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File OF-Fac-IPLI-H117-2020-01 01
20 August 2020

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Hydro One Network Inc.'s (Hydro One) - Application to Perform Work on International Power Line (IPL) J5D (Certificate of Public Convenience and Necessity EC-13) (J5D Optical Ground Wires (OPGW) Upgrade Project, or Project) requested pursuant to sections 211 and 294 of the *Canadian Energy Regulator Act (CER Act)*

Dear Mr. Engelberg and Ms. MacKinnon:

Summary of Decision:

The Commission of the Canada Energy Regulator (Commission) sets out its reasons, considerations and decisions in the pages that follow in relation to the above noted application.

In summary, the Commission:

- approves the applied for Project work as a deviation of the existing IPL under section 211 of the CER Act, which is made applicable to IPLs pursuant to section 294;
- pursuant to subsection 211(3) of the CER Act, grants Hydro One an exemption from the requirement under subsection 211(1) to submit a Plan, Profile and Book of Reference (PPBoR) showing the deviation for approval by the Commission;
- determines that the Project is not likely to cause significant adverse environmental effects to federal lands pursuant to section 82 of the *Impact Assessment Act (IA Act)*; and
- decides that a variance is not required pursuant to sections 280-284 of the CER Act since the applied for Project work will not change the IPL as described in Certificate EC-13 as amended.

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The Commission issues the attached Miscellaneous Order with conditions.

1. Background

The Canada Energy Regulator (CER) received Hydro One's [Application](#), dated 9 March 2020, (Application) as well as its subsequent responses to the CER Information Request [No. 1](#) on 20 May 2020 and Information Request [No. 2](#) on 15 June 2020. Hydro One's application is for authorizations requested pursuant to sections 280 to 284 of the CER Act to perform work on IPL J5D and facilities under Certificate of Public Convenience and Necessity No. EC-13 (Certificate EC-13 or the Certificate) on certain sections of the IPL J5D spanning from Windsor, Ontario, to Michigan, USA (the Project).

IPL J5D is a 230 kV line that spans from Keith Transmission Station (Windsor, Ontario) to Mid River Junction Waterman (at the international border) and ultimately across the Detroit River to the State of Michigan in the United States. The portion of the circuit in Canada is approximately 1.85 km in length. Hydro One's proposed work on IPL J5D will consist of:

- the replacement of two shield-wires with two OPGWs between Hydro One's Tower No. 7 on the Ontario side and International Transmission Company's Tower No. 2302 on the Michigan side, using a pulling cable method;
- the installation of OPGW within existing underground trenches between Tower No. 3 and the Keith Transmission Station; and
- relay replacement work within the existing Keith Transmission station.

The Project is expected to reduce the risk of mis-operations for out-of-zone faults and, as such, enhance the reliability of power exchanging between the State of Michigan and the Province of Ontario on the IPL J5D circuit. Hydro One is planning to start construction of the Project on 15 October 2020, with a planned Project in-service date of 12 March 2021.

2. Relief requested

Hydro One requested the Commission grant the relief pursuant to sections 280 to 284 of the CER Act, for an amendment to Certificate EC-13, and in the alternative, for orders pursuant to sections 211 and subsections 266(1) and (2) of the *National Energy Board (NEB Act)*¹ approving the work to be carried out to IPL J5D and exempting Hydro One from providing for approval any PPBoR beyond that which is described in the Application.

Hydro One confirmed that the J5D OPGW Upgrade work it plans to undertake will not result in any changes to the wording of any IPL certificate or permit (or any attached schedules) pertaining to the CER regulated IPL known as J5D, also known as Certificate EC-13, as amended.

The J5D OPGW Upgrade Project's proposed work will be performed on Hydro One's existing right-of-way (ROW) in Windsor, Ontario. Hydro One's existing ROW runs from Keith Transmission Station, in Windsor, Ontario, to Mid River Junction Waterman, which is situated

¹ The Commission notes that Hydro One should have referenced the CER Act, rather than the NEB Act, in its Application.

in the Detroit River. No change is required in the circuit's alignment or to the J5D circuit's ROW width for the J5D OPGW Upgrade Project work.

