

July 9, 2024

VIA EMAIL: boardsec@oeb.gov.on.ca

Ontario Energy Board
PO Box 2319
2300 Young Street, 27th Floor
Toronto, ON M4P 1E4
Attention: Nancy Marconi

VIA EMAIL: RegulatoryAffairs@hydroone.com

Hydro One Networks Inc.
483 Bay Street
8th Floor, South Tower
Toronto, ON M5G 2P5
Attention: Eryn MacKinnon

VIA EMAIL: gnettleton@mccarthy.ca

Mcarthy Tetrault
421 7th Avenue SW
Suite 4000
Calgary, AB T2P 4K9
Attention: Gord Nettleton

Dear Ms. Marconi:

Re: HONI Expropriation – Group Intervenor Status
Board file number EB-2024-0155

The purpose of this letter is threefold:

1. To seek intervenor status on behalf of our clients as set out below.
2. To request an oral hearing.
3. To request confirmation of eligibility for cost awards.

The Ross Firm Professional Corporation has been retained by the following individuals/entities to represent their interests in this process. As such, we request that the following affected landowners be noted as intervenors for matter EB-2024-0155.

Intervenor List:

1. Baily, Marlene
2. Baxter, Christopher & Carolyn
3. Bogaart, Doreen
4. Dell, Kenneth & Margaret

GODERICH
144 Courthouse Sq.
Suite 100
Goderich ON
N7A 1M9
P: 519.524.5532

KINCARDINE
943 Queen St.
Kincardine, ON
N2Z 2Y2
P: 226.532.9700

PORT ELGIN
1246 Goderich St.
Unit 1, Box 1259
Port Elgin ON
N0H 2C0
P: 226.256.7977

OWEN SOUND
1717 2ND Avenue E.
Suite 203
Owen Sound ON
N4K 6V4
P: 226.256.7977

5. Denning, Steven
6. Burm Farms Ltd. (c/o Edmund Burm)
7. Eglin, John
8. Eves, Brian & Thompson, Linda
9. Fournie, Joseph D., Karen, & Joseph R.
10. Hetherington, Thomas
11. Kraayenbrink, Ronald, Jesse & Phillip
12. Leeson, Harold & Denise
13. Lucier, Joseph & Vandamme, Julie
14. McGee, Douglas & David
15. McGee, Gary
16. McGee, Glenda
17. Moir, Peter & Tamara
18. Mota, Jose & Maria
19. David O'Neill Enterprises Limited (c/o Norman O'Neill)
20. Ouellette, Marc
21. Pierce, Brian & Judy
22. Rankin, Adam
23. Rankin, Helen & Raymond
24. Rankin, Karl
25. Rankin, Shirley
26. Rankin, Kenneth & Beverly
27. Ronek, Kerry
28. Scott, Gregory
29. Tulloch, Gordon & Lois
30. Heritage Acres Inc. (c/o David Van Damme)
31. VanSegbrook, David
32. J & J Farms Ltd.(c/o Kenneth VanDellen)
33. Vozza, Domenic & Diane
34. Watson, John & Sandra

Our firm has been formally retained by each of the above to represent them in this process. The group has been and shall continue to be known, for the purposes of hearings before the Ontario Energy Board, as; "The Ross Firm Group and/or RFG".

Intervenor Interest:

Each individual listed above is directly affected by the proposed St. Clair Transmission Project. In each instance, Hydro One Networks Inc. ("HONI") proposes a taking of their land in furtherance of the project.

Nature and Scope of Participation:

It is the Ross Firm Group's intention to attend any hearing called by the Board. At that hearing we intend to test the evidence in support of HONI's position that the project and resultant

expropriation of land is in the public interest, meets the relevant regulatory requirements, and does not exceed the scope of authorization afforded by the Order In Council 876/2022.

Requirement for an Oral Hearing:

Given the nature and complexity of this process we submit that oral evidence and the opportunity to question the witnesses providing that evidence is essential in allowing our group the occasion to test the merits of HONI's Application. Further, given the technical and regulatory complexity of the process, oral evidence is the best and only tool available which would offer affected landowners a hope of understanding and feeling as though they participated meaningfully in the process. Finally, given what is at stake for the affected landowners, an oral hearing is the only process which would achieve the duties of procedural fairness and natural justice.

Further, and perhaps more importantly, an oral hearing would allow, depending on Board scheduling, for a faster process. Given the submissions in HONI's instant Application, it is clear that the Applicant also wishes to expedite the process as much as possible.

The Need for an Oral Hearing in Addition to Written Evidence

Given the technical and scientifically complex nature of the evidence advanced by HONI, to which the RFG and other intervenor parties have indicated their intention to examine and submit expert evidence in response, it is essential that the OEB conducts an oral hearing to uphold the principles of natural justice. Refusing to do so would undermine the legitimate expectation of those affected by the application. Proceeding by way of a written hearing would not provide a meaningful opportunity for affected parties to examine HONI's evidence or effectively advance their own evidence and arguments. Additionally, a written hearing is not the most efficient process, as it would result in periods of filing, review, response, and reply if the principles of natural justice are applied to a written format.

The purpose of the participatory rights contained in the duty of procedural fairness is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context, with an opportunity for those affected to put forward their views and evidence fully and have them considered by the OEB. The nature of the issues and the stake significantly determine the content of the duty of fairness, necessitating an oral hearing. In this instance, the circumstances require a full and fair consideration of the issues in an oral hearing, ensuring that the claimant and others whose important interests are affected by the decision have a meaningful opportunity to present various types of evidence relevant to their case and have it fully and fairly considered.¹

The five considerations when determining the level of procedure required in a particular decision are:

- a. The nature of the decision,
- b. The statutory scheme,
- c. The importance of the interest to the affected party,
- d. The legitimate expectations, and
- e. The procedural choices.

