

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act*, 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, connection 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 SUBMISSION OF:

Peter Glasgow, Graham Glasgow, Brenda Glasgow

THE SISKINDS FIRM GROUP

1. On May 28, 2024, HONI sought under the provisions of section 92 of the Act approval from the Ontario Energy Board (“**OEB**”) for an Order or Orders granting leave to construct transmission facilities (“**SCTL Project**” or “**Project**”) in the West of London area between St. Clair Township and the Municipality of Chatham Kent.
2. Also, on May 28, 2024, HONI sought pursuant to section 97 of the Act, OEB approval for an Order granting approval for the form or forms of land use agreements offered or to be offered to affected landowners.
3. In accordance with Procedural Order No. 2, these are the written submissions of The Siskinds Firm Group (the “**Siskinds Group**”) in support of its position. In these submissions, The Siskinds Group set out its position and responds to what it understands to be HONI’s position, based on the record of the proceeding. To the extend that HONI expands or changes its position or evidence in their reply submissions, the Siskinds Group reserves the right to respond as deemed appropriate.

The Project

4. HONI is seeking permission to construct a 230 kilovolt double-circuit transmission line from the Lambton Transformer Station, connecting to the Wallaceburg Transformer Station, provided approximately 64 kilometres of transmission line facilities.

5. Permission is also being sought by HONI to convert the Wallaceburg Transformer Station from a 115 kilovolt supply to a 230 kilovolt supply to repurpose the existing 115 kV transmission supply line corridor for the new transmission line.

6. Approval is also being requested by HONI to complete any associated any station facility expansions or upgrades required at the terminal stations and approval of the form or forms relating to the land use agreements.

7. The Siskinds Group all either have facilities situated, or own property, or HONI is seeking access across their Property as part of the Project.

Annual Payments

8. Despite HONI's statements to the contrary, there exists considerable precedent for the provision of annual payments as part of any land rights acquisition program for the Project.

9. The provision for, and inclusion of, an annual payment is neither unusual nor unheard of in circumstances where a service provider utilizes a private landowner's property to facilitate the provision of such public service. For example, Union Gas, regularly includes within its contract minimum annual payment provisions¹.

10. Union Gas previously and now Enbridge has and have entered into contractual agreements providing for payments for storage rights on a per acre basis annually. Such an annual payment was also applied to the Roadway Easement² and privately owned lands.

11. Currently gas companies are compensating at an annual rate of \$188.06 per acre for the entire property, in addition to payments of \$2,147.00 per measured acre land out of production (i.e. driveways, work pads) and an additional \$2,174.00 per wellhead on any affected property on an annual basis. Noting that all of these payments are adjusted annually for inflation purposes.

¹Union Gas Ltd., Re, Ontario Energy Board, 2014 CarswellOnt 19641

² Amended Application for just and equitable compensation in respect of gas or oil rights, Re, Ontario Energy Board, 2003 CarswellOnt 11113

12. The case of *Market Hub Partners Management Inc., Re*, required that an annual gas storage compensation be offered for petroleum and natural gas leases, gas storage leases, wells, access roads and outside acreage. The annual payments were competitive with other compensation programs currently offered by the various other storage operators in Ontario³.

13. While HONI's land rights acquisition program, and associated compensation, may be consistent with previously approved HONI applications, it is not consistent with what is occurring in the market in circumstances where there are ongoing or continual impacts to the use of lands directly arising as a result of the Project.

14. While HONI takes the position that it may be compensating landowners for the necessary legal rights it requires for its assets via a one-time payment framework it has continually disregarded the harm and impacts caused annually to those landowners.

15. HONI's methodology as set out above, being no annual payments, is not consistent with how other long term infrastructure companies approach their land rights compensation in the Province. For example, it is not usual for lands used for a gas pipeline or wind turbine project or landfill to provide annual compensation for the ongoing use of the lands for which it acquires either outright or for the purposes of an easement.

16. It is notable that the Project impacts a significant number of agricultural lands that will either be lost or impacted. Those ongoing and continued losses and/or impacts are not being compensate on an annual basis.

17. It is not unusual for landowners to receive annual compensation as a result of the impacts associated with the construction of facilities that serve the public benefit such as landfills, fossil fuel pipelines and fossil fuel storage areas, windmills and other similar facilities for the continuous and ongoing disruption caused by and arising from the Project.

