

Hydro One Networks Inc.

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BY EMAIL AND RESS

February 6, 2025

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 – Updated Application and Evidence

Further to Hydro One's original application filed December 16, 2024, Hydro One is providing this updated application to include documentation regarding the OEB's jurisdiction to authorize the requested relief sought by Hydro One.

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 Updated Application and Evidence has been filed through the OEB's Regulatory Electronic Submission System.

Sincerely,

A handwritten signature in black ink, appearing to read "Joanne Richardson", with a long, sweeping underline.

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.

SECTION 99 JURISDICTION

20. The Existing Transmission Lines were constructed and placed into operation by predecessors of Hydro One many decades ago in compliance with the then existing legislative scheme that governed the construction of transmission infrastructure in the province. Since that time, the Existing Transmission Lines have been operated, maintained, repaired and inspected by Hydro One or its predecessor. The costs incurred to own and operate these assets have been included in rates charged to customers across Ontario.

21. The Board's jurisdiction to hear and grant the relief sought in this application arises from subsection 99(1)1 of the OEB Act:

99(1) The following persons may apply to the Board for authority to expropriate land for a work:

1. Any person who has leave under this Part or a predecessor of this Part.

22. Prior to the enactment of the OEB Act, leave to construct was granted under Part III of the Ontario Energy Board Act, RSO 1990, c O.13 (the "**1990 OEB Act**").

23. Prior to the enactment of the 1990 OEB Act, authority for approving new transmission lines rested with the Lieutenant Governor in Council pursuant to the *Power Commission Act* or *Power Corporation Act*.

24. In particular, the Lieutenant Governor in Council, could authorize Ontario Hydro (prior to 1973, the Hydro-Electric Power Commission of Ontario) to construct transmission lines. For example, section 24(2)(g) from the Power Commission Act, 1970 Chap 354, Sec.1 (J) gave the Lieutenant Governor in Council the power to authorize the Commission to:

construct, maintain and operate, and acquire by purchase lease or otherwise, or without the consent of the owner thereof or of any person interested therein, enter upon, take possession of, expropriate and use all erections, machinery, plant and other works and appliances for the transmission, transformation, supply and distribution of power, and

1 *conduct, store, transmit, transform and supply power for the purposes*
2 *of this Act, and with lines of wires, poles, conduits, pipes, motors,*
3 *transformers or other conductors, equipment or devices, receive,*
4 *conduct, convey, transmit, transform, distribute, supply or furnish such*
5 *power to or from or for any person at any place, through, over, under,*
6 *along, upon or across any land, public highway or public place, stream,*
7 *water, watercourse, bridge, viaduct or railway, and through, over, upon*
8 *or under the land of any person;*
9

10 25. All predecessor statutes had substantively similar language beginning with *An Act to*
11 *provide for the Transmission of Electrical Power to Municipalities*, 1906 S.O. 121,
12 section 12(b). This approval regime for the construction of transmission lines was the
13 predecessor of Part VI under the OEB Act and Part III of the 1990 OEB Act.
14

15 26. As identified in Hydro One's application, the Lieutenant Governor in Council has, from
16 time to time, approved the Transmission Infrastructure at issue in this application as
17 required by the predecessor acts. The April 23, 1976 Order In Council included in this
18 application as Appendix 2C is the approval that was obtained prior to Ontario Hydro
19 entering into a Supplemental Agreement⁴ and "Tap Line Agreement"⁵ with the
20 Seaway Authority in 1976 and 1977 respectively.
21

22 27. Since the Transmission Infrastructure was approved under the predecessor acts, the
23 OEB has jurisdiction under section 99(1)1. to authorize the expropriation of land.
24

25 28. This interpretation is consistent with the modern approach to statutory interpretation
26 which requires consideration of words "in their entire context and in their grammatical
27 and ordinary sense harmoniously with the scheme of the Act, the object of the Act,
28 and the intention of Parliament"⁶ and that "reading a statutory provision in its entire

⁴ Appendix 2D

⁵ Appendix 2E.

