



Canadian Environmental Law Association
L'Association canadienne du droit de l'environnement

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June 11, 1984

The Steering Committees of the
No Towers Federation
Hydro Consumers Association
c/o Coral Nault
R.R. #4
Perth, Ontario
K7H 3C6

Dear Friends:

Re: Eastern Ontario Hydro Hearings

The following is our report of the proceedings before the Joint Board on May 28, 29, 30, June 4 and 5. During the course of those proceedings, two matters were on the Board's agenda. The first concerned a motion by Ontario Hydro dealing with five different matters. I shall describe these more fully below. The second, was an application brought on behalf of the NTF/HCA, asking the board to retain a consultant to conduct an independent review of the reliability of the electrical distribution system in Eastern Ontario, together with the methods used by Ontario Hydro to assess the adequacy of both existing systems and the proposed transmission systems.

Ontario Hydro's Application

The Interconnection

As noted, Ontario Hydro's application dealt with five distinct matters. The first and perhaps most significant concerned a legal procedure that would, in effect, remove the interconnection facilities from the proposed expansion program. As you may be aware, providing a 2,000 MW interconnection with Quebec near Cornwall had, from the outset of the planning process, been one of the two objectives of the expansion program.

During the plan stage hearings, we vigorously questioned the rationale and need for such facilities, arguing that on the basis of the evidence presented, approval should not be granted. We were joined in this criticism by the Ministry of the

Environment, and even the Ministry of Energy expressed some reservation as to the sufficiency of the planning process in this regard. In its decision upon the plan stage, the Joint Board ordered further study of the interconnection as a precondition to any further public hearing or approval process.

As it turns out, that further study has been very difficult for Hydro to carry out apparently, because of a lack of cooperation from Hydro Quebec. These recent events would seem to confirm the view that we expressed during the hearing namely, that the interconnection was little more than wishful thinking that had no solid planning basis.

Finding itself unable to proceed with further public hearings because of this stumbling block, Hydro brought a motion before the joint board last October that would have allowed it to proceed with the transmission component of the undertaking without having completed the interconnection studies. We opposed that motion upon the ground that the existence and location of any additional interconnection would influence the need, design and planning of additional transmission lines.

Although the joint board order is confusing, it appears that we won the point as the interconnection studies remained a pre-condition to any further decision upon the transmission facilities. Consequently, Ontario Hydro brought another motion, on this occasion offering to jettison the interconnection facilities entirely.

This presented us with somewhat of a dilemma. From the outset, we had argued against the approval of facilities, the need for which was supported by very little, if any, real evidence. On the other hand, the interconnection had always offered the appealing prospect of using Quebec's resources, whether by way of firm support or emergency assistance, to obviate the need for some, if not all, of the proposed transmission expansion program.

For its part however, Hydro has persevered in insisting that the interconnection could not be used in such a fashion. Seeking to find a balance between the somewhat competing perspectives, we expressed the following position before the joint board:

We did not oppose deleting the interconnection from the undertaking subject to the condition that doing so should not prejudice further exploration of the opportunities that may exist or that may present themselves to augment the reliability and security of the supply system in Eastern Ontario by utilizing Hydro Quebec's resources or by obtaining some form of support from Quebec in whatever form it may be available.

Further, that diligent efforts be made to explore those potential opportunities and that evidence of those efforts be presented during the route stage hearings together with the results of any joint study that may be available at that time. Finally, that in any event, a record of the progress that had been made in pursuit of completing that study comprise part of Hydro's evidence.

Deferral of East Section

The second matter that was raised by Ontario Hydro in its application concerned a request that it be allowed to proceed with a route stage hearing upon the lines to be constructed between Kingston and Ottawa (the west section) before having completed its Environmental Assessment of the proposed lines between Ottawa and Cornwall (the east section).

We opposed this aspect of the application. Such a deferral would, we argued, simply fragment the hearing process, confuse those who might wish to participate in it and open the door for procedural challenges that might only further obscure the real issues. In addition, and even more telling, was the built-in bias that such an approach would create. In our view, that bias would include tacit approval of all three lines and implicit approval for the construction of the west section facilities before the east. Finally we argued that, as Hydro had offered no explanation whatsoever as to why the study of the east section had been delayed, it should be denied its application.

Notice

The third matter to be dealt with on Hydro's motion concerned the manner in which notice would be given of the route stage hearings. In this regard we made several suggestions the central thrust of which concerned the format in which notice would be given. Hydro's proposed notice was, in our view, lengthy, confused and likely to discourage all but the most determined reader. We advocated a one-page format in bold type face designed to alert recipients to the potential impacts of the project and specifically the risk of expropriation. More detailed information would accompany this notice but all essential information would be offered on one page. In response Hydro offered to redraft its notice and to meet with us in order to consider our suggestions. That meeting should be taking place sometime this week with the revised notice then going to the Joint Board.

