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File No. 567536.11

May 15, 2025

BY EMAIL & RESS

Ms. Nancy Marconi
Ontario Energy Board
2300 Yonge Street, 27th floor
P.O. Box 2319
Toronto, ON M4P 1E4

Dear Ms. Marconi:

**Re: Hydro One Networks Inc. (“HONI”) Application for Expropriation Near City of Port Colborne (EB-2024-0142)
Asahi Kasei Battery Separator Canada Corporation (“Asahi Kasei”)
Letter of Comment**

We represent Asahi Kasei in the above noted matter. Asahi Kasei is filing this letter of comment with the Ontario Energy Board (“OEB”) as it has a substantial interest in this proceeding. Asahi Kasei intends to follow this proceeding and requests that the OEB include John Vellone and Colm Boyle on the distribution list for all filings related to the proceeding.

Asahi Kasei owns certain lands in Port Colborne to construct a new wet-process lithium-ion battery separator manufacturing facility (“**Separator Facility**”). HONI has applied to the OEB to expropriate a portion of those lands owned by Asahi Kasei where the Separator Facility will be located. As such, Asahi Kasei has a substantial interest in this proceeding by virtue of its interest in land that is affected by the proceeding.

For the reasons that follow, Asahi Kasei supports HONI’s application.

1. Preliminary Comments

Asahi Kasei and Honda Canada Inc. recently announced a joint venture to oversee construction and production activities at the Separator Facility. The construction of the Separator Facility represents a first of its kind \$1.6 billion dollar investment by Asahi Kasei in Ontario to grow the electric vehicle (“EVs”) and battery supply chain, accelerate the production of Ontario-made EVs and create better jobs with bigger paycheques in the Niagara Region.

The Separator Facility has received substantial support from all levels of government. Premier Doug Ford recognized the significance of this investment stating that “*The start of construction on Asahi*

Kasei's battery separator plant is a major step forward in building Ontario's electric vehicle supply chain, connecting minerals in the north with electric vehicle battery makers and automakers across the province."¹ Asahi Kasei will receive support for the Separator Facility from the provincial government of Ontario, through its investment attraction agency, Invest Ontario, and will benefit from the federal government's new Clean Technology Manufacturing Investment Tax Credit.²

Specifically in the City of Port Colborne and Niagara Region, the Niagara Gateway Economic Zone and Centre Community Improvement Plan created significant tax increment based grants to vitalize, strengthen and diversify strategic zones within five Niagara municipalities. The tax incentives provided by federal, provincial and local governments were key components for attracting Asahi Kasei to invest in this region of Ontario.

One of the key construction challenges for Asahi Kasei is sourcing a safe and reliable electricity supply for the Separator Facility. Asahi Kasei is actively working with HONI to connect to and potentially upgrade the transmission system that is subject of this proceeding to supply electricity to the Separator Facility in several phases. Given the Separator Facility is currently under construction, time is of the essence for securing electrical supply. The announcement by Honda Canada on May 13, 2025 did not affect the Separator Facility.

2. Nyon's Position Is Untenable

On April 14, 2025, Asahi Kasei received correspondence from Nyon Oil Inc. and 1170367 Ontario Inc. (collectively "**Nyon**") asserting that it, and not HONI, is the owner of the transmission system since the 1960s. Nyon further asserts that if Asahi Kasei has any intention of connecting to or altering the transmission system, it must bring that proposal to Nyon for approval. This correspondence is attached as Appendix A to this letter.

Asahi Kasei has significant concerns about Nyon's position.

Nyon is asserting that it has been a transmitter under the *Electricity Act, 1998* since the 1960s but does not currently hold a transmission licence or meet any of the requirements under the *Ontario Energy Board Act, 1998* to operate or own a transmission system. From our review of publicly available records, it does not appear that Nyon has ever complied with any relevant legislated requirements for owning or operating a transmission system. If Nyon's position is true, which Asahi Kasei does not yet take a position on, there may be multiple breaches of enforceable provisions under the *Ontario Energy Board Act, 1998* where each breach of an enforceable provision could result in fines of up to \$1,000,000 per day.

Nyon's position creates numerous practical problems as a result. For example, Asahi Kasei cannot locate Nyon's Transmission Connection Procedures to review what processes are in place to connect new transmission customers. It is not sufficient to simply request Asahi Kasei "bring that proposal to

¹ Government of Ontario, Asahi Kasei Breaks Ground on Electric Vehicle Battery Separator Plant in Port Colborne, 14 November 2024, online: <<https://news.ontario.ca/en/release/1005335/asahi-kasei-breaks-ground-on-electric-vehicle-battery-separator-plant-in-port-colborne>>

² Asahi Kasei, Asahi Kasei Announces Port Colborne, Ontario, Canada as Location of Future Lithium-ion Battery Separator Plant, 15 May 2024, online: <<https://www.asahi-kasei.com/news/2024/e240515.html>>

Nyon for approval”. Nyon is required by section 6.1.3 of the Transmission System Code to publish on its website its OEB-approved connection procedures. Nyon’s connection processes must be transparent and applied equally to all potential customers.