⁶ *Stegenga v. Economical Mutual Insurance Company*, 2019 ONCA 615 at para 31 citing *Belwood Lake Cottagers Ass'n Inc. v. Ontario (Environment and Climate Change)*, [2019] O.J. No. 485, 2019 ONCA 70, at para. 39, citing *Montréal (City) v. 2952-1366 Québec Inc.*, [2005] 3 S.C.R. 141

1 context requires the court to consider the history of the provision and its place in the
2 overall scheme of the act.”⁷
3

4 29. The objectives of the OEB Act, include protecting the consumer interest with respect
5 to “to prices and the adequacy, reliability and quality of electricity service” and “to
6 promote economic efficiency and cost effectiveness in the generation, transmission,
7 distribution, sale and demand management of electricity and to facilitate the
8 maintenance of a financially viable electricity industry.” Interpreting section 99 in light
9 of those purposes, the reference to “a predecessor of this Part” includes the
10 authorization power of the Lieutenant Governor in Council as set out above. This was
11 the approach implicitly adopted by the Ontario Energy Board in EB-2011-0391, which
12 authorized expropriation for an existing natural gas distribution main that had been
13 approved to be constructed long before the enactment of the 1990 OEB Act. A copy
14 of the OEB’s determination in that proceeding is provided at Appendix 5 of this
15 Application.
16

17 **PROJECT LAND REQUIREMENTS**

18

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

⁷ *Stegenga v. Economical Mutual Insurance Company*, 2019 ONCA 615 at para 31 citing *Belwood Lake Cottagers Ass'n Inc. v. Ontario (Environment and Climate Change)*, [2019] O.J. No. 485, 2019 ONCA 70, at para. 41.

One for similar transmission infrastructure, and what has been historically required for the Existing Transmission Lines.

31. 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

32. 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.⁸ 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. Thus, in Appendix 6, Hydro One also provides the names of these individuals listed by property. Personal information has been redacted in accordance with OEB policies. Hydro One confirms that all registered property owners and encumbrancers directly affected by this Application will be notified in writing of Hydro One's intentions to proceed and seek the relief now requested in this Application.

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

⁸ 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 34. As noted above, Hydro One continues to be willing to negotiate with the registered
2 property owners listed in Appendix 6. These appendices will be updated over the
3 course of this proceeding should negotiations ameliorate and proceed to completion.
4

5 **PUBLIC INTEREST**
6

7 35. The expropriation authority requested herein is required in order for Hydro One to
8 safely operate and maintain the Existing Transmission Lines and provide service to
9 an estimated 37,0000 customers served by these lines, which includes the entire City
10 of Port Colborne.
11

12 36. The Existing Transmission Lines are needed to maintain a safe, reliable and adequate
13 supply of electricity in the Province. The rights in the lands requested herein are
14 integral to the continued uninterrupted use of the Existing Transmission Lines and
15 therefore are necessarily in the public interest.
16

17 37. As described in paragraphs 5 and 6, Hydro One has attempted good faith negotiations
18 with all landowners affected by the Existing Transmission Lines and has offered
19 consistent offers of settlement based on the Company's LACP.
20

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

NOTICE

39. 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.

Mailing Address: 7th Floor, South Tower
483 Bay Street
Toronto, Ontario M5G 2P5
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b) The Applicant's Counsel:

Monica Caceres
Assistant General Counsel
Hydro One Networks Inc.

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c) The Applicant's Counsel:

Mr. Gordon M. Nettleton
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d) The Applicant's Counsel:

Mr. Sam Rogers
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McCarthy Tétrault