We also suggested that the preliminary hearings with respect to the route stage be convened in the City of Kanata, in the Town of Elgin and in the Township of Loughborough respectively. Finally, we asked the Board to schedule sittings in the evenings as well in order to accommodate those unable to attend during the day.

Filing Documents

This item concerned the manner in which documents might be provided to interested members of the public. Hydro proposed to provide copies of the environment assessment documents to all municipalities and public libraries in the study area with the request that they be made available for public viewing. (A copy of the summary of the environmental assessment would be mailed to all those along the recommended and alternative bands). Hydro also offered to make a more limited number of copies of the transcripts of the proceedings to date available at certain, as yet to be determined, locations.

We expressed satisfaction with these arrangements.

The Planning Act

This last issue concerned deleting reference in the proceedings to the Planning Act. The recently amended Planning Act, 1983, provides that Ontario Hydro be exempt from its provisions where it has obtained approval for the construction of new facilities under the Environmental Assessment Act (the EA Act). In theory, the definition of Environment contained in the EA Act is sufficiently broad to capture all pertinent planning matters. Whether this will be borne out in practice however, is not certain. Nevertheless, the provisions of the Act appear to leave little doubt upon the matter.

The last matter to be considered by the Board upon Hydro's motion was our application for the costs of the motion to be paid by Ontario Hydro, or the Ministry of the Environment, or both. We also requested that a copy of the transcript of the motion be provided to us at no cost.

NPF/HCA Application to retain Consultant

Taking advantage of the fact that the Board was already convened, thereby saving the considerable expense of serving notice upon all parties and participants, we brought a motion before the Board seeking:

- i) a commitment from the Board to retain a consultant to independently review the reliability of the existing and proposed transmission systems, or;
- ii) in the alternative, an order that the costs of retaining such a consultant be paid by Hydro or the Ministry of the Environment, or both and that such costs be paid on a bi-monthly basis.

I am attaching to this reporting letter the proposed plan of work that we proposed be undertaken by the consultant who might be retained. You will readily note that the matters described therein are highly technical. Indeed, it is precisely the complex and technical nature of the reliability issue that mandated independent scrutiny of Hydro's evidence upon the matter.

To fully understand the importance of the reliability issue, one must appreciate the role that reliability has played in the planning process. To begin with, the reliability testing approach or technique used by Hydro (called the contingency testing model) provides the premise upon which the need for additional facilities is based. The particular technique utilized by Hydro involves sophisticated computer programs that simulate the performance of the electrical system, both as it is, and as it is planned. Once the adequacy of the existing system is evaluated, additional components are planned and again assessed using the same reliability testing techniques. Thus the size, number, staging and even location of additional facilities is the product of this same analytical technique.

Upon the basis of the various plans that are the product of this process, capital costs, line losses and environmental impacts are evaluated. Vary these assumptions, and the relative performance of the proposed systems will also vary. In this fashion, every aspect of the planning process derives from the technique adopted by Hydro to determine reliability, the way in which that technique is used by Hydro and, the assumptions that are made to fuel the computer simulations. During cross-examination, Hydro's expert on the subject agreed that the matter of reliability is the cornerstone upon which the entire planning process is built.

The second factor that makes an independent review of this issue vital, is the fact that the issue is too complex and technical to be understood by anyone who is not specifically trained in the area of electrical distribution system reliability. Evidence upon the subject might as well be in another language. It is simply, to the lay person's mind, incomprehensible. Rather than running the risk of confusing the Board, Hydro has chosen throughout the hearing simply to refer to the matter in only the most perfunctory and superficial manner. The evidence upon the point has clearly been woefully deficient.

In our view, it is a ringing indictment of the environmental assessment process that the Joint Board has deemed it appropriate to give plan stage approval to this project without having heard any independent evidence, and indeed virtually no evidence at all, upon the very basic premise upon which the need, nature, size, timing and impact of the facilities is determined. It was this fact more than any other that persuaded me during the plan stage hearing that this particular Joint Board was not interested in, or finally willing to, enquire into these essential planning matters. Nevertheless,

in consultation with the steering committee, it was decided that one final effort would be made in order to place the matter very squarely on the Board's agenda.

The task of locating consultants in this specialized and technical area was a difficult one. Several engineering firms and academic institutions were contacted but with no success. Further difficulties were encountered when several consulting firms declined the prospect of being retained because they, on occasion, work for Ontario Hydro. Finally we had to look outside of Ontario to locate two consultants who were willing to undertake this prospective project. Both were senior consultants with impeccable credentials and international reputations. Their resumes and extensive lists of publications were attached to our motion. On the basis of very brief conversations, an accurate estimate of the costs involved in conducting a review was impossible. On the basis of similar projects undertaken elsewhere however the anticipated cost of the proposed review might be in the \$20,000 to \$30,000 range. Both consultants thought the review would be worth undertaking.

Thus, along with a detailed proposal describing the review to be undertaken, we nominated two candidates for the project. In addition, we supported our application to the Board with two recent precedents from the Environmental Assessment Board wherein consultants had been retained in not dissimilar circumstances.

