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IN THE MATTER OF the *Ontario Energy Board Act 1998*, S.O.1998, c.15, (Schedule B);, (the Act)

AND IN THE MATTER OF section 99 of the Act;

AND IN THE MATTER OF an application by Hydro One Networks Inc. for authority to expropriate interest in certain lands for the purpose of constructing and operating a new 500 kilovolt double circuit transmission line known as the Bruce to Milton Transmission Reinforcement Project.

NOTICE OF MOTION

BY

INTERVENORS GROUP REPRESENTED BY

FALLIS FALLIS & McMILLAN

(‘THESE INTERVENORS’)

The Intervenor Group represented by Fallis Fallis & McMillan, (“These Intervenor”), will make a motion to the Ontario Energy Board (“the Board”) at the Board’s offices, in the West Hearing Room on the 25th floor, 2300 Yonge Street, Toronto, on July 14, 2010. at 9:30 A.M.

THE MOTION IS FOR:

1. AN ORDER declaring that the Intervenor, *1136291 Ontario Inc., c.o.b. as Cedar Crest Trout Farm*, (the ‘Company’), has an interest in the Subject Lands of the Intervenor, David James Taylor and Lynette Taylor, (“Taylors”), being Part of Lots 41, 42, and 43 in Concession 1 SDR, and Part of Lot 41, 42, 43, 44, and 45 in Concession 2 SDR, (former Township of Bentinck), Municipality of West Grey, County of Grey, containing a total of 81 acres more or less, (the “Subject Lands”), as both a tenant of the Taylors, and as the holder of a constructive trust interest therein

2. AN ORDER declaring that this Intervenor, the Company, has never been served with a copy of any *Notice of Application by Hydro One Networks Inc for Authority to Expropriate Interest in Certain Lands*, (the "Notice of Application"), as prepared by the Ontario Energy Board, (the "Board"), dated at Toronto, March 16th, 2010 signed by Kirsten Walli , Board Secretary.
3. AN ORDER declaring that absent such service of the Notice of Application upon this Intervenor, the Company, the Board is without legislative competence to give authority to the Hydro One Networks Inc., ('Hydro One'), to expropriate from this Intervenor, the Company, the intended easement interest in part only of the Subject Lands as sought by Hydro One for its intended works.
4. AN ORDER declaring that the Board is without legislative competence to authorize Hydro One to cause injurious affection to the interests of the Intervenor, the Company and the Taylors those parts of the Subject Lands, located outside and beyond the intended easement interest in part only of the Subject Lands as sought by Hydro One for its intended works.
5. AN ORDER declaring that the expression, '*injurious affection*' is a wording that is a creature of statute, defined by an enactment of the Legislature of the Province of Ontario under the provisions of the *Expropriations Act*, and which expression relates to damages caused to interests in lands by a '*statutory authority*', (being also an expression that is a creature of the same Statute, and defined therein), that are not expropriated, and that may in fact lie beyond and outside of lands that may or may not be expropriated.
6. AN ORDER declaring that the words, '*injurious affection*' and '*statutory authority*' are expressions not utilized, adopted or set out by the Legislature of Ontario in its enactment of the *Ontario Energy Board Act, 1998*, ('OEB Act'), an in particular sec. 99 thereof, and have no legal relevance, significance or meaning to the Board under the OEB Act.