Additionally, Hydro One confirmed the applied for facilities do not result in the construction of a new IPL nor an increase in the capacity of any of the existing IPLs.

3. Assessment of the Application

3.1 Engineering

Hydro One stated that it proposed to replace the existing Distance Protection scheme with a Current Differential Protection scheme and that the Project is expected to reduce the risk of mis-operations for out-of-zone faults and, as such, enhance the reliability of power. Hydro One indicates that the proposed work neither affects the length, nor voltage, nor transfer capability of the IPL. Also, the proposed work does not involve the construction of a new IPL. As a result, the proposed work does not affect the description of the IPL as set out in Certificate EC-13 (as amended). The proposed work pertains to upgrades that constitutes an alteration or deviation to the existing IPL J5D.

The Commission has reviewed the Application and requested clarifications pertaining to engineering matters, which Hydro One addressed in its responses to the CER Information Request (IR) No.1 with respect to ROW, single line diagram components, power flow and protection system repay upgrade. The Commission is satisfied with Hydro One's responses and has no concerns from an engineering perspective with respect to the integrity or operations of the IPL.

3.2 Environmental and Socio-Economic Matters

Hydro One indicated that the Project's activities are to be conducted within the existing J5D ROW and a small area of temporary workspace required to provide a construction laydown area and temporary access to the ROW. Work areas are currently disturbed, paved or graveled, and are generally free of vegetation, with low availability for potential wildlife habitat. It is not expected that ground disturbance will be required to conduct the work. Hydro One noted that Project activities over and adjacent to the Detroit River are not expected to interact with the river, fish or fish habitat, or adjacent riparian areas. Because the Project activities are taking place on a previously disturbed area within an industrial area, Hydro One further expected that the proposed activities will not affect the public and Indigenous Peoples.

To minimize and mitigate any potentially adverse effects during construction, Hydro One stated that its crews would follow a comprehensive Environmental Specification document developed prior to construction that would include protocols for: archaeology, species at risk; erosion and sediment control; soil, slurry and water management; waste management; noise and dust; site restoration; and environmental monitoring. As well, Hydro One committed to implementing clean equipment protocols for invasive weed species.

The Commission notes that, with Hydro One's standard mitigation measures, there is limited potential for the Project to interact with valued environmental and socio-economic components. The Commission concludes that the Project's residual adverse environmental and socio-economic effects, including any resulting cumulative effects, would be low magnitude, limited in extent and duration, be reversible, and not be significant.

3.3 Public Consultation

On 28 October 2019, Hydro One sent Project notification letters to local elected officials and affected landowners about the Project [C05106-1, PDF p. 14 of 94]. In addition, Hydro One contacted local, provincial and federal agencies, and local emergency services who may be involved in the development of the Navigation Safety Plan (NSP). Hydro One advised that the IPL J5D circuit crosses an international waterway, the Detroit River. Additional information is contained under the *Navigation Safety* section.

Hydro One submitted a copy of its engagement activities log with its Application, and committed to maintaining the log during construction and for a period of 90 days after completion of construction. Hydro One stated that it has not received any concerns from the public regarding the Project.

Hydro One has also committed to submitting its engagement activities log to the CER 120 days following completion of construction activities for the Project [C5106-1, PDF p. 15 of 94].

Hydro One also stated that it has not received any concerns from the public about the Project.

The Commission notes these commitments and, upon filing, expects Hydro One's engagement activities log to include:

- a summary of issues or concerns raised;
- a summary of Hydro One's response to those issues or concerns;
- a description of any outstanding issues or concerns; and
- a description of how Hydro One intends to address any outstanding issues or concerns; or
- an explanation as to why no further steps will be taken.

Given no concerns have been expressed by the public and Hydro One's commitments, the Commission is satisfied that Hydro One has met the requirements outlined in the CER's Electricity Filing Manual.