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

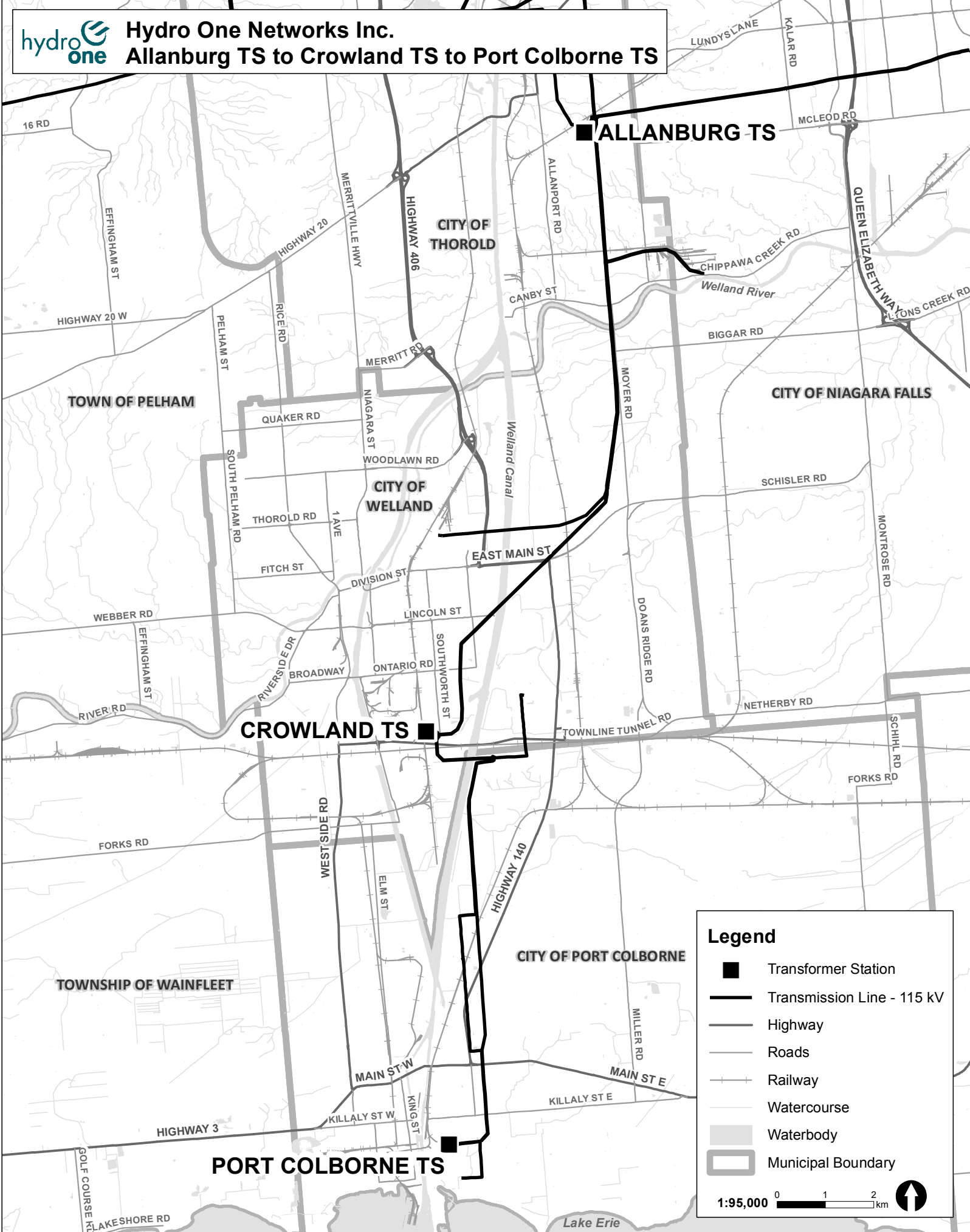
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Appendix 1

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 0 1 2 km

Appendix 2A

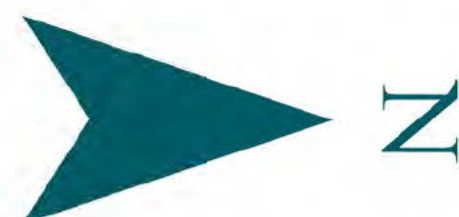
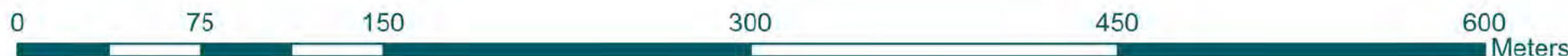
Route Aerial Map