7. AN ORDER declaring that Hydro One has no authority to expropriate lands for its works, absent a grant of authority by the Board under sec. 99 of the OEB Act.
9. AN ORDER declaring that as the damages that will be caused to the Intervenor, Taylors, and the Intervenor, the Company, originate from an intended taking by Hydro One of a limited easement interest only for the construction of the works, conditionally approved under Sec. 92 of the OEB Act on September 15th, 2008, that the market value of any lands of the owners, as taken by confiscation, must be determined, by the Ontario Municipal Board, ('OMB') if necessary, unless otherwise agreed, to compensate for the direct interest taken by compulsion by Hydro One, and for any other damages and costs incurred.
10. AN ORDER declaring that any Order may be made by this Board to authorize an expropriation of a limited easement interest in the part of the land interests of the Intervenor, Taylors, and the Intervenor, the Company, but that such power to authorize, as granted by the Legislature to the Board, does not include any power to authorize the Applicant to cause injurious affection to the land interests of the Intervenor, Taylors, and the Intervenor, the Company, in respect to any damages that they may suffer in their respective separate interests in the remnant lands of the Subject Lands, including personal and business damage, and is an incomplete remedy for those Intervenor, and may act as a bar to the Applicant, Hydro One, in carrying out its intended expropriation, being without any legal competence to otherwise cause injurious affection.
11. AN ORDER declaring that, if the Board determines that it is in the public interest to authorize the Applicant, Hydro One, to expropriate lands for its works, that the Board is then functus under the OEB Act, and that it then behoves the Applicant to then make its formal application to expropriate lands to the named approving authority under sec. 5(5) of the *Expropriations Act*, as Hydro One would then be an '*expropriating authority*' thereunder, authorized to lawfully expropriate land under the grant of authority made by the Board under Sec. 99 of the OEB Act, and that, as it has the need also to cause injurious affection to the

Intervenors, Taylors, and the Intervenor, the Company, and similar other owners of other such similar type interests in other lands within the proposed 180 KM corridor between Bruce GSS and Milton TS, that the Applicant would also be deemed to then be a '*statutory authority*' within the meaning of the *Expropriations Act* to permit Hydro One to cause '*injurious affection*' damages to be suffered by the Intervenors, Taylors, and the Intervenor, the Company, and others.

12. AN ORDER declaring the Board construes the word "*made*", as it is used in sec. 5(5) of the *Expropriations Act*, to mean "*authorized*" as sec. 99 of the OEB Act contemplates
13. AN ORDER declaring that as sec. 4(1) and 5(5) of the *Expropriations Act* were enacted at the very same time, as Sec 11(1) and Sec. 11(2) of S.O. 2002, c. 17, Schedule 'E,' that the Legislature of Ontario did not intend 5(5) to establish the Board as an '*approving authority*' under the *Expropriations Act* and then to immediately remove the Board as '*approving authority*' from the approval process of an expropriation as contemplated and required for the purposes of the construction of the works under for which leave had been previously granted under Sec. 92 of the OEB Act.
14. AN ORDER declaring that sec. 4(2) of the *Expropriations Act* serves to establish, with clarity, that the Board is not empowered to '*approve*' an expropriation of land under Sec. 99 of the OEB Act, but rather is only empowered to "*authorize*" an expropriation of land under the OEB Act; that the words in the expression "*authority to expropriate land*" do not have the same meaning as the words in the expression "*approval to expropriate land*".
15. AN ORDER declaring that the Board, as "*approving authority*" under sec. 5(5) of the *Expropriations Act*, is entirely without any legislative competence to grant "*authority*" to Hydro One to expropriate the intended limited land interests sought of the Intervenors, Taylors', the powers of the Board, as "*approving authority*" under sec. 5(5) of the *Expropriations Act*, being limited to considering and '*approving*' an Application for

Expropriation brought by an expropriating authority, here Hydro One, if so previously empowered with such authority by the Board under sec. 99 of the OEB Act,

16. AN ORDER declaring that Board power under sec. 99 of the OEB ACT is that of an *'authorizing authority'* and that the Board is entirely without any legislative competence thereunder to *'approve' an expropriation of land* on a Sec. 99 Application for authority to expropriate limited land interests, as sought of the Intervenor, Taylors, in part only of their Subject Lands, the powers of the Board, as *"authorizing authority"* under sec. 99 of the *OEB Act*, being limited to considering whether it is in the public interest for Hydro One, as a holder of a conditional approval under Sec. 92 of the OEB Act, to also have *'authority'* to expropriate land for the works.
17. AN ORDER declaring that the reference to the non-application of sec. 4(1) of the *Expropriations Act*, by the use of expression *"Subsection (1) does not apply to an authorization of the Ontario Energy Board . . ."*, within sec. 4(2) of the *Expropriations Act* was intended by the Legislature to mean: *"The considerations required of an approving authority upon an application made under the Act, do not apply to an authorization of the Ontario Energy Board to expropriate land ."*
18. AN ORDER declaring that the scheme set out in sec.99 of the OEB Act deals only with empowerment by the Board, and the application by a person with sec. 96 approval on a sec. 92 application for leave to construct, for the receipt of authority, (the right and power), to expropriate an interest in land, which power, right or authority that person does not otherwise hold, and otherwise does not have a legislative right to expropriate an interest in land, but for an authorization by the Board under Sec. 99 of the OEB Act, if the Board determines that it is the public interest to do so, and that the Board has no legislative authority under sec. 99 of the OEB Act to approve any subsequent application for expropriation of an interest in land that may be made, nor to cause injurious affection.