3.4 Engagement with Indigenous Peoples

Hydro One engaged Indigenous peoples, providing Project information and maps, including contacting the following nine Indigenous communities (listed in alphabetical order):

- Aamjiwnaang First Nation;
- Caldwell First Nation;
- Chippewas of Kettle and Stoney Point First Nation;
- Chippewas of the Thames First Nation;
- Métis Nation of Ontario;
- Moravian of the Thames (Delaware) First Nation;
- Munsee-Delaware Nation;
- Six Nations of the Grand River; and
- Walpole Island First Nation.

Hydro One stated that no concerns were raised about the Project, including its potential impact on federal lands, which is discussed in greater detail below.

The Commission notes Hydro One's commitment to ongoing engagement with Indigenous peoples, and its commitment to maintaining a log in relation to its engagement with Indigenous peoples and filing such with the CER. The Commission expects the same information required in Hydro One's engagement activities log, as described in section 3.3, to be included for Hydro One's engagement activities log with Indigenous peoples.

Further, given that the Project will have limited impact on land and will occur in a previously disturbed, industrialized area, and that no comments or concerns have been received from Indigenous peoples to date, the Commission is of the view that the Project will have no or minimal adverse effects on the rights of Indigenous peoples.

The Commission is satisfied that Hydro One has addressed the requirements outlined in the CER's Electricity Filing Manual regarding consultation with Indigenous peoples.

3.5 Navigation Safety

In accordance with the Memorandum of Understanding between Transport Canada and the National Energy Board [now the CER] for Pipelines and Power Lines Subject to the NEB Act and *Canada Oil and Gas Operations Act* [MOU, 2013, Annex C Section 2.1, PDF Page 8 of 8], the CER must contact Transport Canada if a Project may potentially impact navigation. As such, the CER contacted Transport Canada on 16 June 2020 requesting comments related to any navigation or navigation safety issues, and for any general concerns related to the proposed Project [C06848-1, PDF p. 2 of 2].

Transport Canada responded to the CER letter on 29 June 2020, and stated it had no concerns regarding navigation protection [C07039-1, PDF p. 1 of 1].

In its Application, Hydro One filed a draft NSP. Hydro One indicated it would be requesting agency and emergency services assistance in finalizing the NSP and seeking help from their resources during construction across the river. Hydro One included a list of agencies invited to participate in development of the final NSP, and a consultation record of comments or concerns received from those agencies up to the application date.

Hydro One committed to submitting its final NSP to the CER prior to the start of construction and to submitting a copy two weeks before construction begins.

The Commission notes Hydro One's consultation efforts in developing its NSP and notes Hydro One engaged with a wide array of government and other stakeholders, including Transport Canada. Given Transport Canada has no concerns about navigation safety and Hydro One's commitment to provide the final NSP prior to start of construction, the Commission is satisfied that Hydro One has addressed the requirements outlined in the CER's Electricity Filing Manual regarding navigation and navigation safety.

3.6 Federal Lands

The Project occurs partially on federally-owned lands, administered by Windsor-Detroit Bridge Authority (subsidiary of Transport Canada reporting to the federal Minister of Infrastructure and Communities). In response to the CER IR No.1.1, Hydro One provided maps indicating that the federal lands are crossed by the IPL J5D ROW between Prospect

Avenue and the property boundary of Keith Transmission Station (located near the intersection of McKee Road and Sandwich Street) in Windsor. Hydro One noted that the scope of work on federal lands is limited to completing OPGW infrastructure connection from Tower 3 to the OPGW moving underground within existing trenches to the Keith Transmission Station. The underground trenches housing IPL J5D between Tower No. 3 and Keith Transmission Station are currently in-place and were previously constructed to accommodate and house the proposed OPGW.

Hydro One indicated that it undertook engagement with the nine Indigenous communities to provide an opportunity to address factors specified in Section 84(1) of the IA Act. It reported that no issues or concerns were raised by the Indigenous communities consulted regarding the use of federal lands. Hydro One is of the view that the Project's potential impacts to federal lands would be very minor and not result in any significant or cumulative impacts.

