of the \$2,000,000 quoted in the Hydro One letter of March 14, 2003.
- 4.4 The Municipality is very concerned about the reliability of power supply to the business park. The Municipality is aware of previously significant reliability of service issues with other industrial customers where the service was dependent upon Hydro One's existing long rural feeder lines (lines 190 to 209 of the transcript). The target high-tech customers for the Bloomfield Business Park will require reliable distribution service with a low incidence of failure of service and a quick response time in the event of failure. The Municipality requires a good initial experience with its electricity supply in order to be successful in marketing its business park. The Municipality is aware that its first customer can be its best advertising. Unfortunately, the converse is also true.
- 4.5 The Municipality is also concerned with the timing of the availability of the 10MW dual feeder service to the business park. It is clear from the Chatham-Kent Hydro submission that the service can be available within 8 weeks. It was not until the supplementary submission of Hydro One on May 5, 2003 that Hydro One indicated that they could provide distribution service within 8 weeks to the business park. This supplementary proposal did not state that a 10MW dual feeder supply could be accomplished by Hydro One within this 8 week period. However, it is noted that in the oral evidence offered on behalf of Hydro One at the hearing, it is now Hydro One's position that they can offer the dual feeder supply presumably in the 8 week time frame. The Municipality is concerned about the ever changing position of Hydro One in this respect whereas it has been clear from the outset as the Chatham-Kent Hydro's capability.

4.6 The four amendments submitted by Hydro One to their original proposal do not impact on the recommendations of the Stevens Associates report and the Municipality's decision to accept the recommendation from the report. It remains clear that the Chatham-Kent Hydro electricity rates are significantly lower than the electricity rates of Hydro One. Even if it is accepted that the initial capital costs of Hydro One are less than the capital costs associated with Chatham-Kent Hydro, the Stevens Associates report recommends that the commercial advantage of offering the land with lower electricity rates would probably outweigh the disadvantages of potentially higher capital contribution. The report further states on page 6 "since there are no established rules or precedents it is not certain what the Ontario Energy Board's criteria would be in approving or denying an application such as this. However, based upon conversations with OEB staff (Gordon Ryckman , June 5, 2002) it is likely that the board's criteria will be as follows:

- The main criterion will probably be the interest of the customers or potential customers in the area
- A secondary criterion is likely to be "efficiency" meaning the capital and other costs of serving the area.

The main criterion clearly favours the selection of Chatham-Kent Hydro to serve the commercial/industrial park, because the distribution rates that would be paid by the future occupants of the land would be much lower than what they would pay to Hydro One. The second criterion gives more mixed results: the capital cost would initially be lower with Hydro One, but higher once the load exceeded 11MW."

## **5.0 Economic Benefit and Public Interest**

5.1 Based upon all of the aforesaid, the Chatham-Kent Hydro proposal for distribution service to the Bloomfield Business Park provides a clear economic benefit to not only the Municipality but to the eventual purchaser of the site and the end customers.

- 5.2 A decision to allow Chatham-Kent Hydro to provide the distribution service to the Bloomfield Business Park will also provide a significant economic benefit to the taxpayers of Chatham-Kent in that the Municipality will be able to execute its economic strategy of attracting new businesses and employers to Chatham-Kent without delay with the lowest hydro rates. This will assist in the sale of lots and the recovery of the capital costs invested by the Municipality as quickly as possible thereby reducing the debt service cost to be borne by the ratepayers.
- 5.3 While it is clearly necessary for the Ontario Energy Board to determine whether applications are in the public interest, the Municipality is also required to act in the public interest of its ratepayers.
- 5.4 The Municipality has completed public processes leading to the development of the Bloomfield Business Park including :
  - (a) economic strategy;
  - (b) planning processes designating and zoning the Bloomfield Business Park lands;
  - (c) the process for servicing the Bloomfield Business Park including independent analysis by a consultant of proposals from Hydro One and Chatham-Kent Hydro.
- 5.5 Chatham-Kent Council is elected to represent the local public interest in the Municipality of Chatham-Kent and had made decisions at the conclusion of the aforesaid processes to proceed expeditiously with the development and sale of fully serviced lots and to service the Bloomfield Business Park with Chatham-Kent Hydro.
- 5.6 Having completed all of the aforesaid public processes, the Chatham-Kent Council is in the best position to understand the needs of its community and the Chatham-Kent Council has acted responsibly and in the public interest of its ratepayers.
- 5.7 From 1996 to 1998, Chatham-Kent's former 23 municipalities participated in a very difficult and often painful restructuring process. The result was the amalgamation of all 23 municipalities into one. There have been many benefits from the restructuring including :

- (a) lower cost of service delivery;
- (b) the elimination of counterproductive turf protection between former municipalities which has allowed for the development of the 401 Business Park in the former Township of Raleigh;
- (c) the amalgamation of all of the former public utility commissions into Chatham-Kent Hydro has provided a significant reduction in administrative costs of the distribution service provider. It would appear that the administrative cost reduction is clearly responsible for some of the price differential in rates between Chatham-Kent Hydro and Hydro One. Moreover, the Municipality as the shareholder of Chatham-Kent Hydro elected to take a lower return on investment in order to keep distribution rates lower and to stimulate business investment in Chatham-Kent.

We are respectfully requesting that the Board allow the Municipality the benefit of the significantly lower distribution rates to ensure the success of the Bloomfield Business Park which is the cornerstone of the economic strategy of the Municipality.

- 5.8 The Municipality respectfully requests that the application of Chatham-Kent Hydro to expand its service area to the Bloomfield Business Park be approved by the Board on a final basis.