

Hydro One Networks Inc.

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BY EMAIL AND RESS

December 16, 2024

Ms. Nancy Marconi
Registrar
Ontario Energy Board
Suite 2700, 2300 Yonge Street
P.O. Box 2319
Toronto, ON M4P 1E4

Dear Ms. Marconi,

EB-2024-0142 – Hydro One Networks Inc. – Expropriation Application Near City of Port Colborne – Application and Evidence

Hydro One Networks Inc. (“Hydro One”) hereby applies to the Ontario Energy Board (“Board”) pursuant to section 99(1) of the Ontario Energy Board Act, 1998, (“OEB Act”) for authority to expropriate certain interests in the lands as more particularly described and shown in the plans and descriptions attached hereto. Hydro One requires expropriation authorization so that it may continue to operate existing transmission lines near the City of Port Colborne as further described in the application.

In accordance with OEB filing requirements and policies, components of this application have been filed in confidence given the personal nature of the information disclosed therein. Hydro One confirms that all redacted versions of documents filed in support of Hydro One’s application do not disclose any personal information under the Freedom of Information and Protection of Privacy Act.

An electronic copy of this Application and Evidence has been filed through the OEB’s Regulatory Electronic Submission System.

Sincerely,



Joanne Richardson

cc: Gord Nettleton (McCarthy Tétrault)
Sam Rogers (McCarthy Tétrault)
Monica Caceres (Hydro One Networks Inc.)

ONTARIO ENERGY BOARD

IN THE MATTER OF the Ontario Energy Board Act, 1998, S.O.
1998, c.15, Sched. B (the “Act”)

AND IN THE MATTER OF section 99 (1) of the Act

AND IN THE MATTER OF an Application by Hydro One Networks
Inc. for authority to expropriate land for the purpose of operating
a 115 kilovolt transmission lines in Port Colborne, Ontario.

APPLICATION FOR AUTHORITY TO EXPROPRIATE LAND INTERESTS
HYDRO ONE NETWORKS INC.

December 16, 2024

INTRODUCTION

1
2 1. Hydro One Network's Inc., ("Hydro One") owns and operates 115 kilovolt
3 transmission lines and facilities known as the C2P and A6C transmission lines (the
4 "**Existing Transmission Lines**"). The Existing Transmission Lines are an integral
5 part of the IESO-controlled grid, located adjacent to the Welland Canal near the City
6 of Port Colborne. Appendix 1 of this Application provides a map showing the location
7 of the entire route for the Existing Transmission Lines that originate from Allanburg
8 Transformer Station and/or Crowland Transformer Station and proceed south to the
9 Port Colborne Transformer Station. Along this path these circuits supply numerous
10 industrial customer facilities as well as local distribution companies that supply
11 residential and commercial customers in the area. Appendices 2A and 2B of this
12 Application provides a zoomed in aerial map of the lands in question.

REQUESTED RELIEF

13
14
15
16 2. In accordance with section 99 of the *Ontario Energy Board Act, 1998* ("**OEB Act**")
17 Hydro One seeks the authority to expropriate certain interests in the lands on which
18 the Existing Transmission Lines are situated and as more particularly described and
19 shown in the plans and descriptions attached hereto. In the alternative, Hydro One
20 requests such other relief as the OEB may determine to be necessary and in the
21 public interest necessary to maintain the ongoing safe and reliable operation of the
22 IESO-controlled transmission grid, including the ongoing safe operation of the
23 Existing Transmission Lines.

