

ONTARIO ENERGY BOARD

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

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 Licenses.

**SUBMISSIONS OF WIREBURY CONNECTIONS INC.
FOR JURISDICTIONAL ISSUE MOTION TO BE HEARD MAY 20, 2003**

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SUBMISSIONS OF WIREBURY CONNECTIONS INC. FOR JURISDICTIONAL ISSUE MOTION

Introduction

1. The Issues List for this proceeding was attached to Procedural Order #4, which was issued on May 6, 2003. Part of the first issue on the Issues List ("Customer Preference") asks : "What are the limits of the Board's jurisdiction with respect to existing customers in service area amendment applications ?"
2. Procedural Order #4 required Hydro One Networks to file with the Board "a clear statement of the jurisdictional issue, including all legislative references" by May 8, 2003.
3. By letter dated May 8, 2003, Hydro One framed the issue as follows:

Do the license amendment provisions of the *Ontario Energy Board Act* give the Ontario Energy Board jurisdiction to make an order which would have the effect of transferring a Distributor's existing customers to another Distributor which has sought an amendment to expand its service territory, or does the Board have power only to consider license amendments which would have the effect of transferring new customers ?
4. Procedural Order #4 requires all parties and intervenors who wish to participate in the argument relating to the jurisdictional issue to file written argument by May 15, 2003.

Wirebury's Position

5. In general, Wirebury Connections Inc. ("Wirebury") takes the position that when the Board makes any order which amends a Distributor's license to expand or change its service territory into a territory already served by an incumbent Distributor, the Board does not or should not have the jurisdiction to unconditionally order existing customers of the incumbent licensed Distributor(s) already serving that service territory to transfer to the newly authorized Distributor.¹
6. This does, however, raise an issue as to what constitutes an "existing" customer. and what constitutes a "new" customer.
7. Section 74(1)(b) of the *Ontario Energy Board Act, 1998*, provides the Board with the authority to amend a license if it considers the amendment to be in the public interest, having regard to the objectives of the Board and the purposes of the *Electricity Act, 1998*. Wirebury respectfully submits that it is in the public interest that any amendments to a Distributor's license which are granted ought to enable the Distributor to connect "new" customers in its new service territory. Wirebury also respectfully submits that as a matter of policy, it is not in the public interest to unconditionally permit or require customers of an incumbent licensed Distributor to be connected to another Distributor who becomes licensed to serve an overlapping service territory or an area embedded within the service territory of the host LDC.
8. Wirebury supports open competition for new connections that would provide customer value through the economic, efficient expansion of distribution services. Customers who are not currently metered or billed by an incumbent licensed Distributor ("new" customers) should be able to choose which company will provide their connection and distribution services. New customers would include meter connections in green field and brown field developments, as well as customers downstream of the bulk meter in multiple-unit buildings, where end-use consumers are not being served directly by the incumbent licensed Distributor. This is consistent with subsection 1(a) of the *Electricity Act, 1998*, which states that a purpose of that Act is to facilitate competition in the sale of electricity. It is also consistent with the objectives of the Board, as set out at subsection 1(1) of the *Ontario Energy Board Act, 1998* to facilitate competition in the sale of electricity, to facilitate a smooth transition to competition and to provide consumers with non-discriminatory access to distribution systems.

¹ In this respect, Wirebury makes no comment on the Board's emergency powers under section 59 of the *Ontario Energy Board Act, 1998* to authorize a person to undertake distribution activities where the Board considers it necessary to ensure the reliable supply of electricity. Instead, Wirebury's position relates to non-emergency situations where a Distributor is seeking to expand its territory into an area served by an incumbent Distributor. In such cases, Wirebury respectfully submits that the Board should steadfastly avoid becoming the arbiter of connection disputes between competing Distributors by deciding that existing customers of licensed Distributors may, unconditionally, demand connection with another Distributor.

9. Customers who are currently connected to and metered by a licensed Distributor (“existing” customers) should not be allowed to unconditionally switch to another Distributor as this would create inefficiencies in the provision of distribution services such as unnecessary administrative and regulatory costs, plant duplication and stranded assets or costs. If existing customers are allowed to switch (i.e. to replace their existing meter connection and with a new connection from another Distributor), the customer requesting the switch should pay all of the associated costs, including disconnection costs and the cost of any stranded assets or unrecovered costs. This is consistent with subsections 1(d) and (f) of the *Electricity Act, 1998*, which state that another purpose of that Act is to promote economic efficiency in the distribution of electricity and facilitate the maintenance of a financially viable electricity industry. It is also consistent with the similar objectives of the Board, as set out in section 1 of the *Ontario Energy Board Act, 1998*.
10. In Wirebury’s submission, allowing competition for existing customers would precipitate border disputes, create added risk for established Distributors and increase costs for their system customers. Once a customer has selected a Distributor and the customer’s building has been connected to that Distributor’s system at the meter point, other Distributors should not be allowed to unconditionally switch that customer’s meter point to competing distribution services.
11. While the duplication of plant should be kept to a minimum, some overlap of service areas may be necessary to facilitate competition and reduce the need for regulatory review by the Board. The obligation of a Distributor to connect a customer is not impaired by overlapping service areas and allowing alternative distribution options. The obligation to connect should be determined by the customer as contemplated under section 28 of the *Electricity Act, 1998*. Customer choice for new customers should be the determining factor. Competition should be encouraged to ensure that new customers have connection options for their developments.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 15th DAY OF MAY 2003

Dennis M. O’Leary
Counsel to Wirebury Connections Inc.