Although the Board reserved with respect to our application and will probably not render a decision for some two to three weeks, the nature of the questions they asked and their general reception of our motion leaves little doubt that they will turn it down. It seems clear the the Board regarded our application as a request to retain consultants to review the validity of a decision that they had, in their view, already made.

In my view, this response is utterly out of keeping with the nature of the project soliciting, as it does, approval for facilities that will not be built for some fifteen years hence. Notwithstanding this distant planning horizon the Board's response leaves the distinct impression that it is now, more than ever, disinclined to question either:

- . the need for additional facilities
- . the size and timing of these additional facilities, or
- . the staging or sequence in which any additional facilities might be built

Finally on this point, the Board suggested that we simply retain the consultants with the hope that our costs might be awarded after the completion of the hearing. Perhaps the

best response to this suggestion is indicated in a recent decision of the Environmental Assessment Board (differently constituted in the Manville Canada case):

the board has heard a very eloquent submission... to the effect that it is patently unfair that the residents of the community should be forced into debt in the course of acting in a very positive and responsible fashion, and should be placed in this unfavourable financial position as the direct result of the need to respond to the application brought by the proponent, which may or may not have a serious impact on the community.

I have provided you with this somewhat lengthy and detailed explanation of this matter because of what I believe to be the significance of our application and of the Board's response to it. Simply stated, it is my view that, without independent and expert evidence upon the soundness of Hydro's analysis of the reliability of existing and proposed transmission systems, no challenge to the need for any or all of these proposed facilities will succeed. Should you wish to pursue the matter then, this would mean raising the funds necessary to retain a consultant and pay his or her fees. The result of that review may of course confirm the validity of Hydro's results. Should it not however, one might still doubt the degree to which the Joint Board will consider or even entertain any such evidence.

The decision to build or not to build is at first and last instance a political one. In order to embark upon the planning process, Hydro must first obtain the cabinet's approval. At the other end of the planning process an appeal from the Joint Board's decision lies to cabinet, the same organ of government that approved the project at first instance. In between, an extensive public hearing process provides a largely symbolic exercise designed to mollify the concerns of the community rather than to enquire seriously into them. By appointing Board members with little or no prior experience or expertise in hydro planning or environmental assessment matters, the government clearly reveals the extent to which it will facilitate or even tolerate a bona fide enquiry into the substance and merits of the proposal at hand. By so readily endorsing a several million dollar project without hearing any independent evidence on the central and primary planning issue, the Board has clearly indicated that it has no intention of even appearing to rock the boat.

Finally on this point, I should note the opposition expressed to our motion by the Ministry of the Environment. As you may be aware, we initially made application to the Ministry for funding at the outset of the plan stage hearing during the Fall of 1981. At the time, we received encouragement from

several Ministry employees who believed that the time was ripe for some headway on this problematic and outstanding issue. The Minister refused our request, however, and in doing so, referred us to the Board's power to retain consultants. The Minister's letter setting out that option was attached to our motion of last week.

The opposition expressed by the Ministry is made even more remarkable by the studied air of neutrality that has been the rule throughout these proceedings notwithstanding the severe criticism of the project that has been expressed by the senior Ministry review co-ordinator. Evidently, we are not to be the beneficiaries of such benign indifference, the harbinger of which might have been apparent when the review coordinator in question was reassigned to another department. That senior planner was eventually to be replaced during this recent motion by a junior Ministry employee with no prior experience or familiarity with one of the most monolithic and complex undertakings to have ever been the subject of the environmental assessment process in Ontario.

I trust that this will provide you with an understanding of the course of our most recent round before the Joint Board. Should you have any further questions in this regard, please do not hesitate to contact me.

Sincerely,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



Steven Shrybman
Counsel

SS:dlb

General Outline of Work to be Undertaken

1. To conduct a Bulk Power System Reliability Review, including a review of:
 - a) The contingency testing techniques utilized by Ontario Hydro to test the adequacy of existing and proposed transmission system plans.
 - b) Other methods including probabilistic techniques for evaluating the adequacy of existing and proposed transmission system plans.
 - c) The use and application of contingency testing and other techniques to evaluate the reliability of the electrical distribution system in Eastern Ontario, as it exists, and as engendered by alternative plans for new Bulk or transmission (Exhibit 4 to these proceedings)
 - d) The potential contributions that might be made by interconnection facilities with Hydro Quebec to enhance the reliability of supply to the load in the Ottawa area.
2. To prepare a report with respect to the above-noted review.
3. To assist Counsel to the NTF/HCA with respect to preparation for further proceedings in this matter.
4. To attend where appropriate during further hearings for the purpose of assisting Counsel to the HCA/NTF with cross-examination of the proponents witness(s) called to give evidence on the matter of reliability.
5. To attend at the hearing for the purpose of giving evidence with respect to the review conducted and described above.