BACKGROUND

3. The Existing Transmission Lines deliver power from the Sir Adam Beck No. 1 and No. 2 Generating Stations in Niagara Falls, Ontario, to large industrial customers in Welland and Port Colborne, Ontario, as well as supplying local electricity distribution companies that provide power to residential and commercial customers in the area.
4. In the 1960s, the lands on which the Existing Transmission Lines are situated were expropriated by the St. Lawrence Seaway Authority (“St. Lawrence Seaway”), a federal body. This expropriation was undertaken as part of a project to realign the Welland Canal. This realignment required Hydro One to relocate portions of its transmission system to their current location on the expropriated lands because their original location was in the path that the realigned Canal would take. As part of this relocation and realignment project, Hydro One obtained licences of occupation for its transmission facilities from the St. Lawrence Seaway. Since this time, the Existing Transmission Lines have remained in operation.¹
5. In January and February 2006, the City of Port Colborne purchased portions of the originally expropriated lands from Canada Lands Corporation, the then title holder. The lands subject to the purchase were encumbered by the HONI licences and listed as permitted encumbrances on the properties. The licences held prior to the City of Port Colborne purchase are documented in Appendix 2D and 2E.
6. The City of Port Colborne subsequently entered into an Agreement of Purchase and Sale with Nyon Energy Corp, which transaction was completed with Nyon Oil Inc. and 1170367 Ontario Inc. (collectively referred to as “Nyon”) and accepted on January 30, 2006. The Agreement of Purchase and Sale was conditional on a number of matters, inclusive of Zoning and Official Plan amendments to accommodate a Nyon proposed

¹ The Existing Transmission Lines have been assessed to be in the public interest, as defined and detailed by Ontario Executive Council O.C. 2393/76 issued on August 25, 1976. A copy is found at Appendix 2C to this Application.

1 “Energy Park” development. This transaction ultimately closed on May 1, 2015. At
2 that time, neither Port Colborne or Nyon notified Hydro One of this transaction.
3 Shortly thereafter, on September 22, 2015, Nyon issued a letter to Hydro One
4 purporting that Hydro One does not have the right to occupy the lands in question
5 and served Hydro One with a Notice to Pay or to Quit and a Notice to Remove. A
6 copy of this letter is provided as Appendix 2F.

7
8 7. In October 2015, through counsel, Hydro One and Nyon agreed to hold Nyon’s
9 September 22, 2015 letters and notices “in abeyance” pending the resolution of the
10 dispute. Over the subsequent months, correspondence was exchanged between the
11 parties with Hydro One sending a final letter on December 9, 2015 to which Nyon did
12 not respond or take any other steps to assert its rights until 2024. A copy of the
13 December 9, 2015 correspondence is included at Appendix 2G of this Application. As
14 well as the communication between counsel from October 2, 2015.

15
16 8. Hydro One understands that since Hydro One’s last correspondence with Nyon on
17 this matter, Nyon no longer owns much of the lands it originally acquired from the City
18 of Port Colborne. Those lands are now owned by other parties, as illustrated in
19 Appendix 3. Nyon has only retained ownership of the lands over which the Existing
20 Transmission Lines reside.

21
22 9. Hydro One has been advised by Nyon that Nyon asserts an ownership right in the
23 Existing Transmission Lines. Nyon asserts that because the Existing Transmission
24 Lines were affixed to the lands that they became a part of the land and when the land
25 was expropriated by the St. Lawrence Seaway the Existing Transmission Lines also
26 formed part of that expropriation. A copy of the correspondence received from Nyon
27 outlining Nyon’s ownership views is provided as Appendix 4 of this Application.

28
29 10. Section 44 of the *Electricity Act* provides that “[d]espite any other Act, if property of a
30 transmitter or distributor has been affixed to realty, the property remains subject to
31 the rights of the transmitter or distributor as fully as it was before being so affixed and

1 does not become part of the realty unless otherwise agreed by the transmitter or
2 distributor in writing.” Predecessors of the *Electricity Act*, including the *Power*
3 *Commission Act*, R.S.O. 1960, c. 300, which was in force at the time of the
4 expropriation contain substantively identical language.

5
6 11. At all material times Hydro One has maintained ownership and control over the
7 operations and maintenance of the Existing Transmission Lines. The components
8 that were in place in the 1960s originally affixed to the land have long since been
9 replaced through Hydro One's ongoing maintenance programs.

10
11 12. No previous owner of Nyon's lands has asserted an ownership right to Hydro One's
12 assets. The St. Lawrence Seaway acknowledged that Hydro One owned the Existing
13 Transmission Lines in its agreements with Hydro One, which granted Hydro One's
14 predecessor “the right and privilege to maintain and operate its power lines and
15 electricity supply facilities”.