Section 82 of the IA Act requires that, for projects being carried out on federal lands, the Commission must determine whether carrying out the Project is likely to cause significant adverse environmental effects². Subsection 84(1) of the IA Act lists the factors that the Commission must consider when making that determination:

- (a) any adverse impact that the Project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*;
- (b) Indigenous knowledge provided with respect to the Project;
- (c) community knowledge provided with respect to the Project;
- (d) comments received from the public under subsection 86(1); and
- (e) the mitigation measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the Project that the authority is satisfied will be implemented.

As per subsection 86(1) of the IA Act, the CER posted a description of the Project ([Reference No. 80736](#)) on 29 May 2020 on the Impact Assessment Agency's online Registry, and [a notice](#) inviting public comment on 2 June 2020 for a period of one month (closed 3 July 2020). No comments from the public or Indigenous peoples were received by the CER.

Given that no issues or concerns have been expressed by Indigenous peoples or the public regarding the use of federal lands for the Project, and the temporary nature of the use of those lands, the Commission is satisfied that the guidance and requirements outlined in the CER's Electricity Filing Manual regarding the use of federal lands has been met.

Pursuant to section 82 of the IA Act, the Commission determines that, with Hydro One's project design and proposed mitigation measures, the Project is not likely to cause significant adverse environmental effects to federal lands.

² Section 81 of the *Impact Assessment Act* defines "environmental effects" as changes to the environment and the impact of these changes on the Indigenous peoples of Canada and on health, social or economic conditions.

4. Decision of the Commission

Based on the above-noted matters, considerations, and conclusions, and having considered its duty under subsection 56(1) of the CER Act to consider any adverse effects on the rights of Indigenous peoples, the Commission finds it in the public interest to approve the proposed Project. The Commission has included general conditions that Hydro One must follow in carrying out the Project.

As the proposed work does not change the description of IPL J5D as set out in Certificate EC-13 (as amended), there is no need for a further amendment to the Certificate pursuant to sections 280 to 284 of the CER Act. The proposed work is that contemplated by section 211, and in accordance with section 294, is applicable to IPLs under certificates issued before 1990, which is the situation with IPL J5D. The Commission, pursuant to section 68, may include any other relief it considers appropriate as if an application was made for that relief, and therefore, the Commission approves the Project as described in Hydro One's Application and further filings to perform work on IPL J5D, pursuant to sections 211 and 294 of the CER Act. Given that the IPL does not involve a change of location, Hydro One is exempt from submitting to the CER a PPBoR for approval, under subsection 211(3) of the CER Act.

Pursuant to section 82 of the IA Act, the Commission determines that, with Hydro One's project design and proposed mitigation measures, the carrying out of the Project is not likely to cause significant adverse environmental effects to federal lands.

The Commission has issued Order MO-026-2020 (Order) with conditions. A copy of the Order is attached.

The Commission directs Hydro One to serve a copy of this letter and the attached Order on all interested parties.

Yours sincerely,

Original signed by S. Wong for

Jean-Denis Charlebois
Secretary of the Commission

Attachment



ORDER MO-026-2020

IN THE MATTER OF the *Canadian Energy Regulator Act* (CER Act) and the regulations made thereunder;
and

IN THE MATTER OF an application made by Hydro One Networks Inc. (Hydro One), pursuant to sections 211 and 294 of the CER Act, dated 9 March 2020, filed with the Commission of the Canada Energy Regulator (CER) under File OF-Fac-IPL-H117-2020-01 01.

BEFORE the Commission of the CER on 17 August 2020.

