

STEVEN SHRYBMAN
Barrister & Solicitor
53 Gore Street East
Suite 301
Perth, Ontario

November 16, 1981

Mr. Keith C. Norton
Minister of Environment
14th Floor
135 St. Clair Avenue West
Toronto, Ontario M4V 1P5

Re: Environmental Assessment
File No. 1-77-0007-0000
Re: Hearing before Joint Board
No. CH-81-01

A. THE APPLICANT

The applicant Hydro Consumers Association (HCA) is a group of Lanark County residents who have come together in response to Ontario Hydro's application for approval of its plans to construct two 500 KV transmission lines through eastern Ontario. At present the association is comprised of approximately 80 members.

B. THE DECISION MAKING PROCESS

The Environmental Assessment Act R.S.O. 1980, c.140 (E.A. Act) requires a proponent of a public undertaking to submit an environmental assessment to the minister of the environment. Such a proponent is precluded from proceeding with the undertaking until the assessment has been accepted by the minister and approval to proceed has been granted by him. In accordance with these provisions Ontario Hydro has submitted an E.A. of its plans to construct two 500 KV transmission lines that would run from Kingston to Ottawa.

On April 29, 1981 the minister gave notice to the public of the receipt of this assessment. H.C.A. sub-

sequently responded by notice to the minister requiring before the Environmental Assessment Board with respect to Hydro's proposed undertaking, pursuant to s.7(2) of the E. A. Act. Accordingly a hearing will be convened pursuant to the provisions of the Consolidated Hearings Act S.O. 1981, c.20. The Joint Board established by order of the Environmental Assessment Board and the O.M.B. will conduct a hearing to determine, inter alia:

- (a) i) the acceptance or amendment and acceptance of the environmental assessment;
- ii) whether approval to proceed with the undertaking in respect of which the environmental assessment was submitted, should or should not be given;
- iii) whether the approval mentioned in clause (ii) should be given subject to terms and conditions, and if so, the provisions of such terms and conditions;

C. THE ISSUES

The hearings for which the association applies for a certificate will not consider a specific route for proposed transmission line, indeed Hydro has not delineated one. Rather the E.A. maps out five broad bands through which the corridor might run. These geographic bands are sufficiently broad, so as to together encompass the largest portion of Eastern Ontario (east of Kingston, south of the Ottawa River and north of the St. Lawrence). If successful at this stage of the environmental review, Ontario Hydro proposes to submit for further assessment the specific route along which it proposes the corridor to travel.

As perceived by the Association this proposed transmission line is the inevitable result of the large-scale model that Hydro has chosen to pursue. The essential characteristics of this model involve large nuclear generating stations with a continent wide network of mammoth transmission lines. In brief, it is the position of the Association that viable alternatives exist that would have considerably smaller environmental and economic costs. Among the list of 'small-scale' options proposed are programs of load management, conservation, co-generation, rejuvenation of existing hydro-electric facilities and other small-scale supply technologies.

(i) Acceptance of the Environmental Assessment

As set out by s.5(3) of the E.A. Act, the assessment submitted must include not only a description and rationale for the undertaking itself, but must also consider alternative methods of carrying out the undertaking and alternatives to the undertaking. Further the E.A. must describe the environmental effects of these options and canvass actions that may be necessary to prevent or mitigate this environmental impact. It will be the position of the Association that the E.A. put forward by Hydro contains little or no consideration of either alternative methods of carrying out the undertaking or of alternatives to it. In consequence, it will be submitted that the E.A. fails to comply with the requirements of s.5(3) and should therefore not be accepted.

Although the E.A. as it presently stands offers some consideration of several "supply-side" alternatives to its proposal (industrial co-generation, small hydraulic sources and biomass conversion) these are summarily rejected without reference to any detailed data to support this conclusion. Neither does the assessment contain any reference to environmental factors in this regard, notwithstanding the requirements of the Act that such factors be taken into account. While the E. A. does offer some examination of "supply-side" options, no consideration whatsoever is given alternatives that may be described as demand measures which have the potential for radically reducing future energy needs. Foremost among these alternatives would be those of conservation and load management.

To better appreciate the deficiency of the E.A. in this regard one must note that the Federal Office of Energy Conservation has demonstrated the feasibility of cutting projected growth in Canadian energy consumption through 1990 - in half ("An Energy Policy for Canada - Phase I", Ottawa, 1976). This projection is even more striking when one realizes that a cut in the growth rate of energy consumption by as little as .1 per cent per year will, by the turn of the century, provide annual savings equivalent to one-half the out put of a \$6 billion tar sands plant ("Energy Demand Projections: A Total Energy Approach" Ottawa, 1977). A substantial body of evidence exists that suggests that the projections of the federal government in this regard are conservative and that even greater scope exists for potential energy savings by the implementation of conservation programs. In view of the official endorsement and active pursuit of conservation measures by all levels of government and industry (witness the resolution passed by The Association of Ontario Municipalities

calling upon Hydro to allocate to conservation the same resources applied to other supply side technologies) it is difficult to comprehend Hydro's failure to include any assessment of what may be considered to be the most significant alternative strategy to meeting future energy needs.