Impacts on Socio-Economic Environment

18. The TAC advised HONI as part of the Final Environmental Study Report that farmland is an important criterion to be conserved. In order to measure this important criterion, it was recommended that the economic hardship on landowners by utilized as the metric. In making this recommendation it was suggested that HONI interview

³ Market Hub Partners Management Inc., Ontario Energy Board, Re, 2008 CarswellOnt 12086

landowners to understand what they specifically grow as a crop and how much of an impact the Project will have on the agricultural property(ies)⁴.

19. Despite the recommendations associated with consultation with the agricultural property owners, HONI has failed to engage in meaningful consultation with the Siskinds Group in terms of their utilization or “shared prosperity” from the existing drainage pumping system being operated at the sole cost and expense of the Siskinds Group. It is unreasonable for HONI to think that it has the *carte blanche* rights to utilize the existing agricultural resources constructed by the agricultural landowners in the area for the benefit of their agricultural operations without providing the appropriate compensation.

20. HONI initially communicated with the Siskinds Group in terms of obtaining early access and discuss possible infrastructure (tower) locations, but the issue of compensation associated with the easement has never been discussed. The concerns and questions raised by the Siskinds Group have been deferred to a proposed meeting with an independent third party appraiser which has yet to occur.

21. No meaningful consultation has occurred with the Siskinds Group.

22. An identified guiding principle relating to the selection of mitigation measures included “Proactive communication with Indigenous communities, government agencies, stakeholders and interest groups regarding the Proposed Project⁵.” Such communication, did not, and has not occurred with all of the stakeholders, specifically those agricultural landowners impacted by the Project and whose resources are being utilized by HONI such as the Siskinds Group.

Landowner Agreements

23. The Siskinds Group, and all landowners impacted, must clearly understand the access rights for maintenance, repair, and emergency purposes; restrictions placed on the use of their lands; any removal and relocation and reconstructions activities.

24. The language of the easement must restrict HONI’s activities to ensure as minimal and little impact as possible occurs on the agricultural landowners’ properties, including those owned and operated by the Siskinds Group.

⁴ Final ESR, page 3-155

⁵ Final ESR, page 7-397

Impacts on Agricultural Operations

25. HONI takes the position that as there are no “decommissioning plans for this new transmission line, and as such no mitigation measures are contemplated at this time.” This statement fails to consider that HONI has recently abandoned several transmission lines and towers throughout the area with no decommissioning plan. Such activities result in the landowner of bearing the burden of derelict towers that cannot be removed due to the restrictive language contained in HONI’s agreements.

26. The preparation of a standard decommissioning plan does not place an unreasonable burden on HONI. Decommissioning and rehabilitation are standard requirements in such instances and appropriately relieves the landowner of the burden of having to deal with, and address, HONI’s abandoned assets.

27. HONI appears to be taking the position that in what are “unique and exceptional” circumstances it will provide further compensation for lands that are removed from agricultural production. There is no explanation, definition, or identification of what HONI considers to be a “unique and exceptional” circumstance. This inappropriately leaves it solely to the discretion of HONI as to when it will compensate the landowner for any such impacts.

28. HONI and the Final ESR does not take into account or consider the impact of HONI’s activities and transmission line on the various electronic equipment that is, and has become, an integral part on the farm machinery utilized as part of the agricultural operation.

29. Considering the significant number of agricultural properties impacted by the Project, it is reasonable for the OEB to require HONI to investigate and identify those “unique and exceptional” circumstances whereby the impacts arising as a result of the Project are appropriately compensated.

30. HONI should be, at all times, responsible to provide compensation to the landowners experiencing a loss of an agricultural improvement due to the Project. HONI however takes the position that “where there is contemplation of agricultural improvement removal will depend on whether voluntary agreements are executed by a property owner or expropriation authorization required.” Such compensation should be mandated, by the OEB regardless of whether a voluntary agreement is executed by the property owner or expropriation proceedings are required. The impact on the landowner does not change in either situation or circumstances. It is the impact on the landowner, being the loss of or impact to the land, that at all times should be taken into consideration.

31. HONI is attempting to leverage the voluntary agreement form of compensation as payments to force landowners to enter into a voluntary agreement. This ignores the basic principle that the landowner should be appropriately compensated for any harm to its property or operations as a result of the Project regardless of its contractual arrangement with HONI.