As a potential customer, Asahi Kasei has significant reservations about Nyon’s capabilities of delivering safe and reliable electricity to the Separator Facility. Nyon appears to have been created to develop a petroleum tank farm, polymer storage facility, windmill farm and/or liquified natural gas facility.³ Nyon does not appear to have any expertise in the transmission of electricity. Nor does Nyon appear to have the requisite financial capability to operate a transmission system or register with the Independent Electric System Operator as a Registered Participant. Unreliable electricity supply to the Separator Facility could have significant adverse financial impacts for Asahi Kasei if its production lines are faced with intermittent outages, which Asahi Kasei submits would be much more likely with a transmission system owner and operator that does not have the requisite experience, financial capability or record of compliance.

In closing, it is Asahi Kasei’s strong preference that HONI be the transmitter to supply the Separator Facility given its long history of electricity transmission in Ontario. Asahi Kasei is not expecting a response from the applicant to this letter.

Please contact the undersigned with any questions.

Yours truly,

BORDEN LADNER GERVAIS LLP



Colm Boyle

JV/CB

³ Niagara Economic Development, Work underway at \$1.56B Port Colborne EV Battery Factory, 29 July 2024, online: <<https://niagaracanada.com/work-underway-at-1-56b-port-colborne-ev-battery-factory/>>; Ontario Municipal Board, Decision PL090828, 23 February 2010, page 6, online: <<https://www.omb.gov.on.ca/e-decisions/pl090828-Feb-23-2010.pdf>>

Appendix A

April 14, 2025

Asahi Kasei Battery Separator Canada Corporation

c/o Borden Ladner Gervais LLP
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON
M5H 4E3
Attention: Andrew Guerrisi

Dear Mr. Guerrisi,

Re: Hydro-electric transmission infrastructure adjacent to Asahi Kasei's property

We are counsel to Nyon Oil Inc. and 1170367 Ontario Inc. (collectively "**Nyon**"). We understand that you are counsel to Asahi Kasei Battery Separator Canada Corporation ("**Asahi Kasei**"). Our client owns the property immediately adjacent to your client's property, as marked in reference plan 59R-15312 and attached hereto as **Schedule A** (the **Nyon Lands**").

A. Hydro-electric Infrastructure Adjacent to Asahi Kasei's Property

As you may know, on the Nyon Lands, there is significant hydro-electric infrastructure and transmission lines (the "**Infrastructure**"). Nyon is currently engaged in litigation with Hydro One Networks Inc. ("**Hydro One**") regarding the ownership of this Infrastructure. Part of the requested relief in the claim filed by Nyon against Hydro One is a declaration that Nyon is the owner of a significant portion of the Infrastructure on its property. This is a unique circumstance, in that, normally, Hydro One would be the owner of transmission infrastructure affixed by it, or its predecessors, to the land of another, by virtue of [s. 44 of the *Electricity Act, 1998*](#), SO 1998, c 15, Sch A (the "**Electricity Act**"). However, here, that is not the case.

In the 1960s, the federal government, through the St. Lawrence Seaway Corporation (the "**Seaway**"), expropriated the land that the Infrastructure is on as part of Seaway Expansion Project under the federal St. Lawrence Seaway Authority Act, R.S.C. 1952, c. 242 (the "**SLSA**"). This project created a canal bypass of the City of Welland to allow for larger and deeper ships to travel between Lake Erie and Lake Ontario. When the federal government expropriated the lands to create the bypass, it naturally expropriated all of the fixtures attached to those lands, which included some of the Infrastructure. The Infrastructure at issue was never returned by the Seaway or any of its successors in title to Hydro One. Hydro responds to this by pointing out there was a predecessor to the Electricity Act that included a provision similar to the current-day s. 44. Hydro One states that this predecessor provision resulted in



the Infrastructure remaining the property of Hydro One, even after the expropriation. Nyon responds to that argument by pointing out that the Electricity Act and its predecessor are provincial legislation, and the relied upon provisions are directly in conflict and wholly incompatible with the expropriation provisions of the SLA, which contain no exceptions or conditions to the expropriations that the Seaway completed.

Ultimately, a court will have to determine this issue. Until that happens, or until the matter is resolved, if your client intends to connect to, or alter the Infrastructure, it must bring that proposal to Nyon for approval, in addition to the regulatory authority. We are raising this with you now because it appears from your client's preliminary site plan that an electrical substation is planned on the east side of the property, immediately adjacent to the south of the Nyon Lands and the Infrastructure. A copy of the site plan we are referring to is attached as **Schedule B**.

