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IN THE MATTER OF Section 2 and 3 of
the Consolidated Hearings Act, 1981
(S.O. 1981, c. 20)

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

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

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

PETITION OF THE HYDRO CONSUMERS ASSOCIATION TO
THE HONOURABLE THE LIEUTENANT-GOVERNOR IN COUNCIL

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PART I: BACKGROUND

THE PROJECT

1. Approval to proceed with the planning process for the establishment of additional bulk power facilities in Eastern Ontario was initially engendered in an Order-in-Council O.C. 2065/78 which, inter alia, noted that:

"... the government further intends to appoint members of the Royal Commission on Electrical Power Planning to the Environmental Assessment Board in order to transfer experience in electrical power planning matters to the Board".

That commitment was not honoured and no member of the Panel convened with respect to this undertaking was previously a member of that Royal Commission.

Appendix 'B'

2. As presently constituted, Ontario Hydro's transmission system expansion project entails the construction of three 500 kv transmission lines and associated facilities. As currently projected, the in-service dates for these transmission lines are, as soon as approvals allow, 1990-91 and 1998-99, respectively.

THE HYDRO CONSUMERS ASSOCIATION

3. The Hydro Consumers Association (HCA) is an unincorporated citizens group comprised of approximately 500 Lanark County residents. The Association was founded in early 1981 in response

to Ontario Hydro's plans to substantially expand its transmission and distribution system in Eastern Ontario. Over 300 individuals have contributed financially to the group. Of the funds it has raised, by far the largest proportion has been spent on communicating with its membership and the community by way of mailings and advertisements.

4. From the outset of the planning process, the Association has had two primary objectives. The first was to participate fully in the public hearing approvals process convened before the Joint Board. The second was to test thoroughly the validity of the arguments mounted by Ontario Hydro to justify the need for the expansion of its supply system in Eastern Ontario and particularly for those facilities that would not be needed for several years to come.

5. The Hydro Consumers Association is not now and has not been concerned about siting issues and its constituency does not live in the vicinity of the route that has now been adopted by the Joint Board. Rather, the group's major interest has been in the integrity of the environmental assessment process and the participatory rights accorded those with an interest in the undertaking at hand. The focal point of its concern has been the issues of the need for and alternatives to Ontario Hydro's project.

FUNDING AND THE PLAN STAGE HEARING

6. As is true of virtually all citizens groups who wish to participate in a meaningful way in a public hearing process involving sophisticated and complex issues, the task of acquiring the resources necessary to retain legal and consulting assistance is the first item on the agenda. It is trite to note the profound disparity between the resources of Ontario Hydro and the rural and low-income constituency of rural Eastern Ontario. Accordingly, beginning in the fall of 1981 the HCA undertook the following initiatives (the disposition of which is also noted):

- At the preliminary hearing before the Joint Board on November 10, 1981, a motion for costs in advance of the hearing was made on the Association's behalf. That motion was declined in a perfunctory fashion by the Joint Board in its Order of November 25, 1981.

Appendix 'C'

- On November 16, 1981, a detailed application for funding was submitted to then Minister of the Environment, Keith Norton. The estimates that accompanied that application projected a \$27,000.00 hearing expense. On December 18, 1981, that application was declined.

Appendix 'D'

- A further application for costs was made to the Joint Board during January, 1982. Detailed written and oral submissions were presented and lengthy argument was heard from counsel for Ontario Hydro and the Minister of the Environment. The Board declined the motion again offering virtually no explanation for its reasons for doing so.

Transcript of Plan Stage Hearing January 20 & 21, 1982

- Also during January, an appeal to the Group Certificate Committee of the Legal Aid Committee succeeded, and the Association's application for a legal aid certificate of October, 1981 was granted.
 - At the conclusion of the Plan Stage hearings, a final application for costs was submitted to the Joint Board. Finding that the HCA has contributed to the hearing, the Board granted that application, however in doing so, it reduced the quantum requested from \$35,000.00 to \$22,000.00. Again, only the most cursory explanation was offered for doing so. Those funds were subsequently paid over to the Ontario Legal Aid Plan.
7. The Plan Stage hearings before the Joint Board lasted some 35 days. During the course of the hearings, counsel for the HCA conducted extensive cross-examination of Ontario Hydro witnesses and called 14 expert witnesses on behalf of the Association who

addressed in some detail a mix of conservation and renewable energy strategies and options for meeting the energy service needs of the people of Eastern Ontario to the planning horizon. The "soft energy path" thus described was, it was argued, an alternative to Hydro's expansion programme that had not been adequately assessed. Of that evidence, the Board, in its decision, made the following comments:

"The Joint Board recognized the advantages and desirability of employing some form of soft energy path strategy to meet the energy demands of the people of Ontario. It is, however, a strategy which requires the leadership and direction provided by government policy, probably at both the provincial and federal level. Furthermore, the effect of any soft energy path option introduced at the this time would not be able to meet the short-term needs for additional transmission facilities as described by Ontario Hydro, particularly as those facilities relate the load supply problem identified in the Ottawa area. The subsequent undertaking does not close the door to adopting a soft energy path strategy since the proposed facilities are to be staged for construction over the next twenty years. This staging of facilities would allow sufficient flexibility to introduce a change in strategy as the planning period progresses."

Appendix 'E'

8. While the HCA had, by dint of considerable effort, been able to acquire some very modest resources and the assistance of a number of consultants who agreed to provide their services at no cost or for expenses, it was not able to acquire the resources necessary to address several of the more technical aspects of Ontario Hydro's proposed undertaking. In default of which, Ontario Hydro's evidence with respect to several matters central to the rationale and need for its facilities went untested.

9. Responding to our request for funds of the Honourable Keith Norton, then Leader of the Opposition Dr. Stuart Smith, offered the following in this letter to the HCA of November 30, 1982:

"I feel the government regrets the whole hearing process and that is why they so frequently circumvent it from major projects. When they have hearings, they do not go out of their way to make sure that the citizens groups are well funded and well prepared. That is a very regrettable situation, but one which represents the attitude of this Conservative government."

Appendix 'F'

DELETION OF INTER-CONNECTION FACILITIES

10. As advanced during the Plan Stage hearing, Ontario Hydro's undertaking included the establishment of additional inter-connection facilities with Hydro Quebec. The projected cost of this aspect of the undertaking ranged to \$730 million. The argument mounted by Ontario Hydro in justification of its project was vigorously assailed during the Plan Stage hearing and the Board subsequently ordered that further study be undertaken with Hydro Quebec before Route Stage approval be sought.

Appendix 'G', Plan Stage Decision of Joint Board

11. On October 25, 1983, Ontario Hydro brought a motion before the Joint Board to have the inter-connection aspect of its undertaking deferred, citing difficulties in carrying out the joint studies that had been requested. Hydro had, to that point, argued that the inter-connection and transmission facilities were two aspects of one undertaking rather than two undertakings.

Counsel for the HCA argued on the motion that if approval to

proceed with transmission facilities was to be contemplated in abeyance of an assessment of the inter-connection component, that the potential influence of a further deferral or deletion of inter-connection facilities be evaluated as a pre-condition to any such approval.

12. On January 24, 1984, Hydro's motion was granted by the Board but with the proviso that no approval for the proposed transmission facilities would be given prior to the filing of an environmental assessment with respect to the inter-connection component of the undertaking. Incidentally, the Joint Board declined HCA's application for costs on that motion but again declined any explanation of its reasons for doing so.

Appendix 'H'

13. Attempts to seek clarification of the requirements of that order was met with the following response from the Joint Board in its letter dated March 22, 1984:

"In response to your letter dated February 23, 1984 concerning clarification of the Board's Order of January 24, 1984, I have been directed to advise you that the Joint Board's Order speaks for itself."

Appendix 'I'

14. On May 28, 1984, a further motion was brought before the Joint Board by Ontario Hydro on this occasion to delete the inter-connection aspect of its undertaking. In support of its argument that this would not influence the need for additional

transmission facilities, Ontario Hydro called several expert witnesses who offered evidence on various technical matters including energy load forecasting and reliability modelling data.

15. Ontario Hydro's request was granted by the Joint Board and in its order of June 29, 1984, a major and several hundred million dollar component of Ontario Hydro's undertaking was deleted from the approvals process.

Appendix 'J'

MOTION TO RETAIN CONSULTANTS DENIED

16. On July 4, 1984, counsel for the HCA brought a motion before the Board for an order:

- (a) Appointing Dr. R.J. Ringley of Power Technologies Inc. or Dr. R. Billington of the University of Saskatchewan, as a technical consultant to the Board to carry out those services and undertake such work as is described by the proposed programme or work attached ...;
- (b) In the alternative, for an order that the costs of the No Towers Federation and Hydro Consumers Association including fees and disbursements with respect to retaining Drs. Ringley or Billington, be paid by the proponent Ontario Hydro or the Minister of the Environment, or both, ...

