

IN THE MATTER OF Sections 2 and 3
of the Consolidated Hearings Act,
1981;

- and -

IN THE MATTER OF Sections 12(2)
and 12(3) of the Environmental
Assessment Act, (R.S.O. 1980,
c.140);

- and -

IN THE MATTER OF Sections 6, 7
and 8 of the Expropriations Act,
(R.S.O. 1980, c.148);

- and -

IN THE MATTER OF an undertaking
of Ontario Hydro consisting of the
planning of, selection of locations for;
acquisition of property rights for,
and the design, construction,
operation and maintenance of
additional bulk electricity system
facilities in Eastern Ontario consisting
of switching and transformer stations,
communications and control facilities,
transmission lines and related
facilities

- and -

IN THE MATTER OF Section 11(1) of
the Consolidated Hearings Act, 1981;

- and -

IN THE MATTER OF an application by
the joint board for a stated case for
the opinion of the Divisional Court

BEFORE: D.S. Colbourne)
B.E. Smith) September 10/11, 198-
D.H. McRobb)

ORDER STATING A CASE TO THE DIVISIONAL COURT OF THE
SUPREME COURT OF ONTARIO

Ontario Hydro brought an application before the joint board to state a case on certain questions of law relating to the approval of its undertaking consisting of bulk electricity system facilities in Eastern Ontario. A motion on this application was heard in Ottawa on September 10, 1984 and continued on September 11, 1984. As a result of the submissions made, the joint board has concluded that a case should be stated for the opinion of the Divisional Court on a number of questions which, in our view, are questions of law.

The following documents form part of this stated case:

- (a) Plan Stage Environmental Assessment Document;
- (b) Route Selection Stage Environmental Assessment Document;
- (c) Volumes I and II, Record and Factual Background;
- (d) Affidavit of David B. MacGregor.

A chronology of steps which have been taken to date on this matter is set out as follows:

Chronology

1. October, 1975 - Ontario Hydro initiates public involvement in the Eastern Ontario transmission studies (list of participants set out in Appendix Q of the Eastern Ontario Environmental Assessment, item 1).
2. May 17, 1977 - Royal Commission on Electric Power Planning hearings held in Eastern Ontario (Cornwall, Kingston, Smith's Falls, Ottawa and Arrnprior) to review the requirement for bulk power facilities in Eastern Ontario. The Royal Commission confirms the need for such facilities in its report of July 13, 1979.

3. August 29, 1979 - The Government of Ontario passes Order in Council 2417/79 confirming the need for additional bulk power facilities in Eastern Ontario (set out in Appendix B of the Eastern Ontario Environmental Assessment, item 1).
4. July 15, 1980 - Ontario Hydro submitted the Eastern Ontario "Plan Stage" Environmental Assessment to the Minister of the Environment. (item 1)
5. September 22 to October 20, 1980 - Ontario Hydro published a series of advertisements for information centres on the Plan Stage Environmental Assessment in Eastern Ontario. (item 2 - advertisements and publication list)
6. April 7, 1981 - Notice of Completion of the Review under the Environmental Assessment Act forwarded by the Minister of the Environment to Ontario Hydro.
7. April 15, 1981 - Ontario Hydro requested a hearing under the Environmental Assessment Act. (item 3)
8. April 24, 1981 - Ontario Hydro filed the Eastern Ontario Environmental Assessment with the Environmental Assessment Board on a Motion brought by Ontario Hydro.
9. May 13, 1981 - the Minister of the Environment published the Notice of Completion of the Review of the Eastern Ontario Plan Stage Environmental Assessment. (item 4 - notice and publication list)
10. May 19, 1981 - Ontario Hydro published an advertisement announcing that it has asked for a hearing on its Eastern Ontario Plan Stage Environmental Assessment. (item 5 - advertisement and publication list)
11. June 29, 1981 - Minister of the Environment officially referred the Eastern Ontario Environmental Assessment to the Environmental Assessment Board and gave directions for Notice for the Public Hearing. (item 6)
12. July 3, 1981 - The Consolidated Hearings Act, 1981 proclaimed in force.
13. August 7, 1981 - Ontario Hydro gave notice in writing to the Hearings Registrar of its request for a hearing under The Consolidated Hearings Act, 1981, for a deferral under sub-section 5(3) and for directions under sub-section 7(2) of that Act. (item 7)
14. September 11, 1981 - Joint Board established to consider the Eastern Ontario transmission system expansion undertaking.
15. September 28, 1981 - Joint Board issued a Notice of Directions to Ontario Hydro with respect to the form and distribution of the Notice of Public Hearing. (item 8)

16. October 2, 1981 - Notice of Public Hearing was served by mail on approximately 1,100 persons in Eastern Ontario. (item 9 - notice and distribution list)
17. October 5-7, 1981 - Notice of Public Hearing published by Ontario Hydro. (item 10 - notice and publication list)
18. November 10-11, 1981 - preliminary hearing held in Nepean.
19. November 25, 1981 - Joint Board issued Order and Reasons for Order on procedural matters and set January 5, 1982 as the date for commencement of the main hearing. (item 11)
20. January 5, 1982 - main hearing commenced in Ottawa.
21. January 21, 1982 - Joint Board issued an Order adopting the November 25, 1981 order issued by the Joint Board as previously constituted. (item 12)
22. June 17, 1982 - Eastern Ontario plan stage transmission hearing concluded after 36 days of hearings.
23. August 6, 1982 - Joint Board issued Reasons for Decision approving Ontario Hydro's recommended Plan M3 as the basis of route stage studies. (item 13)
24. September 28, 1982 - Formal Decision issued by Joint Board (item 14).
25. November 15, 1982 - Ontario Hydro mailed an announcement of the commencement of its route stage studies to approximately 1,700 persons in the Eastern Ontario study area. (item 15 - mailing and distribution list)
26. November 17, 1982 - Ontario Hydro published an announcement of the commencement of its route stage studies in Eastern Ontario. (item 16 - advertisement and publication list)
27. March 11, 1983 - Ontario Hydro mailed an announcement of alternative corridors, telecommunication study areas and information centres to approximately 2,000 persons in the Eastern Ontario study area (item 17 - mailing and distribution list)
28. March 16, 17 and 21, 1983 - Ontario Hydro published an announcement of alternative corridor and telecommunication study areas and information centres for the West Section (Kingston to Ottawa). (item 18 - advertisement and publication list)
29. March 22, 23 and 25, 1983 - East Section (Ottawa to Cornwall to Quebec border) information centre advertisements published by Ontario Hydro. (item 19 - advertisement and publication list)
30. August 13, 1983 - Ontario Hydro mailed a project newsletter to approximately 2,900 persons in the Eastern Ontario study area. (item 20 - mailing and distribution list)

31. September 13, 1983 - Ontario Hydro mailed an announcement of its intention to defer East Section to approximately 2,900 persons in the Eastern Ontario study area. (item 21 - mailing and distribution list)
32. October 2, 1983 - Notice of Motion for an October 25, 1983 hearing mailed by first class mail to about 3,000 groups and individuals on Ontario Hydro's public involvement mailing lists including parties and participants previously registered with the Joint Board. (item 22 - Notice of Motion and distribution list)
33. October 25, 1983 - hearing held at Nepean on the Ontario Hydro Motion seeking deferral of the East Section route stage hearings.
34. October 26, 1983 - Ontario Hydro mailed an announcement of alternative routes and telecommunication sites in the West Section to approximately 8,200 persons including persons identified as property owners and tenants through a computer search of assessment records. (item 23 - mailing and distribution list)
35. January 24, 1984 - the Joint Board issued a deferral Order with respect to the East Section and the interconnection and deleted the Planning Act from this application. (item 24)
36. April 18, 1984 - Notice of Motion and supporting material brought by Ontario Hydro to remove the interconnection purpose from the undertaking mailed by first class mail to approximately 3,000 groups and individuals. (item 25 - Notice of Motion and distribution list)
37. April 25 and 26, 1984 - first publication by Ontario Hydro of the Notice of Motion to remove the interconnection purpose from the undertaking (item 26 - notice and publication list)
38. May 8, 1984 - supplementary material for the May 28, 1984 Motion mailed by Ontario Hydro to same persons receiving the April 18, 1984 Notice. (item 27 - mailing and distribution list)
39. May 8, 1984 - Ontario Hydro mailed an announcement of the recommended route and telecommunication sites for West Section to approximately 9,000 persons in the West Section. (item 28 - mailing and distribution list)
40. May 16 and 17, 1984 - second publication by Ontario Hydro of the Notice for the May 28, 1984 Motion. (item 29 - notice and publication list)
41. May 16 and 17, 1984 - advertisement by Ontario Hydro of West Section Information Centres. (item 30 - advertisement and publication list)
42. May 28 - June 5, 1984 - Joint Board hearing to consider the Notice of Motion brought by Ontario Hydro to change the purpose of the undertaking and other matters.