Load management refers to wide range of activities which would be used to induce consumers of electricity to re-schedule their activities so that the system load is evened out and peak demand reduced. Hydro's failure to assess this option to increased bulk transmission facilities would appear to ignore the findings of its own task force ("Electricity Pricing and Costing Study", Toronto, 1976) which strongly endorsed "time differentiated marginal rates". Further, European and American experience with peak and off-peak rates have unequivocally demonstrated that these measures have significant impact upon patterns of energy demand. The failure of the E.A. to offer any consideration of this demand measure alternative must be considered a serious deficiency and would undermine any faith that Ontario Hydro has seriously considered alternatives to its proposed undertaking.

Turning to the requirement of the Act that the E.A. also assess alternative methods of carrying out the undertaking, as noted, Hydro's assessment establishes five broad bands through which the transmission corridor might run. The assessment then goes on to rank these bands in order of priority with reference to a number of 'objectives' described by the document. Several issues arise in this regard but foremost among them is the apparent failure of the assessment to include among these sorting criteria, the existence of present rights-of-way.

From the documentation provided by the E.A. existing rights-of-way were not considered by Hydro in preparing and evaluating its preferred bands. Upgrading and widening existing corridors might well mitigate the environmental effects that would be occasioned by placing the lines on 'virgin' lands. Neither does the document contain a comparison of the economic costs or savings that this option would represent. Again, the deficiency of the E.A. in this regard would militate against a Board determination that it complies with the requirements of the Act.

Finally in this regard, it is important to note that any assessment of the need for additional bulk transmission facilities can only be evaluated within the context of load projections of future energy needs in the Ottawa area. The review prepared by the Ministry of the Environment of the E.A. notes the concern expressed by the Ministries of Energy, Housing, Treasury and Economics and Environment as to the reliability of Hydro's long term load forecast. Reference to Hydro's track record in this regard will offer some explanation for the ambivalence expressed by these Ministries. In 1975 Hydro's load forecast for the 1980/81 year exceeded actual use by 25.3 per cent. Present projections for the 1989/90 year are 28.8 per cent smaller than those of the forecast made in 1978. It is interesting to note that the above noted 1978 forecast was the one presented by Hydro to the Porter Commission on Electrical Planning dealing with the future energy needs of the Ottawa area, and was relied upon by Hydro to support its case for the need for additional bulk power supply. Further doubt is cast upon the reliability of present load projections by the realization that potential reduction in loads through conservation and load management are not taken into account.

The Joint Board convened with respect to this matter will at first instance determine whether to accept, or amend and accept the E.A. (s.11(2)c). In my opinion, the Association's submissions in this regard represent a serious challenge to the acceptability of the E.A. prepared by Ontario Hydro. The assessment contains little or no consideration of the alternatives to its proposal nor of the environmental effects of these alternatives. As noted, the Association is not alone in its criticism of the assessment and its deficiencies in this regard. In sum, a very strong argument exists in support of the proposition that this assessment fails to comply with the provisions of the Environmental Assessment Act and should therefore be rejected on this basis.

The association will argue that the Board reject the E.A. submitted by Ontario Hydro and direct the proponent to:

(i) provide a more detailed evaluation of the alternatives to the undertaking, and;

(ii) provide a more detailed evaluation of the environmental effects of its proposal including mitigating and monitoring prescriptions.

(ii) Impact of the Undertaking

In addition, the Association is concerned with the foreseeable impact of this project upon the region's economy. Among these would be the loss of agricultural lands, decreased property values and the potential negative effect upon tourism in cottage areas. Rural residents will also bear a disproportionately larger share of the costs of this project (approximately \$500 million) as rural hydro rates are higher than those paid by the urban users for whom the electrical power of this line is intended. The smaller scale alternatives proposed by the Association would, in its view, alleviate much of the above noted impact while at the same time providing much larger scope for local job creation.

The Association is as well seriously concerned with the potential impact of this project upon the local ecology. Among the bands established by Hydro are located valuable trout lakes, wetlands and wilderness areas. Among the herbicides utilized by Hydro to defoliate rights-of-way are those containing the deadly chemical dioxin. Further concerns have been articulated about the potential health hazards of the electromagnetic fields surrounding high-voltage transmission lines.