Attached to that motion was various supporting documentation including the curriculum vitae of Drs. Ringley and Billington and a proposed plan of work that would be undertaken by a consultant should one be retained.

Appendix 'K'

17. Both Drs. Ringley and Billington are senior consulting engineers with particular familiarity with reliability modelling. Dr. Billington has instructed Ontario Hydro engineers with respect to bulk power system reliability study. Both consultants had indicated their willingness to undertake the work described and had estimated the cost of their services to be approximately \$25,000.00 respectively.

18. By order dated October 5, 1984, the Joint Board denied this motion stating, inter alia:

"Whereas the Board has concluded that the outline of the work to be undertaken, suggested as a review of the bulk power system reliability, relates to matters more properly the subject of the Plan Stage hearings, and since the Board already having concluded on those aspects and details of the work suggested to be reviewed, now therefore the Board denies the request of counsel for the Hydro Consumers Association ...".

Appendix 'L'

19. By letter dated January 11, 1985, counsel for the HCA advised the Hearings Registrar that the group would be withdrawing from all further proceedings and noted that:

"In withdrawing from the proceedings the HCA does so in protest over the lack of resources available to it to retain the expert assistance necessary to allow an informed judgment upon the numerous technical matters that comprise the basis of the proponents' undertaking. Particularly discouraging has been the Board's response to the various requests that have been made of it for assistance in this regard. Quite apart from the fact that several of its applications have been denied, the lack of any, but the most cursory of explanations, has provided little guidance to a group dependent upon a future and speculative award of costs. I know that for many members of the HCA the manner in which the Board has responded to its applications has created the impression that the Joint Board is simply disinterested in the issues that it has wanted to raise."

Appendix 'M'

ROUTE STAGE HEARING

20. On September 30, 1985, the Joint Board issued its reasons for a decision approving the proponent's undertaking and finding that the taking of lands was fair, sound and reasonably necessary to enable the undertaking to proceed.

21. In its decision, the Joint Board made the following findings:

- That the staging and construction of the transmission system was dependent upon joint studies with respect to the inter-connection with Hydro Quebec (p. 2 of its decision);

- That no evidence was adduced before the Board by those critical of a need for the undertaking (p.2 of its decision);
- That all three proposed transmission lines including the line that would not be needed until the year 1999 were in the Board's view necessary to augment the distribution system in Eastern Ontario (p. 52 of its decision).

Appendix 'A'

SOUTHWESTERN ONTARIO

22. The Joint Board convened with respect to Ontario Hydro's undertaking in Eastern Ontario is comprised of the same three members that sat on the Joint Board concerned with the Southwestern Ontario Hydro undertaking.

23. In a decision of the Division Court of Ontario quashing the Plan Stage decision in the Southwestern hearings, the Court faulted the Joint Board for failing to provide adequate notice of the Plan Stage hearing and stated that:

"I do not for a moment seek to challenge the sincerity of the Board nor do I mean it any disrespect when I say that, in spite of that explanation, I find it very difficult to accept that evidence admitted at the route stage hearings is likely to lead to a different choice than that of a system plan based on M3. However conscientiously the Board seeks to follow its "without constraint" condition it is a fact that it was not expressed as a response to any challenge to the adequacy of its notice. The Board's requirement that leave be obtained was self-imposed; it was not required to do so, and its unyielding insistence upon

that condition, in the face of deep concern expressed not only on behalf of COC and its members, but by Hydro and the highest level of government suggest to me a strong reluctance to reconsider in any real sense its plan stage decision."

Re Central Ontario Coalition and Ontario Hydro,
46 O.R. (2d) at p. 715

24. Consequently, proceedings have now been convened in that matter before a Joint Board differently constituted.

PART II: THE ISSUES AND RELIEF REQUESTED

Issue 1: The Reliability of the Existing and Proposed Transmission System

25. When all elements of the electrical distribution system in Eastern Ontario are in operation, the system is capable of meeting projected needs for the present and for some time to come. It is only when certain hypothetical contingencies occur, that the existing system may prove inadequate during periods of peak demand. Thus the reliability of the existing system is central to the determination of need for additional facilities, their type, size, design and staging.

26. The procedures for developing those contingencies and the methodology used for assessing the performance of the distribution system upon their occurrence is a highly complex matter involving sophisticated engineering judgment.

27. No independent assessment whatsoever of Ontario Hydro's evidence on the matter of reliability has been made in the

proceedings before the Joint Board. On the contrary, the Joint Board has resisted any effort to acquire an independent assessment of this essential issue. Neither can the Joint Board be taken to have the engineering expertise necessary to assess the validity of Hydro's evidence on this matter.