43. June 29, 1984 - Joint Board issued an Order removing the interconnection purpose from the undertaking and deferring the East Section. (item 31)
44. August 1, 1984 - Ontario Hydro submitted Vols I and II of the Route Stage Environmental Assessment to the Minister of the Environment.
45. August, 1984 - Ontario Hydro mails first Notice of route stage hearing in accordance with the Order of the Joint Board. (item 32 - Notice and distribution list)

It may be helpful to the Court if we set out the background information and the procedures to be followed when dealing with matters coming under the Consolidated Hearings Act. The Act was given royal assent on July 3, 1981 and its aim was to avoid the possibility of repetitive, expensive, complex and time-consuming approval procedures. On very large projects, such as this particular undertaking, a number of public hearings would be required and invariably these hearings would deal with many of the same issues, involving a duplication of the presentation of evidence.

Some idea of the magnitude of this problem may be obtained from an example, such as a sanitary landfill project. Approvals under the Environmental Assessment Act and the Planning Act may be required where questions of need, impact on the natural environment and economic viability must be examined at two separate hearings. In addition, hearings may also be necessary under the Niagara Escarpment Planning and Development Act, the Planning Act for zoning bylaws or variances, the Expropriations Act and the Environmental Protection Act. In total, it is conceivable that five different public hearings would be needed in order to receive the necessary approval to permit this landfill project to be put into operation.

The Consolidated Hearings Act (CHA) is designed to overcome this problem. The Act applies to undertakings which may require more than one hearing to be held before more than one tribunal under the various Acts listed by Schedule.

The proceedings are commenced by a proponent giving written notice to the Hearings Registrar. The notice must specify the general nature of the undertaking, the hearings that may be required and the Acts under which the hearings are required. The result of the consolidation is that there would be one comprehensive hearing dealing with all matters, and one decision. That decision stands in the place of all other decisions, orders, authorities, certificates or approvals necessary in order to permit the undertaking to proceed.

By subsection 1(j) of the Consolidated Hearings Act, "undertaking" means an enterprise or activity, or a proposal, plan or program in respect of an enterprise or activity, and by subsection 1(g), "proponent" means the person who proposes to carry out the undertaking. Ontario Hydro, being the proponent in this case, described its undertaking as a program for the construction of transmission lines and related facilities, in order to achieve its purpose of providing for the supply of electric power and energy to meet the load growth forecast which is to occur in Eastern Ontario, to the year 2000. The second purpose for the work was to provide interconnection capabilities of 2000 megawatts with Hydro Quebec, but this second purpose was subsequently abandoned by Hydro during the proceedings and its description of the undertaking was amended accordingly.

Ontario Hydro described the Eastern Ontario (Plan Stage) Study Area as being that geographical area of the Province situated generally east of a line which commences west of the city of Kingston at Lake Ontario, and then proceeds in an arc through the most easterly portion of Hastings County, then takes in two-thirds of the County of Lennox and Addington and the lower three-quarters of Frontenac County, and then proceeds on the line between the Counties of Renfrew and Lanark to the Ottawa River. It then follows easterly along the Ottawa River to the Quebec border, thence southerly to the St. Lawrence River and returns to the point of commencement.

In effect, what Ontario Hydro is proposing, is a program which would allow it to build transmission lines and related facilities somewhere in this large area described as Eastern Ontario, including all or part of the counties of Hastings, Lennox & Addington, Frontenac, Lanark, Leeds, Grenville, Dundas, Stormont, Glengarry, Prescott, Russell, and the Regional Municipality of Ottawa-Carleton.

In developing its program, Ontario Hydro studied five different combinations of facilities and locations in detail, all of which would meet its objective and be technically acceptable. The combinations of facilities and locations are described in the Environmental Assessment document as "Alternative Plans". Each plan describes a Route Stage Study Area varying in width from 10 to 60 km and this is the area within which more detailed studies would be carried out in order to determine the precise route and location for the transmission line and facilities.

Plan 1 - describes a route stage study area extending from the cities of Kingston to Ottawa, Ottawa to Cornwall and Kingston to Cornwall.

Plan 2 - describes a route stage study area extending from the cities of Kingston to Ottawa and Kingston to Cornwall.

Plan 3 - shows a route stage study area from the cities of Kingston to Ottawa and from Ottawa to Cornwall.

Plan 4 - shows a route stage study area from the cities of Kingston to Cornwall and from Ottawa to Cornwall.

Plan 5 - varies only slightly from Plan 4 and generally describes the same route stage study area as Plan 4.

These five system plans were examined at three projected electrical load growths - low, medium and high (L, M, H). The capacity and technical details of the electrical equipment, as well as the timing for its installation, depend upon the load growth scenario selected. Thus, Plan M3 is based on the medium load growth and provides for the construction of one 500 Kv transmission line from the city of Kingston to the city of Ottawa and from the city of Ottawa to the city of Cornwall by the year 1987. A second 500 Kv line would be built from the city of Kingston to the city of Ottawa by the year 1997. Ontario Hydro recommended Plan M3 to the joint board for approval, but made it clear that any of the five plans would be technically acceptable to them and would satisfy their needs for the

supply of reliable power and energy to its customers in Eastern Ontario.

By order dated September 28, 1981, the joint board directed that Hydro mail notice of the hearing to specified individuals and organizations and that the same notice of hearing be advertised.

The form of notice of the hearing included reference to the various statutes to be considered, the submission by Hydro of the Environmental Assessment document, the receipt of same by the Minister of the Environment, and the Provincial government's review of such Environmental Assessment document. The notice also specified locations in the Toronto, Ottawa and Kingston areas where copies of the environmental assessment, the government's review and submissions filed by individuals and organizations relating to the Environmental Assessment document were available for viewing by the public. The notice also advised that copies of the environmental assessment itself would be available at specified government offices, both Provincial and Municipal in other locations within the study area. In layman's language, the notice described the purposes of the hearing as being to make, in one decision, all decisions required to be made by the various statutes. Finally, the notice provided the location and time of the hearing and specified as the purpose of the hearing, the identification of the parties and participants, to set procedural matters, to determine the issues (if possible) and to set the date(s) and location(s) for the continuation of the hearing. The notice requested attendance by individuals in order to make their submissions, but stated that written submissions could be made.

prior to the hearing, by those who were unable to attend the hearing.

The location selected for that hearing by the joint board was the city of Ottawa, as it was believed to be the central point of all the legs of all of the areas proposed to be studied; it was the focal point for the need for the undertaking and it was roughly equidistant from both ends of the area to be studied.

The Board decided, for reasons that are dealt with later, that the notice for the hearing was to be sent by mail or personal service 30 days prior to the hearings to specified individuals and groups. These were identified by Hydro as being persons, parties and groups who had expressed interest in the proposals throughout Hydro's work in developing the environmental assessment and at its public awareness meetings to acquaint all individuals who might be affected in the area, conducted over a lengthy period of time. Notice was further directed to the clerks of all towns, townships, villages, cities and counties, as well as all conservation authorities within the study area, to those individuals, groups and public figures who had made submissions to the government through the Ministry of the Environment's public review of the environmental assessment and to all persons who had requested advice as to the progress of the hearings through either Hydro, the joint board or the various government ministries. All elected officials and M.P.'s representing constituencies falling within the study area, as well as Directors of various government ministries involved in the government review of the environmental assessment, including the Ministries of the Environment; Housing; Industry and Tourism;

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Energy; Transportation and Communications; Natural Resources and Treasury and Economics, were to be provided notice.

Newspaper notice in both English and French, as necessary, was to be given at least once in either of the two weeks of October 4th or October 11th (38 or 31 days prior to the hearing) in specified dailies and weeklies, having general circulation in the area to be studied.

The hearing commenced on November 10, 1981 at which time preliminary matters were dealt with. At that time Hydro's formal request and its submission for deferral of certain matters was considered, together with other procedural matters, such as the filing by all parties of witness statements, interrogatories and all documents relevant to the issues, and dates and locations for the continuation of the hearing. The matter of costs was also raised by counsel for certain groups who would be appearing to oppose Hydro's application.