To quote from the review of the E. A. prepared by the Ministry of Natural Resources:

"a description of environmental effects of the facility is required under the Act. None is provided in this document nor are mitigation and monitoring prescriptions provided for such environmental effects. The components of the environment that will be affected are noted but not the nature of the effect on them."

Should the Board decide to accept this E.A., it would then determine whether approval to proceed should be given and if so, whether such approval should be given and if so whether such approval should be given subject to terms and conditions. To reiterate, it will be the position of the Association that a serious consideration of the alternatives to this undertaking will demonstrate them to be

more environmentally sound and cost efficient. Failing success with its argument in this regard, the Association would then attempt to persuade the Board that conditions should be imposed upon any approval granted by the Board in order to ameliorate the adverse effects of this project. To assist in this process, it will be argued that the Board exercise its power pursuant to the Consolidated Hearings Act and retain its own experts to investigate the need for and the nature of preventative and mitigating measures.

(iii) In Summary

The Environmental Assessment Act requires that a proponent canvass the alternatives to the undertaking it puts forward. A substantial argument exists that Ontario Hydro has failed to discharge this responsibility. In consequence of this failure, the E.A. submitted does not comply with the requirements of the Act and should therefore be rejected. Further, careful consideration of the alternatives to the undertaking would demonstrate that the environmental and economic costs of the project as proposed far outweigh its possible benefits. Should approval to proceed be granted by the Board, however, various control and monitoring mechanisms should be imposed as a condition of approval in order to attenuate environmental impact.

D. THE RESPECTIVE RESOURCES OF THE PARTICIPANTS

It is clear that the E.A. Act recognizes the importance of public participation in the process of assessment and review of undertakings that may significantly impact upon the environment. While recognizing the validity of public involvement, however, the Act makes no provision for the funding of such public participants. We are left therefore with a situation in which there may be a dramatic disparity between the resources of the participants in this decision making process. The inability of 'ratepayers associations' such as the Hydro Consumers Association to retain its own experts or counsel or indeed to even be present throughout the course of the hearing, tends to undermine the very notion of meaningful public participation.

The association is committed to the principle that meaningful public participation has a vital role to play in any decision making process that will have broad environmental implications. In its view, the quality of the decision will be a product of the degree to which 'competing' interests are considered during the decision making process. In

choosing among the various options available to it, the board will weigh the relative economic benefit against the environmental costs of each alternative. Ontario Hydro is a large corporate bureaucracy committed to growth and a large scale model that tends to overshadow or externalize many of the environmental costs associated with its endeavours. The Hydro Consumers Association, on the other hand, advocates small scale alternatives that places a premium on conservation and environmental viability. The optimal choice will require the board to navigate a course between these competing perspectives. To do so, it is clear that both positions need to be vigorously articulated.

In addition, among the foreseeable economic and environmental costs of this project will be those that will be borne primarily by the residents of the rural areas through which this transmission corridor may travel. It is the citizens who must live with the decision, who are in the best position to articulate the nature and extent of immediate environmental costs.

In other respects the impact of this project upon the fabric of the lives of those most immediately affected will be an intangible that planners and decision makers are not particularly well equipped to evaluate. In our view, it is those who have the most at stake who can add an invaluable perspective that will enhance the quality of the decision that will be made.

While it is true that the public has been accorded the legal right to participate in this decision making proves it has not however been granted the means whereby it might effectively do so. Where the resources of the participants to this process are as disparate as those of Ontario Hydro and the Hydro Consumers Association respectively, the legal right to participate becomes little more than window dressing that conceals the fact that only one party to this process has the resources to participate in a meaningful way.

To put this application in perspective, it should be noted that were the ministry to accede to this request for funding it is highly unlikely that even a generous amount would represent more than 1% of the financial resources that Hydro has devoted to preparing and presenting its case before the board. Finally, in this regard, we refer you to the recommendation of the Royal Commission on Electrical Power Planning which concluded:

"The principle of funding of public interest groups from the public purse should be adopted in connection with the energy and environmental hearings in the future. Only in this way will it be possible for the disparate views to be aired adequately in public hearings."

E. OTHER SOURCES OF FUND RAISING

The Hydro Consumers Association was founded with \$100.00 donations from each of its 20 subscribing members. These funds were utilized to embark upon a campaign of public education aimed at provoking debate by the community of the issues involved and to solicit greater participation in the decision making process. During the course of this campaign, the Association acquired approximately 60 new members and additional, although modest, financial support. At this juncture, however, the financial resources of the Association have been exhausted by its efforts to bring the issues before the public.

The Association has also approached the Canadian Environmental Law Association and did so as early as last May. Unfortunately, the Canadian Environmental Law Association, while able to offer advice and counselling, is unable to participate to any greater extent because of manpower constraints.