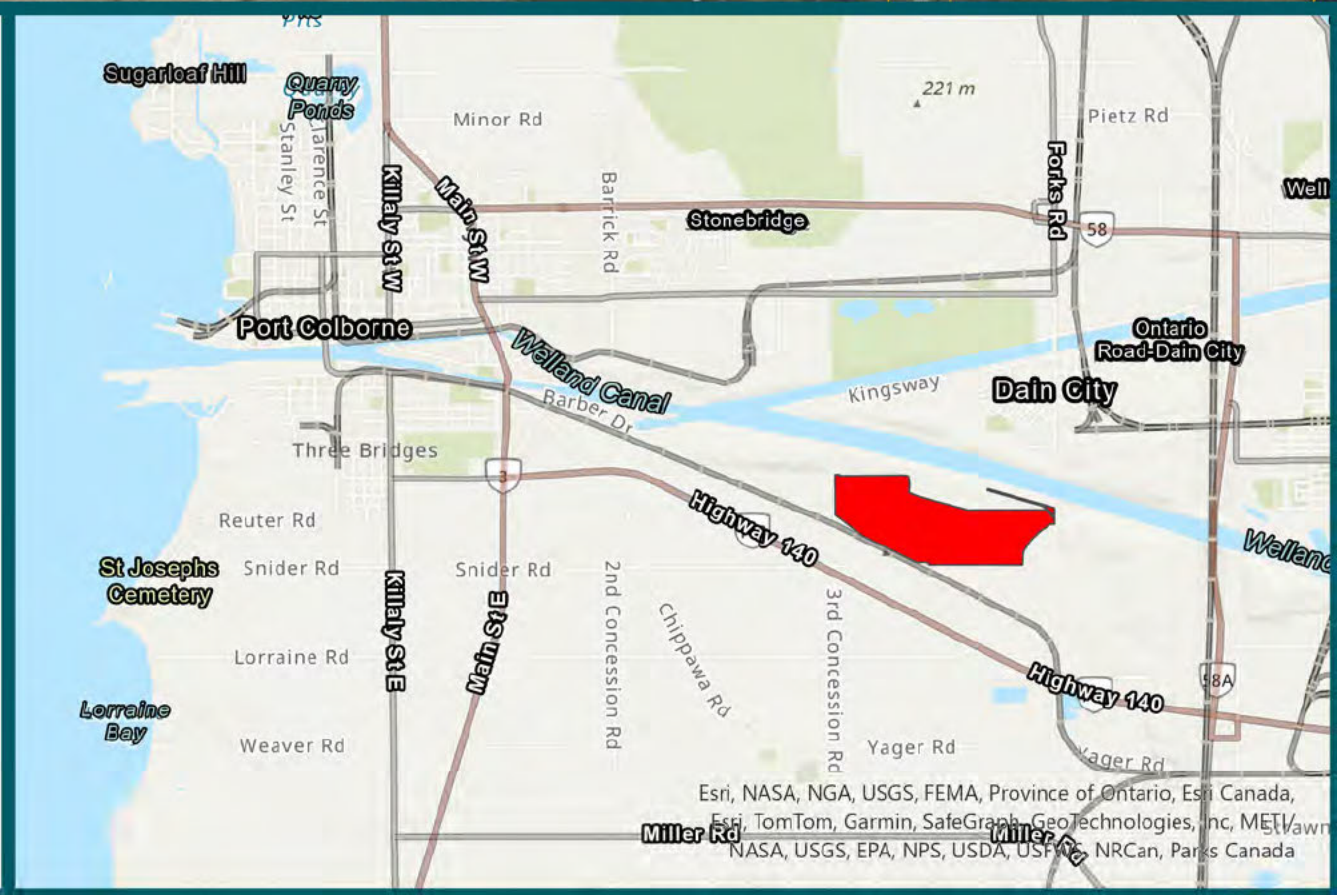
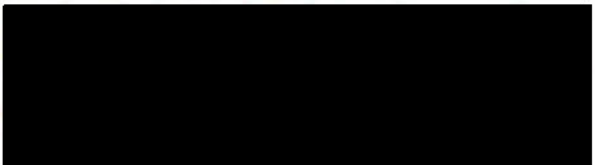
Appendix 2A

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



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