16
17 13. Pursuant to section 19(1) of the Act “[t]he Board has in all matters within its jurisdiction
18 authority to hear and determine all questions of law and of fact.” If Nyon alleges an
19 ownership interest in the Existing Transmission Lines in response to this Application,
20 the OEB should determine, as a matter of fact and law, that Hydro One owns the
21 Existing Transmission Lines and then proceed and grant the relief requested in this
22 Application.

23
24 14. On February 21, 2024, Nyon initiated legal proceedings asserting, among other
25 things, that the licensees pursuant to which Hydro One operates the Existing
26 Transmission Lines are cancelled. Nyon thereby illustrated that an amicable voluntary
27 resolution to this matter is unlikely. Thus, given that the OEB may grant regulated
28 electricity transmission utilities expropriation authorization if such relief is
29 demonstrated to be in the public interest, Hydro One requests such relief in this
30 circumstance.

1 15. In support of the relief requested, Hydro One relies on previous OEB jurisprudence
2 that considered similar factual circumstances. Specifically, in 2012, the OEB
3 considered a request for expropriation authorization relief, pursuant to section 99 of
4 the Act, by Enbridge Gas Distribution Inc. over certain lands for the purposes of
5 continuing the operations of an existing natural gas distribution main in the City of
6 Welland.²

7
8 16. Enbridge's pipeline had been constructed in 1972 to provide natural gas to the City
9 of Port Colborne. Like the Existing Transmission Lines, it was constructed on land
10 owned by the St. Lawrence Seaway in the same area as the Existing Transmission
11 Lines. At the time, the St. Lawrence Seaway had entered into licence agreements
12 with Enbridge's predecessor giving them the right to install, operate, maintain and
13 replace the pipelines. As explained by the OEB in 2012:

14 *The St. Lawrence Seaway Authority was succeeded by the St.*
15 *Lawrence Seaway Management Corporation, which then transferred*
16 *the subject lands to the Canada Lands Corporation CLC Limited. The*
17 *subject lands have since been transferred to private individuals.*³
18

19 17. This is the same scenario facing Hydro One in relation to the Existing Transmission
20 Infrastructure.

21
22 18. The OEB concluded that expropriating an easement over the lands of the private
23 individuals was in the public interest "the pipelines were installed in the 1970s and
24 provide natural gas service to the Town of Fort Erie and the City of Port Colbourne.
25 The Board notes that eliminating the pipelines could compromise natural gas service
26 for a large number of customers. The Board also notes that no interested party argued
27 that the pipelines do not serve the public interest."
28

29 19. A copy of the OEB Decision and Order in that application is provided as Appendix 5.

² EB-2011-0391

³ EB-2011-0391 at para 6.

PROJECT LAND REQUIREMENTS

20. Expropriation authorization is sought over limited land interests, namely, those required to safely and reliably operate the facilities now and in the future. In order to accommodate the Existing Transmission Lines, new permanent easement interests in land of a general width of 15 metres from either side of C2P and the A6C transmission lines in a separate or consolidated configuration with resulting adjustment for overlapping corridors or stranded lands will be required over the Nyon lands, which comprises approximately 14.51 hectares. This taking will ensure the ongoing safe operation of the Existing Transmission Lines. The relief requested in this application is consistent with the typical easement interests obtained by Hydro One for similar transmission infrastructure, and what has been historically required for the Existing Transmission Lines.

21. Given the legal proceedings now being initiated by Nyon, and its purported cancellation of the licenses, Hydro One must seek expropriation authorization from the OEB to ensure it is able to continue to operate the Existing Transmission Lines irrespective of Hydro One's ongoing willingness to secure these rights voluntarily.

DESCRIPTION OF THE LAND INTERESTS TO BE EXPROPRIATED

22. A description of the lands and the specific interests in lands in which Hydro One is seeking authority to expropriate is documented in Appendix 6. This list is inclusive of all land interests Hydro One requires to access, inspect, operate and maintain the Existing Transmission Lines.⁴ Hydro One has conducted a search of title sufficient to identify the current registered property owners, those who hold encumbrances on the lands, and those with any interest in the lands directly affected by this Application.