In addition the association has made application for a Legal Aid Certificate that would enable it to retain counsel for the hearing. At this point, we have been informally notified that our application has been granted for the purposes of being represented at the preliminary hearing which has just concluded. We are presently awaiting written confirmation of this approval and would hope at that time to better assess the likelihood of obtaining approval from the Ontario Legal Aid Plan to retain counsel throughout the course of the hearings.

Finally in this regard, the association, through its counsel, made representations before the board that a broad view be taken of the power accorded the board pursuant to the provisions of the Consolidated Hearings Act to make an Order as to costs. It was the position of the association that an Order of Costs be made in favour of the Association at the outset of the hearing. We appreciate that this submission may be unprecedented within the context of the normal

litigation process, it was the associations view, however, that an Order of Costs coming at the end of the proceeding would be meaningless if this delay undermined the ability of the association to be present during the course of the proceedings.

In sum, therefore, the Association has pursued all avenues available to it but finds itself with insufficient resources with which to pursue actively the legal rights accorded it to participate in this public hearing process.

F. APPLICATION FOR FUNDING

Please therefore consider our application for funding with respect to the following matters:

(A) General research and preparation

Research staff will assist counsel before and during the course of the hearing with regard to technical matters - provide liason with Ontario Hydro, the Ministry of the Environment, Ministry of Energy and other provincial Government agencies, the Federal Department of Energy Conservation, the Department of Environmental studies at York - co-ordinate research activities with other intervening organizations. (Eg. - Ontario Public Interest Research Group and Energy Probe.)

(B) Lawyers Fees

Research including consultation with research staff and experts with regard to the technical issues before the board; preparation, including the preparation of witness statements and interrogatories, if required; counsel fee during the course of the hearing.

Disbursements: mileage and transportation costs, transcripts, photocopying, telephone expenses.

(C) Expert Witnesses

Experts will be retained in order to assist with the preparation of interrogatories, and cross examinations, and to adduce evidence before the board with respect to the following matters:

i) Load Forecasting

- analysis of the accuracy and reliability of Ontario Hydro load projections
- development of alternative forecast encompassing and using analysis and the impact of load management and conservation programs

ii) Alternatives to the Undertaking

- evaluation of the extent to which the E.A. represents an adequate consideration of the alternatives to this undertaking and the environmental impact that might ensue from pursuing these options
- analysis of the potential energy savings that would result from active programs of conservation and load management.

iii) Interconnection with Hydro-Quebec

- evaluation of the desirability of such interconnection with regard to the extensive criticism made of this proposal in the review prepared by the Ministry of the Environment

iv) Alternative methods of carrying out the Undertaking

- assessment of the feasibility of upgrading existing right-of-ways and the potential minimization of economic and environmental cost that this alternative might facilitate

v) Terms and Conditions

- feasibility of avoiding the use of herbicides along corridor right-of-way - cost benefit analysis
- investigation of the potential health effects of the electromagnetic fields

surrounding high voltage lines including and assessment of safe distances for primary residences and work places.

G. FUNDING MECHANISM

Should the ministry decide to make an award of funds, the association is quite willing to negotiate the implementation of accounting procedures that would ensure their proper administration. Although we are flexible in this regard, we suggest the following options for your consideration:

The first of these would utilize a procedure implemented by the Berger Royal Commission, whereby funds were provided an umbrella association of intervening groups that shared common objectives. Only where a group or individual could identify an interest that was distinct from that of the group as a whole, were funds awarded to it directly. In this regard the board might act as a conduit for these funds which would be administered throughout the course of the hearing. We have had preliminary discussions with the other intervening parties before this board and can anticipate sufficient co-operation so as to effect the implementation of this option.

Alternatively, the executive of the association would be willing to enter into a contract with the ministry that would ensure the proper administration and accounting of any funds provided. Finally, it might be possible to utilize the trust account of the association lawyer to the same end.

H.

Finally you will find enclosed a current list of our members. You will also find attached the text of a resolution that was passed by the township councils of the South Sherbrooke and Bathurst Townships in Lanark County, endorsing this application for funding.

Whereas Ontario Hydro proposes to build a power transmission line through Eastern Ontario which may pass through the Townships of Bathurst and/or South Sherbrooke.

Whereas many residents of this Township would be effected by the transmission line and its construction.

Whereas this project requires the approval of the Environmental Assessment Board that should consider all the alternatives and impacts of the construction of the power line.

And whereas those effected by this project should have an equal opportunity to participate fully in the environmental hearings.

Be it resolved that this Council supports the request of the Hydro Consumers Association for intervenor funding at the Environmental Assessment hearing on the Eastern Ontario Transmission line.

Further that the Minister of the Environment be informed of this Council support and that this resolution be circulated to all municipalities that might be effected by the construction and operation of the Eastern Ontario Transmission line.