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By Email and Filed on RESS

Ms. Nancy Marconi
Registrar
Ontario Energy Board
P.O. Box 2319, 27th Floor
2300 Yonge Street
Toronto ON M4P 1E4

Dear Ms. Marconi:

Re: Hydro One Networks Inc. (HONI)- Leave to Construct Application – St. Clair Transmission Line Project ("Project"), EB-2024-0155 – Intervenor Request Response

We are legal counsel to Hydro One Networks Inc. ("Hydro One"), the Applicant in the above-referenced proceeding. We are writing in response to the Ross Firm Group ("RFG") intervenor request letter dated July 10, 2024, Ms. Lombardi, counsel on behalf of Peter, Graham, Brenda and Patricia Glasgow and Heather Gauthier ("Siskinds Client Group") intervenor request letter dated July 15, 2024, as well as the intervenor request letter dated July 15, 2024, submitted by Enbridge Gas Inc. ("Enbridge").

At the outset, Hydro One does not object to the requests made from RFG, the Siskinds Client Group, or Enbridge for intervenor status or their respective cost award eligibility requests.

RFG's submission states an intention of submitting undefined expert evidence, Hydro One suggests that before costs are incurred regarding this step, it would first be helpful for the Ontario Energy Board ("Board" or "OEB") and parties to understand the relevance, nature and scope of this type of evidence, particularly given the limited scope of issues arising in this proceeding and due to the priority nature of the Project. Doing so would ensure the scope of evidence proposed has been reasonably demonstrated to assist the Board in its consideration of the application and well before costs are incurred and claims are submitted.

There also appears to be a misunderstanding of the relief Hydro One is seeking in this application. The relief sought is leave to construct transmission facilities in accordance with section 92 of the *Ontario Energy Board Act, 1998* ("Act"). Hydro One is not seeking expropriation relief as prescribed in section 99 of the Act. Hydro One's need for expropriation authorization relief would only be determined once the form of land agreements included in the present application have been approved; leave to construct is granted and if voluntary negotiations with landowners prove to be unsuccessful. Hydro One will determine the need for section 99 relief only after the present application has been determined.

We make this observation given the reference found at the outset of the Siskinds Client Group submission (i.e. "Re: HONI Expropriation – Intervener Status Request") and also because both RFG and Siskinds Client Group submissions appear to address expropriation authority matters

as a basis for their oral hearing requests. For example, RFG states: *"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".*[1] Yet, Hydro One is not the government; the government is not a participant seeking relief in this proceeding. The land rights required for the Project will, again, occur by way of voluntary negotiations using the approved form of agreements that Hydro One has sought approval for in this application.

It is difficult to understand how the substantive form and terms and conditions of these agreements can be fairly construed as complex matters. They are a form of precedent Hydro One has used in other Leave to Construct applications, including ones which have included Mr. Ross' direct involvement. The most recent of which have proceeded by way of written hearing process.

In multiple instances, RFG also refers to Hydro One as seeking extraordinary relief by asking for an expedited review of this application.[2] Yet, what Hydro One has in fact asked for is a Board decision by December 2024, a date that is consistent with the Board's Leave to Construct Performance Standards.[3] This timing also aligns with the public policy objectives of the Ministerial Order.[4] Implementation of the Project is a provincial priority. The Project will enable up to 450 MW of supply capacity into the West of Chatham area for the region's economic growth and aims to reduce a typical residential customer's bill under the Regulated Price Plan by $0.14/month.[5]

Additionally, the relief Hydro One is seeking is not based on instantaneous efforts. Hydro One has taken more than two years to consult with stakeholders. As outlined in Hydro One's pre-filed evidence, a Class Environmental Assessment ("Class EA") process that included notification to the RFG members commenced in February 2022.[6] The preferred route was established in June 2023. The Class EA process was completed and submitted to the Ministry of the Environment, Conservation and Parks (MECP) on February 5, 2024.[7] Once the preferred route was established in that Class EA process, Hydro One began meeting with affected property owners to reach voluntary agreements.

Finally, as it concerns the Siskinds Client Group and RFG's assertions on whether an oral hearing is required to fulfil common law principles of natural justice and fairness, Hydro One is mindful of Section 5.1 of the *Statutory Powers Procedure Act* ("SPPA"). This provision states that tribunals, including the OEB, shall hold written hearings unless a party presents compelling justification for an alternative approach.[8]

In assessing the "compelling justification" standard, Hydro One observes that during the Board's EB-2022-0140 proceeding, RFG made virtually identical arguments as to why the Board in that proceeding should adopt an oral hearing process. As with the current circumstances, the EB-2022-0140 proceeding involved an application for section 92 relief and transmission facilities

[1] EB-2024-0155 – Ross Firm Group Intervenor Request Letter – Filed July 9, 2024 – p. 4 of 6.

[2] Ibid. For example, at page 3 of 6 the RFG submit "Given the submissions in HONI's instant Application, it is clear that the Applicant also wishes to expedite the process as much as possible".

[3] OEB Correspondence – Updates to Performance Standard and Other Process Improvements – Filed March 29, 2011 – Appendix B.

[4] Ibid – Exhibit B, Tab 3, Schedule 1, Attachments 1 to 3.

[5] Ibid - Exhibit B, Tab 9, Schedule 1.

[6] EB-2024-0155 – Hydro One Prefiled Evidence – Filed May 28, 2024 - Exhibit B, Tab 3, Schedule 1 — p. 2 of 4

[7] Ibid.

[8] Statutory Powers Procedure Act, RSO 1990, c S.22.

designated as a priority project and where affected landowners sought the extraordinary relief of an oral hearing process.

The Board squarely denied RFG's request.[9]

In its decision, the Board stated that the written hearing process provides sufficient scope for all parties to scrutinize the applicant's evidence adequately.[10] Written hearing processes have flexibility and allow the Board, when appropriate, to impose additional process steps in order to enhance the information gathering and discovery process.[11] The Board's decision also highlighted that while some evidence may be complex and technical, this alone does not necessitate an oral hearing.[12] Further, the Board was unpersuaded that RFG would obtain additional insights through oral cross-examination, finding that the existing evidence was sufficient for intervenors and Board staff to formulate their final positions.[13]

Hydro One submits that neither the Siskinds Client Group submission, nor those of RFG satisfy the SPPA's compelling justification standard. No unique circumstances have been raised. The rationale provided in EB-2022-0140 has not been addressed or demonstrated to be distinguishable. As a practicable matter, Hydro One is mindful that the time and resources required to convene an oral public hearing are significant. Given the thoroughness and flexibility of the written process and consistent with OEB precedent and the SPPA standard, Hydro One respectfully submits that the Siskinds Client Group and RFG's request for an oral proceeding can and should be dismissed.

Please do not hesitate to contact the undersigned should you have any questions regarding this matter.

Yours truly,
McCarthy Tétrault LLP

Gordon M. Nettleton
Partner | Associé

[9] Ibid at para 7.

[10] Ibid at para 11.

[11] Ibid at para 4.

[12] Ibid at para 11.

[13] Ibid at para 11.