⁴ Consistent with the decision in EB-2011-0391 at paragraph 15, Hydro One seeks an easement in perpetuity to survey, remove trees, clear, lay, construct, install, operate, use, inspect, remove, renew, replace, alter, enlarge, reconstruct, repair, expand, maintain transmission infrastructure and all works, appurtenances, attachments, apparatus, appliances, markers, fixtures and equipment.

1 Thus, in Appendix 6, Hydro One also provides the names of these individuals listed
2 by property. Personal information has been redacted in accordance with OEB
3 policies. Hydro One confirms that all registered property owners and encumbrancers
4 directly affected by this Application will be notified in writing of Hydro One's intentions
5 to proceed and seek the relief now requested in this Application.

6
7 23. Attached hereto as Appendix 7 are draft reference plans showing the lands over
8 which authority to expropriate the interests set out in Appendix 6 is being requested
9 and the registered owners thereof.

10
11 24. As noted above, Hydro One continues to be willing to negotiate with the registered
12 property owners listed in Appendix 6. These appendices will be updated over the
13 course of this proceeding should negotiations ameliorate and proceed to completion.

14
15 **PUBLIC INTEREST**

16
17 25. The expropriation authority requested herein is required in order for Hydro One to
18 safely operate and maintain the Existing Transmission Lines and provide service to
19 an estimated 37,0000 customers served by these lines, which includes the entire City
20 of Port Colborne.

21
22 26. The Existing Transmission Lines are needed to maintain a safe, reliable and adequate
23 supply of electricity in the Province. The rights in the lands requested herein are
24 integral to the continued uninterrupted use of the Existing Transmission Lines and
25 therefore are necessarily in the public interest.

26
27 27. As described in paragraphs 5 and 6, Hydro One has attempted good faith negotiations
28 with all landowners affected by the Existing Transmission Lines and has offered
29 consistent offers of settlement based on the Company's LACP.

28. Hydro One requests an Order granting it the necessary authority to expropriate the land interests more particularly described in Appendix 6. This would allow the necessary time for filing and registration of the expropriation plans after receipt of the decision and clarify any existing ambiguities between the current property owner and Hydro One that will in turn avoid or mitigate existing legal proceedings over same.

NOTICE

29. Hydro One requests that a copy of all documents filed with the OEB be served on the Applicant and the Applicant's counsel, as follows:

a) The Applicant:

Eryn Mackinnon
Regulatory Advisor
Hydro One Networks Inc.

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b) The Applicant's Counsel:

Monica Caceres
Assistant General Counsel
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4

5 **c) The Applicant's Counsel:**

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8 McCarthy Tétrault
9

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16

17 **d) The Applicant's Counsel:**

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19 Partner
20 McCarthy Tétrault
21

