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Via Email (nancy.marconi@oeb.ca)

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

Dear Nancy:

Re: File No. EB-2024-0142

We are counsel to Hydro One Networks Inc. ("**Hydro One**") and write further to the letter of Scott Lemke of Massey LLP on behalf of Nyon Oil Inc. ("**Nyon**") dated February 5, 2025.

Mr. Lemke is incorrect when he asserts Hydro One does not own the Existing Transmission Lines (as defined in Hydro One's application) on the Lands (as defined in Mr. Lemke's letter). Mr. Lemke refers to section 44 of the *Electricity Act, 1998*, SO 1998, c 15, Sch A. throughout his letter, however, predecessors of the *Electricity Act, 1998* contained functionally identical language including *Power Commission Act*, R.S.O. 1960, c. 300, which was in force at the time of the expropriation of the Land by the St. Lawrence Seaway Authority and provided in section 45:

... where works of the Commission have been affixed retained to realty they remain subject to the rights of the Commission as fully as they were before being so affixed and do not become part of the realty...

Thus when Mr. Lemke asserts that the Lands expropriated "included the transmission infrastructure that was affixed to those lands" he is incorrect as the Existing Transmission Lines were not part of the realty that was expropriated.

Hydro One's ownership of the Existing Transmission Lines is further demonstrated by the conduct of the parties since the expropriation more than 60 years ago. At no point has any predecessor land owner asserted an ownership right in the Existing Transmission Lines, and, in fact, in agreements between Hydro One and the St. Lawrence Seaway Authority acknowledged that Hydro One owned the Existing Transmission Lines and granted Hydro One "the right and privilege to maintain and operate its power lines and electricity supply facilities" on the Lands.

Similarly, Nyon has taken no steps consistent with ownership of the Existing Transmission Lines since its acquisition of the Lands in 2015. It has not applied to the Board for a licence (or an exemption from the licence requirement), nor has it taken any steps to maintain, repair, or inspect the Existing Transmission Lines.

In any event, this is a matter squarely within the exclusive jurisdiction of the Ontario Energy Board and not the Superior Court. The *Ontario Energy Board Act* grants the Board the authority to determine all questions of law and of fact concerning matters within its jurisdiction, and exercises an “exclusive jurisdiction in all cases and in respect of all matters in which jurisdiction is conferred on it by this or any other Act”. Determination of the ownership of transmission assets is a determination of fact and law that is necessary for the Board to exercise its jurisdiction under section 99,¹ and other sections of the *Ontario Energy Board Act*.²

Finally, the only justification that Nyon offers for its request for an indefinite adjournment of Hydro One’s expropriation application is that a second expropriation application may be necessary in the event that a Court determines that Nyon is the owner of the Existing Transmission Lines. For all of the reasons set out above, even if a Court were to accept that it had jurisdiction to determine who owned portions of the Provincial Transmission Grid, Nyon’s claim for ownership of the Existing Transmission Lines is weak and unlikely to be successful. The likelihood of the need for a second hearing is low, and is not a reason to indefinitely adjourn the application.

Nyon’s recent conduct underscores the need for a prompt expropriation hearing. Nyon has recently begun engaging in attempted self-help to stop what it believes are trespasses by Hydro One and its employees. On November 28, 2024 it sent a “trespass notice” through counsel suggesting that it would seek to engage local law enforcement to prevent Hydro One from accessing the Lands to inspect, maintain and repair the Existing Transmission Lines. After being pointed to section 40 of the *Electricity Act*, Nyon’s counsel maintained their position that Hydro One was not permitted to access the Lands. These circumstances necessitate a consideration by the Board of whether the public interest favours expropriation by Hydro One so that it can continue to maintain the ongoing safe and reliable operation of the IESO-controlled transmission grid, including the ongoing safe operation of the Existing Transmission Lines.

Yours truly,



Sam Rogers

SBR/dd

¹ A public interest assessment must necessarily consider whether the applying party, in fact, owns the “work”.

² For example, section 57 requires that a party who owns or operates a transmission system must hold a licence, which necessarily requires the Board to determine who owns the transmission system.