Ontario Hydro applied to the joint board to divide the hearing into two stages, so that a decision could be made on the selection of an appropriate plan without putting Hydro to the expense and delay of studying in detail the specific transmission line route locations on all plans. Submissions were heard by the joint board on this question from the parties and participants of record in the proceedings.

It was Hydro's submission that, because the specifics of locations for matters required to be determined pursuant to the Planning Act. (which could lead to either official plan amendments, restricted area by-law amendments, consents, variances), because properties to be

affected under the Expropriations Act had not been determined at this stage, and because Hydro had studied five different large area alignments and five different facility arrangements within the study area, it was best to defer consideration of the specific locations.

Under the authority granted to the Board in Section 5 of the Consolidated Hearings Act, the joint board deferred all matters, except those relating to the selection of an appropriate plan, to the second phase of the hearing (the Route Selection Stage). In doing so, we made our deferral order without constraint to any decision or order we may subsequently make. This condition allowed us to review any earlier decision or order, and to make whatever changes we considered appropriate under the circumstance. The precise wording of this "without constraint" condition is as follows:

"This deferral order is made by the joint board without constraint to the decision to be made by it in respect of the Eastern Ontario electrical transmission system expansion program or without constraint to the decision or decisions to be made by it in respect of the matter or matters deferred herein."

The importance of this condition in our procedures will become apparent later.

Notice given by the joint board of its proceedings is of course a matter of paramount importance. This undertaking, as presented, requires approvals under the Environmental Assessment Act, the Expropriations Act and the Planning Act. For reasons which are set out below, Planning Act approvals became unnecessary. Under the Environmental Assessment Act, when an environmental assessment is submitted with respect to an undertaking, the Minister of the

Environment, pursuant to Section 7(1)(b), shall give notice of the receipt of the assessment, completion of the review, the location where documents may be inspected, and such other matters as he considers necessary. The requirements state that notice must be given to the proponent, to the clerk of each municipality in which the undertaking is being, or will be carried out, in such manner as the Minister considers suitable, to the public and such other persons as the Minister considers necessary or advisable.

With respect to restricted area by-laws, which would permit the location of a Hydro transmission line (and/or requirements as to the consents required to sever properties and/or any variance which may be required from specific by-laws of any municipality), here again, since this is so specific, the requirement to notify everyone in each municipality of a potential appeared to be excessive, until the time of the determination of the specific route. The Ontario Municipal Board practice, when dealing with matters under the Planning Act, such as zoning by-laws, variances and consents involves the giving of notice to owners of land affected and those adjoining within 400 feet. Again, a determination would have to be made of the owners of the specific lands and the owners of lands within 400 feet for restricted area by-laws, and slightly less than that in dimension for variances and consents. Such determination appeared to be excessive at the initial stages.

For the hearing of necessity under the Expropriations Act, notice must be served on each registered owner of the lands to be expropriated, and notice must also be published once a week for

three consecutive weeks in a newspaper having general circulation in the locality in which the lands are situated.

The implications of such service at the early stage would require that Ontario Hydro search title to all properties within the Plan Stage Study Area which is that whole area of Eastern Ontario potentially to be affected. The Board concluded in the circumstances that although the ultimate intention was to expropriate certain lands, those certain lands had not been identified, and it would be unreasonable to notify all residents within that broad study area since only a relatively small number of residents in the area would ultimately be affected by the determination of a specific route.

It appeared to the joint board after those considerations, and after having regard to the nature of the application, that notice should be undertaken by way of advertisement in the "weeklies" and "dailies" in the whole of the plan stage area which potentially could be affected by any one, or a combination of Hydro's alternative plans.

We selected newspaper advertisements, which is the method routinely used for giving notice under the Environmental Assessment Act, as the most appropriate means of providing broad notice for Phase One (Plan Stage). We decided also that notice should be given to individual property owners who may be directly affected by the work, at the second stage (the Route Selection stage) of the hearing, when site-specific issues would be examined with respect to the selection of a transmission line route.