28. In our submission, the Joint Board's response is at odds with its obligation to satisfy itself as to the requirements of the Environmental Assessment Act and the Expropriations Act. In the event that a deficiency is identified or brought to light during the context of proceedings before it, the Joint Board should move to remedy that deficiency. The integrity of the planning process requires independent scrutiny of technical issues beyond the expertise of lay people or Board members. In failing to bring that independent judgment to bear upon the matter before it, the Joint Board failed to discharge its mandate under the Environmental Assessment Act and Expropriation Act.

29. In our submission, this undertaking should be remitted pursuant to the provisions of s. 13(1)(c) of The Consolidated Hearings Act, 1981, as amended, for a new hearing before a different Joint Board with respect to the matter of need. Specifically, this hearing would be for the purpose of hearing independent evidence as to the reliability of the electrical distribution system in Eastern Ontario and the nature and timing of additional facilities that may be required. The locational

aspects of transmission system siting and planning process need not be repeated.

Issue 2: Inter-Connection Facilities With Hydro Quebec

30. Proposals to establish additional inter-connection facilities with Hydro Quebec have had a critical bearing upon the development of Ontario Hydro's transmission system expansion programme for Eastern Ontario. Throughout the Plan Stage hearing, Ontario Hydro's witnesses vigorously resisted all efforts to examine its inter-connection project as distinct from its transmission plans.

31. Further evidence adduced upon Ontario Hydro's motions to defer and then delete this aspect of its undertaking, has confirmed that the staging of additional transmission line construction will depend upon the planning of the inter-connections that Ontario Hydro is still intent on developing. Indeed, a finding to that effect was made to the Joint Board as noted in paragraph 21 above.

32. At issue is the construction of a 500 kv transmission line several hundred kilometres in length. On one scenario, a second line between Kingston and Ottawa would be built by the year 1990 and a third line from Ottawa to Cornwall by the year 1999. On other scenario, the order of construction is reversed. The difference will clearly be of considerable significance to those

who must absorb the impacts of this project. This is particularly true if the third line is not needed.

33. In our submission therefore, this staging decision is one that must be regarded as of considerable importance to the respective communities affected. It is inappropriate then to approve the construction of facilities in abeyance of information vital to determine the sequence of construction particularly in view of the scale of facilities involved and the planning periods in issue.

34. Further in this regard, the establishment of additional inter-connection facilities with Quebec and the contribution that such facilities may make to the reliable supply of energy to Eastern Ontario may obviate the need for elements of Ontario Hydro's transmission system expansion project.

35. In our submission therefore, the approval by the Joint Board of the second and third transmission lines that Ontario Hydro has proposed and the finding that the taking of lands, to facilitate the construction of these lines, is fair, sound and reasonably necessary, should be rescinded. Any further application for approval should await the completion of inter-connection study with Hydro Quebec and the environmental assessment thereof.

Issue 3: Approval of Facilities for the Year 1999

36. The uncertainties that have plagued energy use forecasting are now a matter of the broadest public record. Dramatic variation of Ontario Hydro's projected energy demands during the last decade have generated peak demand forecasts that vary by several hundred per cent. In our submission therefore, and with regard to this very substantial uncertainty as to future demand growth, it is not prudent nor responsible to approve facilities on the basis of predicted energy demand some fourteen years hence. There is no evidence whatsoever to support any confidence that such projections will even approximate actual demand growth.

37. Further in this regard, while endorsing the desirability of adopting soft energy path approaches, the Joint Board has approved facilities that will inhibit the development of the initiatives that it has, in principle, endorsed. By sanctioning the expenditure of scarce resources on supply expansion, those available for energy efficiency and conservation measures have been diminished.

38. Finally in this regard, in our submission it is inconsistent with the participatory rights engendered by the public hearing provisions of the Environmental Assessment Act and the Expropriations Act to approve the construction of facilities some fourteen years in advance of their projected date of construction. In our view, it is highly unlikely that any hearing held in

contemplation of such an approval will be considered a legitimate venting of the communities concerns by those who, in the year 1999, may be confronted with the reality of construction.

39. In our submission therefore, the approval by the Joint Board of those facilities that are not, upon present forecasts, needed until the year 1999 and the finding that the taking of lands, to facilitate the construction of this line, is fair, sound and reasonably necessary should be rescinded.

All of which is respectfully submitted, this 25th day of October, 1985.



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