19. AN ORDER that the scheme set out in the *Expropriations Act* deals only with the approval of applications made to an approving authority by a person with authority to expropriate an interest in land, (whether authorized by legislative enactment or by such authority granted to such person under enacted legislation, here Sec. 99 of the OEB Act), and to approve the causing of injurious affection by a statutory authority, and to also measure damages attributable to the taking and to any injurious affection so caused.
20. AN ORDER declaring that any doubt about the fact that, under Sec. 99 of the OEB Act, the Board is limited only to considerations associated with empowerment and the grant of authority to a sec 96 qualified person, here Hydro One, to expropriate an interest in the Subject Lands of the Intervenor, Taylor, if such expropriation is in the public interest, and that any approval of such expropriation of that land is governed by the procedures set out in the *Expropriations Act*, is clearly found in section 2(2) of the *Expropriations Act* enacted in 2002 by S.O. 2002, Chap. 17, Schedule 'F', (four years after passage of the OEB Act) and amendments thereto in 1998), which states:
 - 2(2) "The provisions of any general or special Act providing procedures with respect to the expropriation of land or the compensation payable for land expropriated or for injurious affection that refer to another Act shall be deemed to refer to this Act and not to the other Act"
21. AN ORDER declaring that, if authorized by the Board to expropriate the limited easement interest in part of the lands of the Intervenor, Taylors, and the Intervenor, the Company, after the Applicant, Hydro One, first establishes that such expropriation is in the public interest, the Applicant must therefore follow the procedures set out in the *Expropriations Act* to initiate such application to expropriate that intended limited easement interest in those intended lands.
22. AN ORDER declaring that as the Board has established no guidelines or procedures to date, nor any forms for use on any sec. 99 application to the Board made by a sec. 96 qualified

person on a sec. 92 leave to construct application, and as there is uncertainty over the rights and powers of the Board, and its responsibilities, duties, etc. on a sec. 99 application for authority to expropriate, the Board shall refer to the Superior Court of Justice the questions raised by each of the above 20 Orders so sought, in order that all parties, the Applicant, Intervenor, and other persons who might otherwise qualify as an "owner" of land, (as both are so defined within the meaning of the *Expropriations Act*), and the Board will have a clarity of understanding of the limitation of the powers as conferred upon the Board on a Sec. 99 Application, with a further direction to be made by the Board that all costs incurred and associated with such reference shall be deemed to be a costs incurred in these proceedings.

23. AN ORDER that the proceedings are hereby stayed until such time as Hydro One has advised the Hearings Registrar of the Environmental Hearings Tribunal that of the fact that there are at least two or more hearings that may be held under one or more Acts, advising of those possible hearings and the Acts under which such possible hearings may take place, requesting that a Joint Board be immediately established to convene hearings under the *Consolidated Hearings Act*, and that the hearings, and all final appeals therefrom, first conclude.
24. AN ORDER declaring that further proceedings under File EB-2010-0023 be stayed to be brought back on before the Board on 14 days notice after the conclusion of:
 - A. any final appeal of any order of this Board, or of any court of law made as a consequence of such orders made by this Board, and
 - B. Any final order made by the Joint Board under the *Consolidated Hearings Act*,
25. Such further and other relief as counsel may advise and this Board may permit.