WHEREAS on 18 December 1959, the National Energy Board issued Certificate of Public Convenience and Necessity EC-13 (CPCN EC-13) to The Hydro-Electric Power Commission of Ontario for the existing international powerline (IPL) designated as J5D (IPL J5D) between Ontario and Michigan;

AND WHEREAS Order AO-001-EC-13 dated 4 March 1971 varied the CPCN EC-13 for IPL J5D from voltage of 115 KV to voltage of 230 KV;

AND WHEREAS Order AO-002-EC-13 dated 4 March 1999; Order AO-003-EC-13 dated 17 June 1999 and Order AO-004-EC-13 dated 23 August 2000 are a series of amending orders made in relation to CPCN EC-13 whereby Hydro One became the holder of CPCN EC-13;

AND WHEREAS Order AO-005-EC-13 dated 16 June 2016 varied the CPCN EC-13 for IPL J5D from an overhead power line to an underground power line between the Keith Transformer Station and Tower No. 3;

AND WHEREAS on 9 March 2020, Hydro One submitted an application for work to be carried out on the existing IPL J5D consisting of the replacement of two shield-wires on the IPL J5D with two Optical Ground Wires (OPGW) between Hydro One's Tower No. 7 on the Ontario side, and International Transmission Company's Tower No. 2302 on the Michigan side, along with the installation of OPGW within existing underground trenches between Tower No. 3 and the Keith Transmission Station (Project);

AND WHEREAS Hydro One filed subsequent related submissions dated 20 May 2020 and 15 June 2020 in response to information requests made by the CER;

AND WHEREAS the Project occurs partially on federal lands, administered by Windsor-Detroit Bridge Authority (subsidiary of Transport Canada), and section 82 of the *Impact Assessment Act* (IA Act) requires that, for Projects being carried out on federal lands, the Commission must determine whether carrying out the Project is likely to cause significant adverse environmental effects;

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AND WHEREAS the scope of work on federal lands traversed by the Project is limited to completing the connection from Tower 3 to optical ground wires moving underground in trenches on the existing IPL right of way running to the Keith Transmission Station;

AND WHEREAS pursuant to section 82 of the IA Act, the Commission determines that, with Hydro One's proposed mitigation measures, the carrying out of the Project is not likely to cause significant adverse environmental effects to federal lands;

AND WHEREAS the Commission has had regard to all considerations that are directly related to the Project and relevant, including environmental matters;

AND WHEREAS the Commission has considered the consultation undertaken by Hydro One with potentially affected Indigenous peoples, and further has considered pursuant to subsection 56(1) of the CER Act any adverse effects on the rights of Indigenous peoples and is satisfied that such consultation is appropriate and any adverse effects will be none or minimal;

AND WHEREAS the Commission has examined the application and subsequent related submissions and considers it to be in the public interest to approve the Project, and grants the following relief, including exemption from submitting a Plan, Profile and Book of Reference for approval by the Commission;

IT IS ORDERED that the applied-for Project is approved subject to the following conditions:

1. Hydro One must comply with all of the conditions contained in this Order unless the Commission otherwise directs.
2. Hydro One must cause the approved Project to be designed, located, constructed, installed, and operated in accordance with the specifications, standards, commitments made, and other information referred to in its application or in its subsequent related submissions.
3. Hydro One must implement or cause to be implemented all of the policies, practices, programs, mitigation measures, recommendations, procedures, and its commitments for the protection of the environment included in or referred to in its application or in its subsequent related submissions.
4. Hydro One must seek approval from the Commission of any proposed modification to the Project's electrical system that may impact reliable operation for the bulk electrical system, power transfer capabilities, and the specification of the IPL structures, before any modification is made.
5. Within 30 days of the date that the approved Project is placed in service, Hydro One must file with the CER confirmation that the approved Project was completed and constructed in compliance with all applicable conditions in this Order. If compliance with any of these conditions cannot be confirmed, Hydro One must file with the CER details as to why compliance cannot be confirmed. The filing required by this condition must include a statement confirming that the signatory to the filing is an officer of Hydro One.

6. Unless the Commission otherwise directs prior to 17 August 2022, this Order shall expire on 17 August 2022 unless construction of the Project has commenced by that date.

THE COMMISSION OF THE CANADA ENERGY REGULATOR

Original signed by S. Wong for

Jean-Denis Charlebois
Secretary of the Commission