

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

IN THE MATTER OF an Application by Hydro One Networks Inc. (“**HONI**”) pursuant to sections 92, 96.1, and 97 of the Act for an Order or Orders granting leave to construct approximately 64 kilometres of electricity transmission line and associated facilities from Lambton Transformer Station, connecting Wallaceburg Transformer Station, and terminating at Chatham Switching Station in the West of London area.

AND IN THE MATTER OF an Application by Hydro One Networks Inc. for approval of the form of land-use agreements offered or to be offered to affected landowners:

WRITTEN SUBMISSIONS FROM THE ROSS FIRM GROUP

Pursuant to the OEB’s Procedural Order No. 2 dated September 23, 2024, the Ross Firm Group submits the following in writing:

I. Introduction

We represent a group of landowners (the “Clients”), specifically the Ross Firm group of Landowners, who are subject to an expropriation by Hydro One Networks Inc. (“HONI”) pursuant to the *Ontario Energy Board Act*, 1998 (the “Act”), under a leave to construct application under Section 92. The application pertains to the construction of a new high-voltage transmission corridor (the “Project”).

Our Clients are concerned about the overly broad and onerous language in the proposed Transfer and Grant of Easement (the “Easement Agreement”) presented by HONI. We submit that this language is not supported by the legislation and appears to be an attempt to facilitate future projects without appropriate compensation or consultation with affected landowners.

Additionally, we have concerns regarding the inclusion of telecommunications lines and related business ventures within the Easement Agreement, which we believe are outside the scope of the current application and not properly addressed under the Act.

II. The Overbroad Easement Language

The pertinent clause in the Easement Agreement states:

(a) To enter and lay down, install, construct, erect, maintain, open, inspect, add to, enlarge, alter, repair and keep in good condition, move, remove, replace, reinstall, reconstruct, relocate, supplement and operate and maintain at all times in, through, under, over, across, along and upon the Strip an electrical transmission systems and telecommunications systems consisting in both instances of pole structures, steel towers, anchors, guys and braces and all such aboveground or underground lines, wires, cables, telecommunications cables, grounding electrodes, conductors, apparatus, works, accessories, associated material and equipment, and appurtenances pertaining to or required by either such system (all or any of which are herein individually or collectively called the ("Works")) as in the opinion of the Transferee are necessary or convenient thereto for use as required by Transferee in its undertaking from time to time, or a related business venture. This language is excessively broad, granting HONI the discretion to undertake any future works it deems "necessary or convenient," including for "a related business venture," without further compensation or consultation with the landowners. This could include unrelated commercial activities that may significantly disrupt agricultural operations or reduce the property's market value.

III. Attempt to Circumvent Compensation for Future Projects

In response to our interrogatory regarding HONI's position on undertaking future works within the easement lands without additional compensation, HONI stated:

"Generally, yes. If a future project could be constructed within an existing easement, and without the need for additional easement rights (as prescribed in the terms of the existing easement) and no temporary working rights were required in order to construct and operate the future project, then Hydro One would not reasonably expect to provide additional compensation to the original grantor, or its successors..."

This response indicates HONI's intention to rely on the broad language of the Easement Agreement to avoid compensating landowners for future projects. Such an approach is inconsistent with the principles of fairness and the statutory requirements under the Act.

IV. Lack of Disclosure to Landowners

HONI has not adequately disclosed to landowners that the Easement Agreement could be used to facilitate future projects unrelated to the current Project. None of the materials provided discuss the possibility of future projects. The onerous terms are embedded within a complex legal document, which may not be fully understood by the average landowner without legal assistance. This lack of transparency undermines the landowners' ability to make informed decisions about their property rights and contravenes the spirit of the Act, which emphasizes fair dealing with affected landowners.

V. Legislative and Regulatory Framework

Under the Ontario Energy Board Act, 1998, specifically Section 97, any offer to a landowner must be fair and reasonable and in a form approved by the Ontario Energy Board ("OEB"):

"In an application under section 90, 91 or 92, leave shall not be granted until the applicant satisfies the Board that it has offered or will offer to each owner of land affected by the approved route or location an agreement in a form approved by the Board."

The Act envisions that agreements with landowners are specific to the approved project. The overbroad language in the Easement Agreement extends beyond the scope of the current Project, effectively bypassing the need for future approvals and compensation, which is not supported by the legislation.