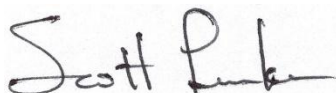
B. Hydro's Application to the Ontario Energy Board to Expropriate Property Interests from both of Our Clients

Last month, Hydro One brought a motion seeking a temporary stay of our client's claim against it in order to provide Hydro One time to complete an expropriation pursuant to s. 99 of the *Ontario Energy Board Act, 1998*, SO 1998, c 15, Sch B. Hydro One initially refused to provide us a copy of that expropriation application, but was ultimately obligated to as part of its motion materials. In that application, Hydro One has applied to expropriate easements over Nyon's lands, as well as over portions of your client's lands. Hydro One's application for expropriation submitted to the Ontario Energy Board (the "OEB") is attached as **Schedule C**. That application has still not been circulated to the interested parties (primarily being Nyon, Asahi Kasei, registered mortgage holders, and any other entities with registered interests). We have written to the OEB setting out Nyon's position regarding the ownership of the Infrastructure.

We note that Hydro One has only made an application to expropriate an easement, which will not resolve the Infrastructure ownership issue. Again, if Asahi Kasei has any intention of connecting to or altering the Infrastructure, it must seek the approval of our client (in addition to any other necessary regulatory approvals that it independently determines are required).

Should you wish to discuss the foregoing, please do not hesitate to contact me.

Yours very truly,
MASSEY LLP



Scott Lemke
SGL/ac

cc. Frank Portman, Partner, Massey LLP – fportman@masseylaw.ca

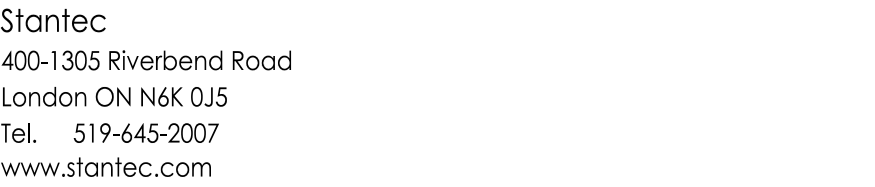


Schedule A
Outline of the Nyon Lands



Schedule B

Asahi Kasei Registered Site Plan



Liability Note

The Contractor shall verify and be responsible for all dimensions.
DO NOT scale the drawing - any errors or omissions shall be
reported to Stantec without delay.

SPECIAL PROVISIONS TO BE PROVIDED THROUGH MUNICIPAL ZONING ORDER. JUNE 7, 2024
* GARBAGE TO BE PRIVATE PICKUP

50% CD	RT	BB	2024.08.30
100% DD	RT	BB	2024.07.26
80% DD	RT	BB	2024.06.28
FOR SITE PLAN APPROVAL - SUBMISSION 1	RT	BB	2024.06.18
60% DD FINAL	RT	BB	2024.04.05
60% DD FOR PRICING	RT	BB	2024.04.05
Issued/Revision	By	Appd	YYYY.MM.DD

Permit/Seal

PRELIMINARY

NOT FOR CONSTRUCTION

Issued for 50% Construction Documentation Submission and Review ONLY. Design is not final, coordinated or complete. Not all systems/ components are shown. Information shown is expected to change, possibly in material respects, following Project award as details are developed, design is coordinated, site conditions are determined, and comments are received from authorities having jurisdiction and other stakeholders. Any party using this design is solely responsible for decisions that it makes based on this design, the impact on its work because of subsequent design growth and changes and for including appropriate allowances to cover the same.

Client/Project Logo

AsahiKASEI

Client/Project
MANUFACTURING FACILITY

PROJECT EAGLE
5088 HIGHWAY 140
PORT COLBORNE, ON
CANADA

title
SITE PLAN
NOVEMBER 8, 2024

Project No.	Scale
161500301	1:3000

Revision _____ Drawing No. **SP-101**



Schedule C

Hydro One Ontario Energy Board Application to Expropriate certain Land Interests

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

Filed: 2024-12-16
EB-2024-0142
Exhibit A
Tab 1
Schedule 1
Page 2 of 14

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.

Filed: 2024-12-16
EB-2024-0142
Exhibit A
Tab 1
Schedule 1
Page 4 of 14

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.

Filed: 2024-12-16
EB-2024-0142
Exhibit A
Tab 1
Schedule 1
Page 6 of 14

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

Updated: 2025-02-06
 EB-2024-0142
 Exhibit A
 Tab 1
 Schedule 1
 Page 8 of 14

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

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

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

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

28. This interpretation is consistent with the modern approach to statutory interpretation which requires consideration of words "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, 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.

Filed: 2024-12-16
EB-2024-0142
Exhibit A
Tab 1
Schedule 1
Page 10 of 14

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.

Filed: 2024-12-16
EB-2024-0142
Exhibit A
Tab 1
Schedule 1
Page 12 of 14

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:

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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.

Filed: 2024-12-16
EB-2024-0142
Exhibit A
Tab 1
Schedule 1
Page 14 of 14

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