THE GROUNDS FOR THE MOTION ARE:

1. The Expropriations Act, R.S.O. 1990, chap. E. 26, as amended
2. The Ontario Energy Board Act, 1998, S.O. 1998, chap, 15, Schedule B, as amended
3. The Niagara Escarpment Planning & Development Act, R.S.O 1990, Chap N. 2 as amended
4. The Ontario Planning and Development Act, 1994, S.O. 1994, C. 23 Schedule "A" as amended
5. The Grey County Official Plan, Approved March 5, 1998
6. The West Grey Zoning By-law No. 27-2006,
7. The Environmental Assessment Act, R.S.O. 1990 chap. E. 18, as amended
8. The Consolidated Hearings Act, R.S.O. chap. C. 29, as amended
9. The Ontario Water Resources Act, R.S.O. Chap. O. 40, as amended
10. OEB Rules of Practice and Procedure : Rules 1.03, 2.01, 4.01, 8, 42, 43, 44, 45 of the Board's Rules of Practice and Procedure
11. The Canadian Charter of Rights & Freedoms - (Part I of the *Constitution Act, 1982*)
12. The Board has no Guidelines, Rules of Procedure, Procedural Manual or forms for a Section 99 Hearing, has made a written acknowledgment that it has developed absolutely no Guidelines or

Rules of Procedure whatsoever for conducting any hearing under any s. 99 application by any Applicant for authority to expropriate lands, has substituted for a written request for such Guidelines and Rules, two previous s. 99 applications, only one of which was a full hearing, and the other being a proceeding that settled before the hearing commenced.

12. The Board has never sought any court adjudication as to the extent or limitation of its powers under the provisions of s. 99 of the *OEB Act*. That section does NOT give the Board the power to '*approve*' the expropriation sought by the Applicant, but only empowers a qualified applicant with '*authority*' to expropriate.
13. Neither the Board nor Hydro One would entertain any consideration to moving the new 500 KV Line to deviate around the Camp Creek Lowlands, and would not consider the Decision of the Minister of the Energy made March 9th, 1977, which was based on the risk of degradation to Camp Creek by the construction of the 500 KV Line through the Camp Creek Lowlands.
14. The Minister of the Environment refused a request made April 17th, 2009, that the issues surrounding Camp Creek be referred to the Environmental Review Tribunal for its review and consideration.
15. The provisions of the *Expropriations Act* with respect the '*approval*', by the "approval authority", of the taking of a limited interest of land in respect to the Intervenors, Taylor and the Intervenor, the Company, continue to have full application if the Board determines to grant '*authority*' to Hydro One to expropriate its intended limited easement interest in part only their respective interests in the Subject Lands, and in respect to authorizing Hydro One to cause injurious affection to the interests of those Intervenors in the Subject Lands.
16. The Legislature of Ontario did not give the Board any legal competence under the OEB Act to empower the Board to '*approve*' the expropriation of land by Hydro One, if it is in the public interest, and it has no authority to do so under the OEB Act.

17. The refusal of the Board to entertain the receipt of any evidence whatsoever on alternative routing and locational issues that these Intervenor, and many other owners of an interest in land, wished to have the opportunity to give and present at the Sec. 92 hearings, constitutes a violation of their rights under the *Canadian Charter of Rights and Freedoms*, and has effectively served to fracture and bifurcate the hearings into technical hearings of the Board involving Sec. 96 considerations only, on the one hand, and routing and locational issues on the other hand, but which routing and locational issues are still stranded beyond any adjudication forum, as outstanding, unresolved and un-adjudicated issues, without any tribunal forum being established for such discussion, consideration, evaluation, adjudication and resolution, before any decision is made by the Board on the Application by Hydro One for authority to expropriate a limited easement interest in the lands of These Intervenor
18. The failure of both the Board to require that Notice of the Application made herein by Hydro One be served upon those persons other than the registered owners of that part of their lands on which the Applicant seeks authority to expropriate a limited easement interest therein, and the failure of the Applicant to serve such other persons, including the Intervenor, the Company, with such Notice of Application, constitutes a denial of natural justice to any hearing, let alone a fair hearing, and contravenes their rights under the *Canadian Charter of Rights and Freedoms*.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion.

1. The *Affidavit of James Taylor*, Intervenor, and the Exhibits therein referenced,

Dated at Durham this 21st day of June, 2010

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