VI. Relevant OEB Decisions

A. EB-2010-0023 – Hydro One Networks Inc. – Bruce to Milton Transmission Reinforcement Project

In this decision, the OEB addressed issues related to land acquisition and the rights of landowners affected by transmission projects. The Board emphasized that easement agreements should be specific to the approved project and that utilities should not use easement agreements to secure rights for unspecified future projects without clear disclosure and consent from landowners.

The OEB underscored the importance of fair compensation and transparent dealings with landowners. Utilities are expected to provide clear information about the nature and extent of the rights being acquired. The Board recognized that any future projects not contemplated in the original easement would necessitate new agreements, ensuring that landowners have the opportunity to negotiate terms and receive compensation relevant to the new project's impact.

B. EB-2017-0182/EB-2017-0194 – Upper Canada Transmission, Inc. operating as NextBridge Infrastructure – East-West Tie Line Project

In this proceeding, the OEB considered the scope of easement agreements and the potential impact on landowners. The Board stressed that easement agreements should not be overly broad or impose unreasonable obligations on landowners. The rights granted should be proportionate and directly related to the approved project.

The OEB reaffirmed that utilities must obtain all necessary regulatory approvals for future projects, even if they intend to utilize existing easement lands. Compliance with legislative

requirements at the time of the future project is mandatory. The Board emphasized that any future projects would require new agreements with landowners, accompanied by fair compensation and consultation.

HONI argues that the language in this Easement Agreement is the same as that approved in other applications of this kind. While we acknowledge that similar language may have been used in past agreements, this should not be determinative in the present instance for several reasons:

1. **Changed Circumstances and Context:** Each project and its impact on landowners must be assessed on its own merits. The context and specific circumstances surrounding the current Project differ from previous applications, necessitating a fresh evaluation of the appropriateness of the easement language.
2. **Evolving Regulatory Standards:** Regulatory standards and expectations evolve over time. What may have been acceptable in past agreements may no longer align with current best practices or adequately protect landowner rights under updated regulatory frameworks.
3. **Landowner Awareness and Consent:** The lack of adequate disclosure and consultation in this instance distinguishes it from prior cases. Landowners may not have been fully aware of the implications of such broad language in previous agreements, and continuing this practice perpetuates potential injustices.
4. **Precedent Should Not Override Statutory Compliance:** Even if similar language was previously approved, it does not supersede the requirement for agreements to comply with current legislative provisions and OEB guidelines, which emphasize fairness and transparency.

VII. Inclusion of Telecommunications Lines and Related Business Ventures in the Easement Agreement

A. Concerns Raised by the Ross Firm Group of Landowners

Our Clients, the Ross Firm group of Landowners, have raised specific concerns regarding the inclusion of telecommunications lines and related business ventures within the Easement Agreement. They requested that HONI provide details of the economic models for these related business ventures, including revenue potential, operational costs, and types of related business ventures.

HONI responded:

"No economic modelling has been completed, as there are no related business ventures contemplated at this time."

Despite this response, it is apparent that HONI contemplates using the telecommunications lines with third parties for profit. By including "related business ventures" within the Easement Agreement, HONI is positioning itself to engage in profitable activities without providing additional compensation to the landowners.

B. The Electricity Act and Compensation for Related Business Ventures

While HONI may be authorized to install telecommunications lines without additional compensation under certain circumstances, the **Electricity Act, 1998** is silent on compensation to landowners for profits made by related business ventures utilizing these lines. The Act does not contemplate granting utilities unfettered rights to leverage easements acquired for electrical transmission purposes for unrelated commercial activities without appropriate compensation to affected landowners.

C. Impact on Ratepayers and Regulatory Oversight

The potential profits from these related business ventures should be considered as an offset to rates charged to consumers or as an additional benefit that should be transparently addressed within the application. The inclusion of such ventures without proper disclosure and regulatory scrutiny undermines the OEB's mandate to protect the interests of consumers with respect to prices and the adequacy, reliability, and quality of electricity service.

D. Outside the Scope of the Application and OEB's Authority

The inclusion of related business ventures within the Easement Agreement is outside the scope of the current application under Section 92 of the Act. The OEB's jurisdiction in this application pertains to the approval of the construction of the transmission project as contemplated by the Independent Electricity System Operator (IESO) and the Minister of Energy.