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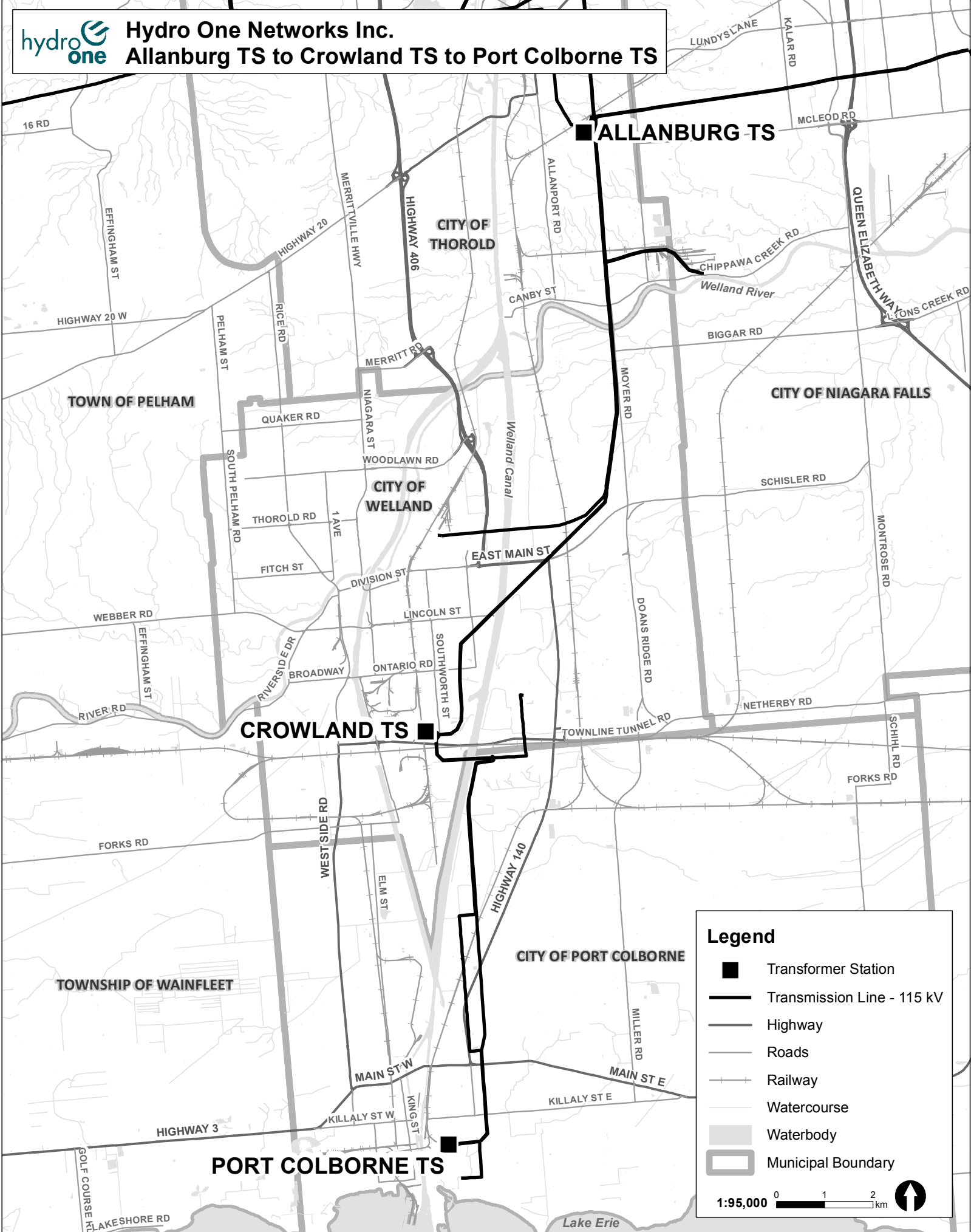
1 30. This Application for authority to expropriate certain interests in the lands as more
2 particularly described and shown in the plans and descriptions attached hereto and
3 any other relief the OEB may so deem necessary is respectfully submitted to the OEB
4 on December 16, 2024.

Appendix 1

General Route



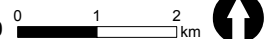
Hydro One Networks Inc. Allanburg TS to Crowland TS to Port Colborne TS



Legend

- Transformer Station
- Transmission Line - 115 kV
- Highway
- Roads
- Railway
- Watercourse
- Waterbody
- Municipal Boundary