32. It is dismissive and an oversimplification for HONI to take the position that the testing of imported topsoil should be limited to Soybean cyst nematode (SCN) or otherwise shown to be free of SCN. HONI cannot relieve itself of its obligations to comply with all applicable laws including those relating to excess soil, the importation of soil, and movement of soil between properties.

33. The rights of the landowners impacted by the Project was recognized and enunciated by the Supreme Court of Canada in the case of *Dell Holdings Ltd. v Toronto Area Transit Operating Authority* at paragraph 20 stating:

The expropriation of a property is one of the ultimate exercises of governmental authority. To take all or a part of a person's property constitutes a severe loss and a very significant interference with a citizen's private property rights. It follows that the power of an expropriating authority should be strictly construed in favour of those whose rights have been affected. This principle has been stressed by eminent writers and emphasized in decisions of this Court⁶.

34. Recognizing the significant impact of the Project on the Siskinds Group and other agricultural landowners it is incumbent on the OEB to ensure that the compensation packages, easements, and landowner agreements protect the rights of those landowners, being those direct and indirect impacts arising as a result of the Project.

35. The mixing of soil and movement of soil from one property to another can have far reaching and devastating impacts on an agricultural property. Further, soil stripping removes environmental protection or compact the soil, ruining its quality, risking contaminated ground, or causing erosion. Each of these negatively impact the physical, chemical, and biological properties of the soil and its ability to support drainage or vegetation. HONI's dismissal of such effects by stating that "undesired ground disturbance is minimized to the extent practical" neglects to consider the devastating effects of such activities on agricultural lands. Such effects must be taken

⁶ *Dell Holdings Ltd. v Toronto Area Transit Operating Authority*, [1997] 1 S.C.R. 32 at para 20

into consideration, appropriately compensated, and reflected in the various landowner agreements.

36. HONI recognized that the long-term and result in net effects (that are not anticipated to be significant) may result as a result of the Project and indicates that many are temporary in nature and can be mitigated with diligent construction planning and implementation of mitigation measures. In circumstances such as these the OEB has an obligation to uphold the precautionary principle and apply the precautionary approach.

37. HONI's approach to those effects on agricultural operations that will be long term and result in net effects is inconsistent with the precautionary principle, which is a principle of international law and policy that has been cited by the Supreme Court of Canada as an appropriate statutory interpretation aid⁷.

38. The term "precautionary principle" at its core, calls for preventative, anticipatory measures to be taken when an activity raises threats of harm to the environment, wildlife, or human health even if some cause-and-effect relationship has not been fully established⁸.

39. The risk of harm to the agricultural operations arising as a result of the Project should be appropriately considered and landowners compensated both in the short and long term for such harms.

40. The Supreme Court of Canada has recognized the "precautionary principle" that can be used to inform various powers including those such as HONI who act, and provide infrastructure that is, for the general welfare of the public⁹.

41. HONI recognizes that the "inherent nature of transmission line construction causes disturbance to farming operations ..." While HONI recognizes and acknowledges such disruption, it is appropriate for mitigation measures to be applied in the circumstances. Such mitigation measures include but are not limited to ensuring that there are no impacts on agricultural productions during sensitive agricultural

⁷ J. Abouchar (2002) "The Precautionary Principle in Canada: The First Decade" 12 *The Environmental Law Reporter, News and Analysis*, (U.S) December 2000 11407 at 11407. See also E. Brandon, "Does International Law Mean Anything in Canadian Courts?" (2002) 11 *Journal of Environmental Law and Practice* 399 at 424-426 and 441-443

⁸ Bernie, Boyle, and Redgwell, *International Law & the Environment*, 3rd ed. (United States: Oxford University Press, 2009 at pages 155-156; See also C. Smith, "The Precautionary Principle and Environmental Policy, Science Uncertainty and Sustainability" (2000) 6:3, *International Journal of Occupational and Environmental Health* at page 263

⁹ *Canada Ltee (Spraytech, Societe d'arrosage) v Hudson (Town)* [2001] 2 SCR 241

times. The compensation package and various agreements being proposed by HONI fail to address, take into consideration, and compensate for such impacts.

Costs of Participation

42. Siskinds Group respectfully requests that they be awarded 100% of their reasonably incurred costs of participating in this proceeding.

43. Siskinds 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.



Paula Lombardi, LSO#: 46935M

Siskinds LLP
275 Dundas Street, Unit 1
London, ON N6B 3L1

Email: paula.lombardi@siskinds.com
Tel: 519.660.7878