Granting easement rights for unrelated business ventures exceeds the scope of what the OEB can approve within this application. The Board should ensure that any rights granted within the Easement Agreement are limited to those necessary for the construction and operation of the approved Project.

E. Request for Exclusion from the Easement Agreement

We submit that the language pertaining to telecommunications systems and related business ventures should not be included in the Easement Agreement as it is currently drafted. If HONI wishes to engage in such ventures in the future, it should be required to:

1. Seek separate approvals from the OEB and any other relevant regulatory bodies.
2. Negotiate new agreements with landowners, providing full disclosure and fair compensation for the additional rights and potential impacts on their properties.
3. Ensure that any profits derived from such ventures are transparently reported and considered in the context of consumer rates and benefits.

VIII. Absence of Decommissioning Provisions

A. OEB Filing Requirements

According to the **OEB Filing Requirements for Electricity Transmission Applications**, Chapter 4, Appendix B: Standard Elements of Land Use Agreements, Section 5 – Decommissioning:

"A decommission clause should set out that the energy company will be responsible to cover the cost of decommissioning the facilities and restoring any damage done to the area in use. This clause should also have specific procedures for the decommissioning process."

B. Lack of Decommissioning Clause in the Easement Agreement

The Easement Agreement lacks any decommissioning provisions. HONI claims it is too far in the future to project decommissioning plans. However, this is insufficient justification for omitting such a clause.

C. Feasibility of Including Decommissioning Provisions

HONI can and should commit to decommissioning once facilities are no longer required, replaced, or unserviceable. The costs can be estimated based on the expected service life of the Project. Including a decommissioning clause is standard practice and aligns with OEB guidelines.

D. Implications of Omission

Without a decommissioning clause, landowners risk being left with obsolete infrastructure on their property, negatively impacting land use and value. It is unreasonable for HONI to avoid this responsibility.

E. Request for Inclusion

We request that the OEB require HONI to include a decommissioning clause in the Easement Agreement, outlining:

1. HONI's responsibility for covering decommissioning costs.
2. Procedures for the decommissioning process.
3. Restoration obligations to return the land to its prior condition.

IX. Conclusion and Relief Sought

The overbroad language in the Easement Agreement proposed by HONI is inconsistent with the legislative framework and OEB precedents. It seeks to grant HONI rights beyond the scope of the current Project, potentially allowing future projects and unrelated business ventures without proper compensation or consultation with landowners.

We respectfully request that the Ontario Energy Board:

- 1. Require HONI to Amend the Easement Agreement:**
 - a) Limit the scope strictly to the current Project.
 - b) Exclude language pertaining to telecommunications systems and related business ventures.
 - c) Include a decommissioning clause as per OEB guidelines that obligates HONI to dismantle all equipment and restore the land to its original condition at the end of the project's useful life.

2. Ensure Proper Disclosure:

- a) Mandate clear and transparent information to landowners about the rights being acquired.
- b) Require disclosure of implications for future projects or business ventures.

3. Mandate Fair Compensation and Consultation:

- a) Restrict HONI from engaging in future commercial activities or expansions under the Easement Agreement without explicit approval from the landowners and establish that HONI must acquire new easement rights for future projects or ventures, providing fair compensation and consultation.
- b) Ensure decommissioning responsibilities are clearly defined and accepted by HONI.

4. Consider the Impact on Ratepayers:

- a) Require HONI to disclose potential profits from related business ventures, providing clear, accessible information regarding the full extent of the rights it is seeking, ensuring that landowners understand the long-term implications of the easement.
- b) Consider these profits as offsets to consumer rates.

Costs of Participation:

- 1. The Ross Firm Group respectfully requests that they be awarded 100% of their reasonably incurred costs of participating in this proceeding.
- 2. The Ross Firm Group submits that its participation in this proceeding has been responsible, respectful of the proceedings, and justifies the award of costs that they have requested.

All of which is respectfully submitted on this 8th day of October, 2024.

Supporting OEB Decisions:

- **EB-2010-0023:** Hydro One Networks Inc. – Bruce to Milton Transmission Reinforcement Project
- **EB-2017-0182/EB-2017-0194:** Upper Canada Transmission, Inc. operating as NextBridge Infrastructure – East-West Tie Line Project

References

- **Ontario Energy Board Act, 1998**, Section 97.
- **Electricity Act, 1998**