¹ [Baker v. Canada \(Minister of Citizenship and Immigration\), 1999 CanLII 699 \(SCC\), \[1999\] 2 SCR 817](#)

Accordingly, to this test, the more important the decision, the more procedure is required. A written hearing, as opposed to an oral hearing, would preclude reasonable participation by the landowners, who are the most affected by the OEB decision and do not have the technical abilities to fully understand and participate in the examination of HONI's evidence.

DUTY OF FAIRNESS

While the Board has discretion to determine its own procedure, these discretionary powers are not unlimited and are subject to the rules of natural justice and procedural fairness², including the right for all parties impacted by an administrative decision to meaningfully participate in the process (also known as the "right to be heard") and the right to an unbiased, impartial decision maker.³

By granting intervenor status to the Ross Firm Group, the Board acknowledges and confirms that the RFG and all other intervenors have a substantial interest and intend to participate actively and responsibly in the proceeding.⁴ As intervenors, the Board must protect the RFG's rights to natural justice and procedural fairness, including the RFG's right to meaningful participation.⁵ Procedural rights lie on a spectrum; what constitutes natural justice and procedural fairness in a given proceeding will depend on the nature of the power being exercised and the nature of the right(s) affected by that exercise. While the full array of procedural rights may not be necessary or applicable in every proceeding, certain procedural rights are required and applicable in all proceedings: (a) the right to know the case to meet and the right to meaningfully participate in the proceedings; and (b) the right to make submissions to an unbiased, impartial decision maker.

In this case, the government is seeking to exercise its power to take away one of the most historic and fundamental rights held by individuals in Ontario: the right to use, own, and enjoy real property. Given the significant consequences of the Board's decision in this proceeding, the Board must ensure that all parties directly impacted thereby have an opportunity to meaningfully participate in the proceeding.

The right to be heard is not merely a right to make submissions. At a minimum, the right to be heard is a right to make submissions and a right to have those submissions seriously considered by the Board. The right to be heard cannot be illusory. It must be realized.

PUBLIC/OEB POLICY CONSIDERATIONS IN FAVOUR OF AN ORAL HEARING

The Board's mandate is to protect consumers and serve the public interest in a manner that is transparent and accountable and includes the following guarantee: "We will never lose sight of the individual ratepayers, the consumers, the people of Ontario."⁶

Through its mandate (including its vision statement and purpose statement,⁷ among others), the Board guarantees each individual and consumer in Ontario will have agency at all times in all

² [Framework for Review of Intervenor Processes and Cost Awards EB-2022-0011, March 2022](#), p. 8

³ [Framework for Review of Intervenor Processes and Cost Awards EB-2022-0011, March 2022](#), p. 8

⁴ [Rules of Practice and Procedure, OEB](#), Section 22.02

⁵ [Framework for Review of Intervenor Processes and Cost Awards EB-2022-0011, March 2022](#), p. 8

⁶ "Mandate". <https://www.oeb.ca/about-oeb/mission-and-mandate>

⁷ "Purpose". <https://www.oeb.ca/about-oeb/mission-and-mandate>

matters within the Board's jurisdiction. The Board guarantees it will be transparent with and accountable to each individual and consumer in carrying out its mandate.⁸ The Board explicitly acknowledges the power of the monopolized energy systems in Ontario and promises to protect the individuals and consumers from the unilateral powers associated with monopolistic markets.⁹

By limiting permissible evidence and allowing only written submissions from the parties, the Board would fail to fulfill its mandate to be transparent and accountable. In doing so, the Board would render the agency it guarantees to each individual and consumer in Ontario as nothing more than perceived agency.

Even if the Board's procedural orders in this proceeding to date are justified, the public perception remains that the Board acted unfairly and unjustly against those directly impacted by its decision. As a result, in the public eye, it would appear that the Board unfairly favoured the applicant and would give rise to a reasonable apprehension of bias.

As part of its pursuit of modernization, the Board developed a Framework for Review of Intervenor Processes and Cost Awards (Framework), which explicitly recognizes the significant benefit that intervenors bring to proceedings and policy discussions at the Board and the importance of protecting intervenors' procedural rights, including the right to be heard.¹⁰

Ultimately, the RFG agrees that the Board has discretion to determine the processes and procedures in this proceeding. However, that discretionary power ends where procedural unfairness begins.¹¹ Given the circumstances and considering the totality of the foregoing, the RFG respectfully submits that continuing under the Board's procedural orders would result in a breach of its duties of natural justice and procedural fairness.

Eligibility for Costs:

The Ross Firm Group relies on paragraph 3.03(c) of the *Ontario Energy Board – Practice Direction on Cost Awards*. Our purpose of participation in this Application shall be to represent persons/entities with an interest in land that is affected by the instant process. Clearly, the decision whether to grant authority to expropriate our clients' lands makes our group eligible not only for intervenor status but costs awards as well.

Language:

We will not require the hearing to be conducted in the French language.

⁸ "Values". <https://www.oeb.ca/about-oeb/mission-and-mandate>

⁹ "Natural monopolies and regulation". <https://www.oeb.ca/about-oeb/what-we-do>

¹⁰ [OEB Letter re: Framework for Review of Intervenor Processes and Cost Awards \(March 31, 2022\)](#), p. 1

¹¹ [Re: Sound v. Fitness Industry Council of Canada, 2014 FCA 48 \(CanLII\)](#).

I trust the foregoing is satisfactory.

Yours very truly,

the ross firm.
PROFESSIONAL CORPORATION

Per:

A handwritten signature in black ink, appearing to be 'QR' with a flourish.

Quinn M. Ross

qmross@rossfirm.com

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QMR/dbg

cc: Aaron Fair, HONI (Aaron.Fair@HydroOne.com)