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In considering the Route Stage notice, we examined the notice requirements of the Expropriations Act. The task of providing notice to registered owners of land would be considerable. Some idea of its magnitude is given in the affidavit of David B. MacGregor of Ontario Hydro, who deposed that it would require Ontario Hydro over 46 man-years of work, costing \$2.5 million, to provide the kind of notice specified by the Expropriations Act. Added to this would be the cost of delay in placing the proposed facilities into operation, which cannot be accurately estimated, but would be considerable. Apart from the vast expense of providing this kind of notice, the time required to collect information on registered owners would be so great that with ownership changes the notification list would be out of date before it was completed. For these reasons, we decided that municipal assessment rolls should be used as a means of providing notice to property owners and tenants who may be interested in this undertaking.

Section 7(2) of the Consolidated Hearings Act provides that if the manner of giving notice prescribed by the consolidated Acts is impractical, the joint board may vary the manner of notice if it is satisfied that it facilitates the hearing and is not unfair to any person entitled to be heard at or to attend the hearing.

In summary, therefore, we established that Plan Stage notice should be given to everyone in Eastern Ontario, that is for the first stage of the hearing (Plan Stage). At this stage we would be dealing with broad issues such as the need for the works, consideration of the alternatives to the undertaking and the alternative methods of carrying out the undertaking, the method of assessing the

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environmental impacts for the proposed work and the selection of a particular plan. While the hearing could not be divided precisely between Environmental Assessment Act matters in Phase One and Expropriations Act and Planning Act matters in Phase Two, generally speaking, this was the case. More specific notice would be given at the second stage of the hearing.

Pursuant to our powers under the Consolidated Hearings Act, we established the notice requirements for the hearing to be as follows:

Phase One (Plan Stage)

- (a) newspaper advertisements were placed in newspapers having general circulation throughout Eastern Ontario
- (b) notice by prepaid first class mail to municipalities, planning boards, conservation authorities, provincial politicians, government agencies
- (c) notice by prepaid first class mail to individuals and organizations on Ontario Hydro's publication list

Phase Two (Route Selection Stage)

Notice consisted of two mailings by prepaid first class mail to the following:

- (a) owners and tenants of property as determined by the latest assessment records situated within the alternative route corridors or within 120 metres of the edge of any proposed right-of-way for a transmission route or facility
- (b) parties and participants of record
- (c) municipalities and planning committees
- (d) conservation authorities
- (e) provincial politicians
- (f) government agencies
- (g) Ontario Hydro's publication list

In addition, public advertisements will be placed in newspapers having general circulation in the area to which the Route Selection Stage applies. We agreed that additional notice would have to be given, along with the opportunity to present additional evidence, if we contemplated selecting a transmission route corridor other than one of the alternatives proposed by Hydro and advertised.

In order to make the two-phased hearing approach fair to all interested persons, we adopted certain procedures. It was our intention to receive evidence and submissions on the general issues relating to the Plan Stage, and to receive evidence and submissions of individual property owners with respect to the selection of a specific transmission line route at the second stage of the hearing. This procedure was designed to achieve flexibility and would not prevent property owners from presenting their evidence at the first phase as long as it was relevant to the selection of an appropriate plan.

The joint board recognized that there may be individuals or organizations who are concerned about the impact of the proposed undertaking on particular properties. These concerns, and the evidence tendered with respect thereto would normally be considered at the Route Selection Stage. The Board recognizes, however, that such evidence alone or in conjunction with other evidence might also have implications for the Plan Stage decision. An important purpose of the "without constraint" condition imposed in the joint board's order of November 25, 1981 was to allow the Board to consider and weigh all evidence and submissions presented. The joint board could

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review, alter or change any previous decision. This "without constraint" condition also had another purpose.

Since it was anticipated that these proceedings would extend over several years, new evidence or a change of circumstances might occur during this period. The joint board believed that it was desirable to give effect to new evidence, but it would have to be done in a manner which would be fair to all parties and participants in the proceedings. For this reason the joint board established a procedure which it called a "leave" procedure, to permit the introduction of evidence which related to a phase of the hearing already concluded. Obtaining "leave" enabled the joint board to determine whether the evidence was relevant or not, whether it was unduly repetitive, and what additional notice, if any, must be given. For example, parties and participants who no longer had an interest in the proceedings following the selection of one particular plan by the joint board, might wish to participate on the matter of new evidence relating to the first stage of the hearing.

The procedure for obtaining "leave" is simple, requiring the applicant to set out, in affidavit form, the general nature of the evidence sought to be introduced.

The joint board thereupon commenced the Plan Stage hearing in January of 1982 and it continued for 36 days. Subsequent to the hearing, on August 6, 1982, the joint board issued Reasons for Decision and its Decision with respect to its determinations. The joint board selected the facilities outlined in proposed Plan M3, which was Hydro's preferred alternative plan.

We selected Plan M3 by virtue of our authority to attach terms and conditions to any approval given (CHA, section 5(2)). Ontario Hydro described its undertaking in broad terms as a program for the installation of transmission and related facilities in Eastern Ontario. The selection of a particular route, along with the specification of facilities, is a method of carrying out the undertaking and not an alternative to the undertaking. There is an important distinction to be made between alternative methods of carrying out the undertaking and alternatives to the undertaking.

Alternatives to the undertaking are something different from the undertaking and the approval power is limited to the undertaking notwithstanding that we may make changes or modifications to the undertaking. This authority stops short of approving an alternative undertaking of a different nature from the one the proponent has put forward for consideration. The purpose of describing alternatives to the undertaking is merely to give the joint board a comparative analysis in order to evaluate the merits of the undertaking.

Following the approval by the joint board of Plan M3, Ontario Hydro completed its detailed studies and submitted its environmental assessment for the Route Selection Stage of these proceedings. Hydro has identified at least two alternative route corridors within each Route Stage study area which would permit the construction of the transmission line and its related facilities. One of the alternative route corridors has been identified by Hydro as its preferred corridor but, again, the joint board is being asked

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select for approval any one of the alternate routes or any other appropriate route within the route stage study area.

At the request of Ontario Hydro the joint board conducted a hearing commencing May 28, 1984 for, among other purposes, determining the requirements for notice of the Route Stage study hearings. It is worthwhile to note that on this occasion, pursuant to the enactment of a new Planning Act, Ontario Hydro was exempted from the provisions of the Planning Act, and the requirements of the Planning Act in this application were deleted.

Shortly thereafter, the decision of the Divisional Court in Re Central Ontario Coalition Concerning Hydro Transmission Systems et al was released on June 25, 1984 (as yet unreported). This case dealt with notice requirements for an undertaking similar in nature to this one, but within an area of the Province described by Ontario Hydro as Southwestern Ontario. In the Southwestern Ontario case, the Divisional Court quashed the Board's decision on the Plan Stage because of a deficiency in the notice.

While there are a number of factual distinctions which can be made between the Southwestern Ontario case and the undertaking in Eastern Ontario, there are still important questions left unanswered which should be dealt with before continuing in these proceedings. The importance of ensuring that the joint board has proceeded and is intending to proceed on a correct course of action, cannot be overstated. The ability of Ontario Hydro to supply the anticipated load demand for the Ottawa area in a timely fashion hinges upon the validity of this hearing process. For this type of project, the

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2. The joint board's plan stage decision approved a route stage study area within which Ontario Hydro has now recommended a transmission line route and has identified several alternative transmission line routes. Assuming adequate notice:
 - (a) Does the joint board have the jurisdiction to approve one of the transmission line routes identified by Ontario Hydro other than the route recommended?
 - (b) Does the joint board have the jurisdiction to approve a transmission line route other than one of the alternative transmission line routes identified by Ontario Hydro?
3. Do sections 7(2) and 22(3) of THE CONSOLIDATED HEARINGS ACT, 1981 permit notice to be given in a manner which does not meet all requirements of the individual statutes consolidated, either as to form, content or distribution?
4. Was the notice given pursuant to the Order of the joint board dated September 28, 1981 adequate as to:
 - (a) form;
 - (b) content; and
 - (c) distribution

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5. Was the notice given pursuant to the Order of the joint board dated June 29, 1984 adequate as to:
 - (a) form;
 - (b) content; and
 - (c) distribution

6. If this Court identifies any inadequacy of the Plan Stage notice either as to form, content or distribution, can that inadequacy be cured by the joint board re-opening and reconsidering its Plan Stage decision, after appropriate notice, prior to proceeding with the route stage hearing?

7. Is the joint board's determination in this case to impose a "without constraint" condition in respect of the Plan Stage a lawful exercise of the joint board's jurisdiction?

DATED at TORONTO this 5TH day of OCTOBER, 1984

D.S. Colbourne, Chairman

B.E. Smith, Vice Chairman

D.H. McRobb, Member