1:95,000



Appendix 2A

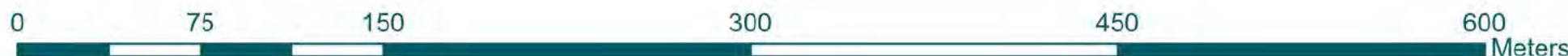
Route Aerial Map



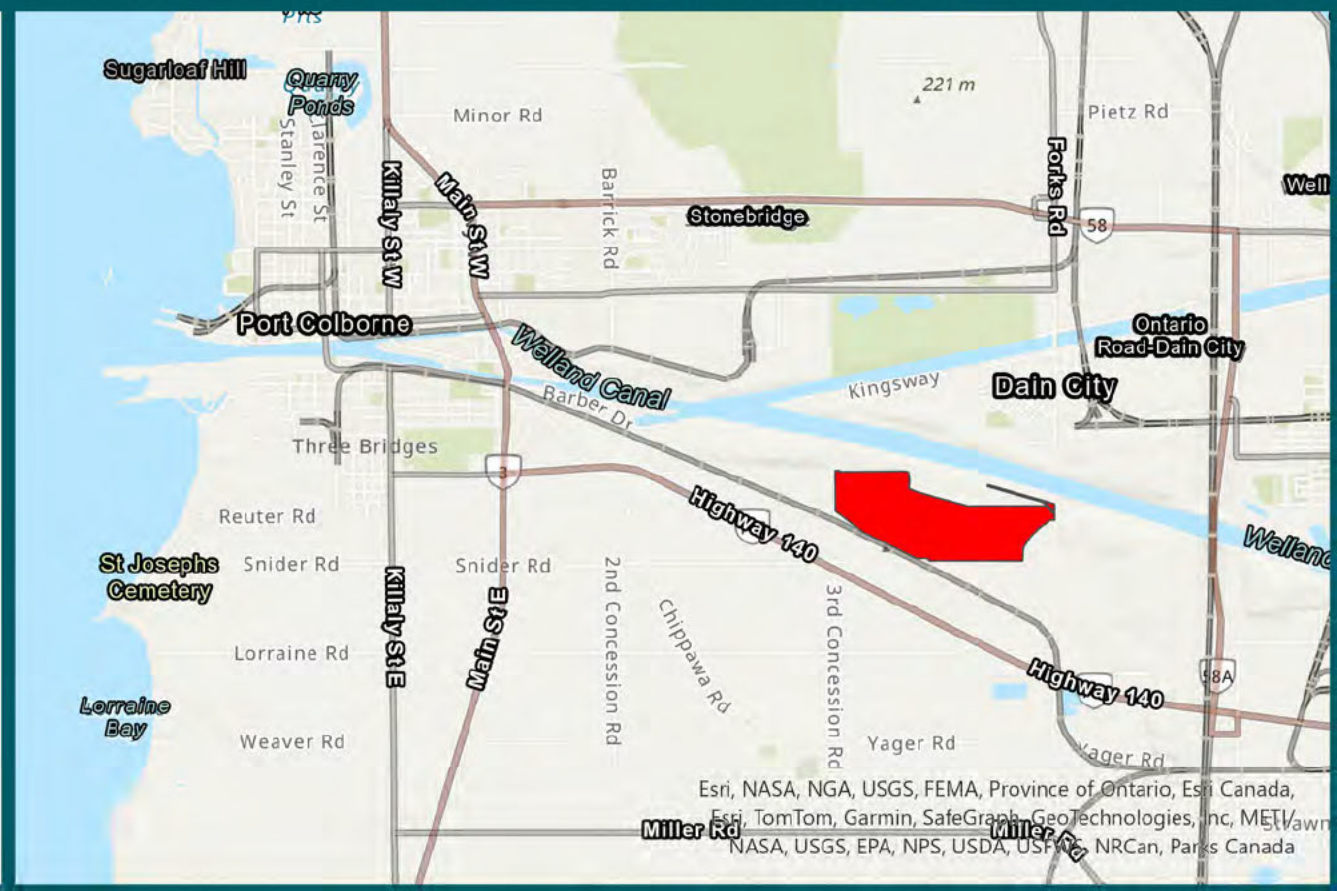
Appendix 2A

3rd Concession Road & Forkes Road East (4th Concession Road)

NOT TO BE REPRODUCED OR REDISTRIBUTED, CONFIDENTIAL TO HYDRO ONE NETWORKS INC.



- Circuit Line (115 kV)
- ▨ Areas to be Expropriated
- Owner of Parcel
- Yellow box: [Redacted]
- Orange box: [Redacted]



Map #	PIN (Property Identification Number)	Party To:	Party From:	Total Area of Parcel (ha.)	Area of Transmission Right-of-Way (ha.)
1	644560105	[Redacted]	[Redacted]	1.06	0.101
1	644560104		[Redacted]	0.45	0.139
1	644560103		[Redacted]	10.14	10.790