



Ontario
Energy
Board | Commission
de l'énergie
de l'Ontario

EB-2022-0140

Hydro One Network Inc.

**Application for leave to construct an electricity transmission line between
Chatham Switching Station and Lakeshore Transmission Station.**

DETERMINATIONS ON THE FILING OF EVIDENCE AND FORM OF THE HEARING

August 5, 2022

Hydro One Networks Inc. (Hydro One) filed an application with the Ontario Energy Board (OEB) under section 92 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B) (OEB Act), seeking approval to construct approximately 49 kilometres of 230 kilovolt double-circuit transmission line between Chatham Switching Station and Lakeshore Transformer Station and associated station facilities to connect the new transmission line at the terminal stations (Project). The proposed transmission line and station facilities will be located in the municipalities of Chatham-Kent and Lakeshore and the County of Essex. Hydro One has also applied under section 97 of the OEB Act for approval of the form of land use agreements it has offered, or will offer, to landowners affected by the route or location of the Project.

A Notice of Hearing was issued on June 3, 2022. The Chippewas of Kettle and Stony Point First Nation together with Southwind Corporate Development Inc. (CKSPFN), Environmental Defence, the Haudenosaunee Development Institute (HDI), the Independent Electricity System Operator (IESO), the Municipality of Chatham-Kent, Pollution Probe, and the Ross Firm Group applied for intervenor status. CKSPFN, Environmental Defence, HDI, Pollution Probe and the Ross Firm Group applied for cost eligibility.

All parties that requested intervenor status were granted intervenor status, and Environmental Defence, Pollution Probe, the Ross Firm Group, HDI and CKSPFN were each granted eligibility to apply for an award of costs, all in respect of matters that are within the scope of this proceeding. In a letter dated July 26, 2022, the OEB approved a request by CKSPFN to add Caldwell First Nation to its intervention, and to continue the intervention under the name Three Fires Group Inc. (Three Fires Group).

As part of its intervention request, HDI indicated that it wished to file evidence and requested an oral hearing. CKSPFN (now Three Fires Group) also indicated that it may wish to submit evidence, depending on the development of the record. The Ross Firm Group also requested an oral hearing, and the Municipality of Chatham-Kent requested the right to file evidence (though it is not clear at this point if they actually wish to file evidence).

Determination on the filing of evidence and the form of the hearing

In Procedural Order No. 1, issued on July 13, 2022, the OEB identified the issues that it will consider in this proceeding. That issues list, based on the OEB's Standard Issues List for electricity leave to construct applications, as well as the Notice of Hearing issued for this proceeding, were informed by OEB jurisprudence on the scope of the OEB's mandate under section 92 of the OEB Act.¹ That section expressly limits the OEB's jurisdiction by prescribing in exhaustive terms the matters that the OEB may consider in deciding whether a proposed project is in the public interest:

96 (1) If, after considering an application under section 90, 91 or 92 the Board is of the opinion that the construction, expansion or reinforcement of the proposed work is in the public interest, it shall make an order granting leave to carry out the work.

(2) In an application under section 92, the Board shall only consider the following when, under subsection (1), it considers whether the construction, expansion or reinforcement of the electricity transmission line or electricity distribution line, or the making of the interconnection, is in the public interest:

1. The interests of consumers with respect to prices and the reliability and quality of electricity service.

¹ See EB-2009-0120 ([Decision on Questions of Jurisdiction and Procedural Order No. 4, November 18, 2009](#)) and EB-2017-0182 ([Decision and Order, December 20, 2018](#)).

The OEB's authority to consider environmental issues and the Constitutional duty to consult is therefore limited to the issues set out in section 96(2) of the OEB Act; in other words, where these matters are relevant to the issues of price, reliability and quality of electricity service such as impacts relating to the cost or schedule for a project. As noted in Procedural Order No. 1, the Project is subject to an Environmental Assessment conducted by the Ministry of the Environment, Conservation and Parks, and the duty to consult for the Project is led by the Ontario government as part of the Environmental Assessment process. It is a standard condition of approval in any approval granted under section 92 of the OEB Act that the applicant obtain all necessary approvals, permits, licences, certificates, agreements and rights required to construct, operate and maintain the project.

The issues list for this proceeding also reflects the fact that the Project has been declared to be a priority transmission project under section 96.1 of the OEB Act, such that the standard issues relating to need and the consideration of alternatives to the construction of a transmission line are not applicable in this proceeding.

Based on their letters of intervention and their interrogatories, it appears that the focus of HDI and Three Fires Group is on matters that are outside the OEB's statutory authority in a proceeding under section 92 of the OEB Act. The OEB will not make provision for the filing of evidence relating to matters that are outside the scope of this proceeding. If any intervenor wishes to file evidence that is directly and materially relevant to an issue on the issues list, it shall file a letter with the OEB by **August 11, 2022** with a description of the proposed evidence (including an explanation of how the evidence relates to the issues in this proceeding), an estimate of the cost of the evidence (if the intervenor is eligible for an award of costs), and the proposed timing of the filing of the evidence.

The OEB will also not require Hydro One to respond to interrogatories from any intervenor on matters that are outside the scope of this proceeding as reflected in the issues list and clarified in this letter.

Given the relatively narrow focus of the interrogatories that appear to be in scope for this proceeding, the OEB has also determined that it intends to proceed by way of a written hearing.

Filing Instructions

Parties are responsible for ensuring that any documents they file with the OEB **do not include personal information** (as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*), unless filed in accordance with rule 9A of the OEB's [Rules of Practice and Procedure](#).

Please quote file number, **EB-2022-0140**, for all materials filed and submit them in searchable/unrestricted PDF format with a digital signature through the [OEB's online filing portal](#).

- Filings should clearly state the sender's name, postal address, telephone number and e-mail address.
- Please use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#) found at the [File documents online page](#) on the OEB's website.
- Parties are encouraged to use RESS. Those who have not yet [set up an account](#), or require assistance using the online filing portal can contact registrar@oeb.ca for assistance.
- Cost claims are filed through the OEB's online filing portal. Please visit the [File documents online page](#) of the OEB's website for more information. All participants shall download a copy of their submitted cost claim and serve it on all required parties as per the [Practice Direction on Cost Awards](#).

All communications should be directed to the attention of the Registrar and be received by end of business, 4:45 p.m., on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Andrew Bishop at Andrew.Bishop@oeb.ca.

Email: registrar@oeb.ca
Tel: 1-877-632-2727 (Toll free)

DATED at Toronto, **August 5, 2022**

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar