

July 9, 2025

Mr. Ritchie Murray
Acting Registrar
Ontario Energy Board
Suite 2700, 2300 Yonge Street
Toronto, ON
M4P 1E4

Dear Mr. Murray,

Re: File No. EB-2024-0142
**Hydro One Networks Inc. Application for Authority to Expropriate
Land Interests with respect to certain lands owned by Nyon Oil
Inc. and 1170367 Ontario Inc. in Port Colborne, Ontario**

I am writing to you regarding deeply troubling misstatements in Hydro One Networks Inc.'s ("**Hydro One**") above-noted application to expropriate, which Hydro One has now acknowledged through their interrogatories are false. These misstatements reveal a disturbing abuse of process that require immediate action by the Ontario Energy Board (the "**Board**").

At paragraph 37 of its application to expropriate, Hydro One stated:

37 ... **Hydro One has attempted good faith negotiations with all landowners** affected by the Existing Transmission Lines **and has offered consistent offers of settlement** based on the Company's LACP. [Emphasis added].

This statement is not true. Hydro One has never made an offer to settle to Nyon. At Interrogatory 37-Nyon-1 b) Nyon asked Hydro One to produce the offer referred to in paragraph 37 of its application.¹ Hydro One responded to Nyon Interrogatory 37-Nyon-1 b) as follows:

b) No formal offers have been presented to Nyon, as the parties remain divided on key business terms...

Hydro One continues in its response to Nyon Interrogatory 37-Nyon-1 b) to state:

... **The parties had exchanged draft memorandums of understanding in 2014** setting out potential terms of a deal, but Nyon subsequently changed its position and substantially

¹ In Nyon's Written Interrogatories this question is marked as 37-Nyon-1 b. In Hydro One's responses, it is marked as Nyon Interrogatory – 12.



increased its monetary demands. Market values for the land are to be determined by independent, accredited (AACI) appraisers, and offers will be based on these appraised values. [Emphasis added].

This representation, itself, is misleading, and its characterization as “good faith negotiations” or “consistent offers of settlement” are blatantly not true. More than 10 years ago, Nyon sent Hydro One a draft Memorandum of Understanding (“**MOU**”). Nyon prepared that MOU, delivered it to Hydro One and Hydro One never responded. There was no suggestion to amend the values therein, or to retain appraisers, or a mediator. Hydro One chose to simply not respond to Nyon regarding the contents.² The only attempts to resolve the issues have been made by Nyon, and those attempts have been consistently ignored by Hydro One.

Presumably, Hydro One will now rely on Nyon’s delivery of 2015 MOU as justification for misleading the Board with respect to its efforts to engage Nyon in good faith negotiations. Surely, the Board did not understand the “good faith negotiations” that Hydro One was referring to at paragraph 34 of its application to mean that 10 years ago Nyon delivered Hydro One a draft MOU that Hydro One did not respond to.

At paragraph 31 of its application, Hydro One doubled-down on the false narrative that it has attempted good faith negotiations with Nyon. There, Hydro One advised the Board:

31 ... 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.**
[Emphasis added].

And at paragraph 34 of its application, Hydro One stated:

34 ... As noted above, Hydro One **continues to be willing to negotiate** with the registered property owners listed in Appendix 6.

With respect to both of the above quotes, the phrases “ongoing willingness” and “continues to be willing to negotiate” imply that Hydro One has recently indicated a willingness to negotiate and secure the sought after easements voluntarily. Again, the exchange of a draft MOU more than 10 years ago cannot be evidence of an ongoing willingness to secure these property rights voluntarily or a continued willingness to negotiate. At best, these paragraphs are misleading; at worst, they are dishonest.

Hydro One’s behaviour is in stark contrast to Nyon’s. In its February 2024 letter to Hydro One, Nyon proposed a resolution process whereby the parties would jointly engage a mediator to assist with resolving the issues between them, and failing resolution at mediation, those issues

² The draft MOU from June 2015 is attached hereto as **Appendix A**.

would be arbitrated efficiently.³ Hydro One, again, refused to respond to this proposal. Instead, on April 8, 2024, Hydro One wrote to Nyon and suggested that it had no obligation to negotiate, but could simply expropriate the subject lands. In its April 8, 2024 letter, Hydro One stated:

In any event, **HONI disagrees that either litigation or alternative dispute resolution are the appropriate method for resolving this matter.** The transmission lines have been operated on the land in question by HONI for over 90 years and are critical infrastructure supporting the Ontario electricity transmission grid. There is significant public interest in their continued operation.

HONI intends to bring an application before the Ontario Energy Board under section 99 of the Ontario Energy Board Act for expropriation of the land necessary to continue to operate its transmission infrastructure. The Ontario Energy Board has previously ordered expropriation of land in nearly identical circumstances based on public interest in Enbridge Gas Distribution Inc., EB-2011-0391. [Emphasis added].⁴

Hydro One has never expressed any interest in voluntarily securing any of the rights it now seeks – it has not even engaged Nyon in discussing a resolution process. From the outset, Hydro One's strategy was to take a high-handed approach by stonewalling Nyon and expropriating property interests from it. Rather than engaging Nyon in good faith negotiations, Hydro One aimed to intimidate Nyon by puffing its institutional chest. Nevertheless, Nyon remains undeterred and will see this matter through until all of the issues between the parties are resolved.

The blatant misrepresentations by Hydro One are particularly troubling in this procedural context. The application to expropriate made by Hydro One is akin to an *ex-parte* motion. Nyon, being the affected landowner, had no immediate formal opportunity to respond to the claims and statements set out in the application. Hydro One has an obligation to the Board and the affected landowners to make full and frank disclosure, which would include all material facts, including those that might be unfavourable to its own position. Hydro One also has a duty of candour, which requires that they be honest and transparent with the Board, without omitting relevant information that could mislead the Board or affect its decision.

It was an outright misrepresentation when Hydro One stated that it had provided all landowners with an offer of settlement – Nyon has never received a settlement offer. When Hydro One stated that it was continuously willing to negotiate and that it had an ongoing willingness to secure the property rights voluntarily, that was misleading, at best. Hydro One owed the Board a duty of candour to advise that the only negotiation with Nyon was from more than 10 years ago,

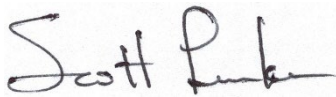
³ Pages 24-25 of Nyon's February 22, 2024, letter are attached hereto as **Appendix B**. The entirety of Nyon's February 22, 2024, letter can be found at Appendix 4 of Hydro One's Application to Expropriate, Part 3 of 3, pp. 55-56.

⁴ The email correspondence between counsel that preceded the April 8, 2024, letter is attached hereto as **Appendix C** and the April 8, 2024, letter from Mr. Rogers, on behalf of Hydro One is attached hereto as **Appendix D**.

and that it had refused to even engage Nyon in a negotiation regarding a dispute resolution process after Nyon had suggested one in February 2024.

Hydro One's patent motive in misrepresenting these facts to the Board is to induce the Board to grant its application. Presumably, it has done so over concerns that its case would otherwise be insufficient. These false statements and omissions by Hydro One amount to an abuse of process; they taint the entire proceeding and application. Nyon respectfully submits that the appropriate remedy is to dismiss the application now. There is ample case law that supports that an abuse of process can result in the stay or dismissal of a proceeding to prevent unfairness and to preserve the integrity of the decision-making process. At the Board's request, Nyon would be pleased to prepare and deliver a Memorandum of Fact and Law with respect to same.

Yours very truly,
MASSEY LLP



Scott Lemke
SGL/ac

cc. Frank Portman – fportman@masseylaw.ca
cc. Gord Nettleton – gnettleton@mccarthy.ca
cc. Sam Rogers – sbrogers@mccarthy.ca
cc. Aya Schechner – aschechner@mccarthy.ca
cc. John Vellone – jvellone@blg.com
cc. Colm Boyle – cboyle@blg.com
cc. Abbey Sinclair – asinclair@weirfoulds.com



Appendix A

Draft MOU from June 2015

**PORT COLBORNE ENERGY PARK
MEMORANDUM OF AGREEMENT (the "Agreement")**

BETWEEN:

HYDRO ONE NETWORKS INC. (herein after "HONI")

- and -

NYON OIL INC. (herein after "the Corporation")

RECITALS:

WHEREAS Nyon has acquired certain lands described in Schedule "A" hereto (the "Property") as of April 30, 2015 (the "Closing") from the Corporation of the City of Port Colborne (the "City") with the conveyance of the Property to Nyon and its related, affiliated or associated corporations (as defined in the Ontario Business Corporations Act) (collectively herein referred to as Nyon);

AND WHEREAS Nyon had a beneficial interest in the Lands from January 30, 2006 until the Closing, pursuant to an agreement of purchase and sale with the City.

AND WHEREAS on Closing all past unpaid rents due and owing on the Property were assigned to Nyon pursuant to an assignment agreement with the City, attached hereto as Schedule "B";

AND WHEREAS the St. Lawrence Seaway Authority by instrument number 37309 B dated December 3, 1965 and registered in the registry division of the County of Welland December 6, 1965 expropriated all of the right, title and interest in lands as set out therein including all improvements and infrastructure. The expropriated lands included the Property, including the lands on which the power transmission and distribution lines and electricity supply facilities (herein referred to as the "Expropriated Infrastructure") were owned, operated and maintained by Ontario Hydro;

AND WHEREAS Ontario Hydro was granted permission to operate and maintain the hydroelectric transmission and distribution facilities on the Lands by the St. Lawrence Seaway Authority through the Master Agreement dated October 6, 1969 with regards to the Expropriated Infrastructure, and the Supplemental Agreement dated June 1, 1976 and the Licence dated April 4, 1977 which license permitted the construction of a single pole line set out therein (said pole line and related infrastructure herein referred to as the "Welland Infrastructure") neither of which agreements constitutes a grant of an easement, transfer of title or any interest in lands and neither of which are binding on successors or assigns of the lands (such limited rights are herein defined as "HONI's Rights").

AND WHEREAS HONI's Rights expired on July 7, 1994 on Part 38 of Reference Plan 59R – 15312 (attached hereto as Schedule "C" and lands on said reference plan attached as Schedule

“C” are referred to herein as “Site A”). Nyon and the City gave notice to HOMI in June 2013 terminating any potential possessory rights of passage of time.

AND WHEREAS HONI's Rights expired on February 14, 2006, on the remaining Parts in the Hydro corridor on Site A.

AND WHEREAS HONI's Rights expired on February 14, 2006 to the Parts in the hydro corridor on Reference Plan 59R – 15310, (attached as Schedule “D”, and lands on said reference plan attached as Schedule “D” are referred to as Site B);

AND WHEREAS HONI represents and warrants that it is the successor to Ontario Hydro with respect to transmission and distribution facilities in the Province of Ontario, including the aforesaid transmission and distribution facilities located on and/or in the Lands;

AND WHEREAS from the respective dates of the expiry of any HONI Rights and any other rights that it may have had, HONI has been operating and utilizing the Expropriated Infrastructure and the Welland Infrastructure (herein collectively referred to as the "Infrastructure") for its own benefit and profit without paying any compensation or rent;

AND WHEREAS, in light of the change in ownership and the proposed uses of the Lands, **on March 28 March, 2013** HONI demanded the transfer of the freehold interests to the Hydro Corridor and ownership of the Infrastructure on or before April 15, 2013 as well as setbacks to be determined by HONI; thereby attempting to secure HONI's ownership of the Infrastructure and lands in the Hydro Corridor;

AND WHEREAS Nyon had appealed to the Ontario Municipal Board (the “Board”) under ss. 22(7) and 34(11) of the *Planning Act*, R.S.O. 1990, c.P.13, as amended, from the City's refusal or neglect to enact proposed amendments to the City's Official Plan and Zoning By-law No. 1150/97/81 (the “Appeals”) to implement proposed development of an energy park on the Lands;

AND WHEREAS the Board had scheduled a hearing for the Appeals commencing on Monday, April 15th (the “Hearing”) and on the demand of HONI to Nyon that setbacks stipulated by HONI had to be included in the bylaw, the draft bylaw was amended to include the setbacks demanded by HONI, and was approved by Order of the Board on July 11, 2013 (the lands within the setbacks being herein referred to as the "Hydro Corridor");

AND WHEREAS the Hydro Corridor and the Infrastructure are an integral part of HONI's transmission and distribution system and business in the Niagara Region;

AND WHEREAS the parties had been negotiating extensively including the exchange of engineering drawings and a draft technical agreement, the latter being dated March 26, 2014, with a view to resolving the technical issues related to the coexistence of hydro infrastructure and the proposed petroleum storage tank farm; however, HONI has failed to provide final comments, although HONI advised it had only a few minor word changes to the draft agreement of March 26, 2014 but no changes of substance, and despite several requests by Nyon to finalize and execute the said draft agreement, HONI has not done so;

AND WHEREAS HONI has occupied the Hydro Corridor and has used the Infrastructure as a tenant by sufferance without payment or compensation or rent of any kind since the respective dates of the termination of the various HONI Rights as set forth in the Recital above.

AND WHEREAS Nyon and HONI (the "Parties") wish to resolve outstanding issues, including the coexistence with the tank farm and HONI's desire to secure the right to own and operate the Infrastructure and the Hydro Corridor set out in agreements in registrable form;

AND WHEREAS Nyon is prepared to sell certain lands and to grant easements to HONI for the Parts of the Hydro Corridor as set forth and described in Schedule "E" hereto, subject to the easements in favor of Nyon as set forth and described in Schedule "E" (hereinafter described as the "Acquired Assets").

AND WHEREAS Nyon is agreeable to negotiating an agreement for a combination of purchase and sale of the freehold interests and easements in respect of the Hydro Corridor and the Infrastructure to secure the right of HONI to own and operate the Infrastructure on the Hydro Corridor set out in agreements in registrable forms;

NOW THEREFORE in consideration of the matters contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

RECITALS

1. The above Recitals are true.
2. On execution this agreement, HONI shall deliver to Nyon and executed Technical Agreement, satisfactory to Nyon in its sole discretion, relating to the resolution of the technical issues with regards to cohabitation of the Infrastructure and the petroleum storage tank farm.

RENT

3. On execution of this agreement HONI shall deliver a certified cheque or bank draft in the amount of five million dollars (\$5,000,000.00) as a down payment respect to the unpaid Rent.
4. The rent calculated monthly, payable in advance, from the respective dates as set forth in the recitals above in respect of the lands and Infrastructure in the Hydro Corridor (the "Rent") needs to be settled and paid forthwith. The parties agree to exchange, without prejudice, and in confidence, their calculations of unpaid Rent, including interest, to and including June 1, 2015, by June 30th, 2015. The Parties' calculations of the unpaid Rent shall be averaged (the "Averaged Unpaid Rent") and HONI shall pay on account to Nyon sixty percent (60%) of the Averaged Unpaid Rent less the \$5 million referred to in paragraph 3 on or before July 15, 2015.

5. From the Closing, April 30, 2015, the rent shall be a monthly net carefree rent and all taxes, and costs and expenses related to the Hydro Corridor and the Infrastructure shall be paid by HONI to Nyon and reimbursed to Nyon within 10 days of being invoiced to HONI.
6. The monthly rent to be paid in advance for July 1, 2015 and so long as rent is payable shall be as determined as the average of the average monthly rent for the 12 months ending June 1, 2015 as calculated by each of the parties in their submissions on June 16 2015 pursuant to paragraph 4 above. Such monthly rent shall be adjusted to the monthly rent for June 1, 2015 finally agreed to or determined by mediation or arbitration, as the case may be.
7. The parties agree to negotiate expeditiously and in good faith for the purpose of concluding an agreement as to the unpaid Rent due and owing and the Purchase Price (as hereinafter defined in paragraph 11).
8. If the parties have not negotiated an agreement, in accordance with paragraphs 7 and 11 herein by August 15, 2015, either party may request confidential mediation, and if there is no settlement within 30 days of the date that mediation was requested then either party may request final and binding arbitration (the choice of mediator or arbitrator as the case may be shall be at the sole discretion of Nyon and it shall advise HONI of its decision within three (3) business days of a request being made) in accordance with Schedule "F" to settle the amounts owing as unpaid Rent and the Purchase Price and all other issues related thereto (the unpaid Rent determined by negotiation or by mediation or arbitration shall hereinafter be referred to as the "Determined Unpaid Rent"). The parties agree to resolve any disputes that may arise between them through mediation or arbitration, in accordance with this Agreement, and no other legal proceedings shall be pursued.
9. If the Determined Unpaid Rent is more than the amount already paid pursuant to paragraphs 3 and 4 above, the difference shall be paid within ten (10) days.
10. If the Determined Unpaid Rent is less than the amount already paid pursuant to paragraph 3 and 4, the difference shall be applied to accrued but not yet paid Rent and then the balance will be considered an adjustment in favour of HONI on its purchase of the Acquired Assets, and excess monies, if any, shall remain as a security deposit for damages or remediation in respect of the lands on Site A for which HONI is responsible.

PURCHASE

11. The Parties agree to negotiate expeditiously and in good faith for the purpose of concluding on an "as is where is basis" free of any registered encumbrances or liens, except for mutual easements and any utility easements, an agreement on the purchase price (the "Purchase Price") for HONI to acquire the Acquired Assets. If the parties have not agreed upon the Purchase Price for the Acquired Assets by August 15, 2015, then, in accordance with paragraph 8 herein and Schedule "F", either party may request

confidential mediation, and if there is no settlement within 30 days of the date that mediation was requested then either party may request final and binding arbitration to determine the Purchase Price.

12. On execution of this agreement HONI shall deliver a certified cheque or bank draft in the amount of five million dollars (\$5,000,000.00) as a down payment against the Purchase Price.
13. If the Purchase Price has been agreed to on or before August 15, 2015 then the closing date for the transfer of the Acquired Assets to HONI shall be August 31, 2015, and all requisitions shall be due and submitted by August 15, 2015.
14. The purchase of the Acquired Assets shall be completed 10 days after receipt of the mediators or arbitrators award or report, as the case may be, on the Determined Rent and the Purchase Price but not later than November 30, 2015; the only extension thereof being until 10 business days after receipt of the mediation or arbitration award/report making the final determination, if not received before October 20, 2015.
15. The closing for the purchase of the Acquired Assets by HONI from Nyon, whether on August 31, 2015, or otherwise, shall take place at the offices of Gordon R. Baker, QC, at 2 Lombard Street, Suite 200, Toronto, Ontario M5C 1M1 at 10:00 a.m.
16. As part of the acquisition of the Acquired Assets and the Purchase Price, HONI covenants and agrees Nyon shall be compensated and paid for all headings of compensation or payment or reimbursement that would have been paid if the Hydro Corridor and the Infrastructure were deemed expropriated including injurious affection, costs etc..
17. The Parties shall exchange, without prejudice and on a confidential basis, for negotiation and settlement purposes only, independent appraisals or opinions of value for the Hydro Corridor and the Infrastructure on or before June 30, 2015. HONI shall provide its comments to Nyon, if any, on or before July 10, 2015 and Nyon shall provide its comments, if any, to HONI by July 15, 2015.
18. Although the Expropriation Act provides that HONI shall pay one hundred percent (100%) of the market value immediately; the Parties agree that HONI shall pay a down payment to Nyon equal to seventy five percent (75%) of the average of the appraisals or opinions of value in respect the Acquired Assets, less the five million dollars (\$5,000,000.00) referred to in paragraph 12, on July 15 2015 (the "Down Payment"), and such Down Payment shall be credited against the Purchase Price.
19. The Down Payment to the extent it exceeds the Purchase Price will be refunded only after HONI remediates that portion of the Hydro Corridor on Site A is may be required with regards to the construction of the tank farm r.

REIMBURSEMENT

20. HONI shall reimburse Nyon for all its costs and expenses, including, without limitation legal fees, planning, consulting, surveying and engineering costs and expenses relating to designing and redesigning the tank farm around Hydro infrastructure and the storm water pond, appraisals and all negotiations with HONI and the OMB hearings, including with regard to the setbacks and bylaw incorporating the setbacks and their approval at the OMB on June 11, 2013 and the city's new Official Plan on November 25, 2013, since March 28 2013, within ten (10) days of receipt of an invoice for same.
21. In the event that HONI fails to make any payment provided for herein, at the option of Nyon, HONI should be considered an overholding month-to-month tenant and thereafter any Rent payable shall be doubled and interest shall be payable thereon at the same rate that HONI charges its retail customers for overdue payments.
22. In the event that HONI should contest or dispute any cost or expense referred to in paragraph 20 it shall first pay the account and then if the account has been paid have it mediated and if that fails arbitrated on the same basis and at the same time as the unpaid Rent and/or the Purchase Price.

CONFIDENTIALITY

23. All information between the Parties, including, but not limited to, information respecting Nyon, the Lands or the Hydro Corridor, unpaid Rent, Determined Unpaid Rent, ongoing rent, and any proceeds payable with regard to any rent or acquisition contemplated herein or information obtained by HONI hereunder will be retained in confidence by it and used only for the purpose of the transactions contemplated herein. Any additional information obtained by HONI hereunder that does not relate to the Hydro Corridor will continue to be treated as confidential by it, and will not be used by it without the prior written consent of the transferor. However, these restrictions on disclosure and use of information will not apply, insofar as information:
 - (a) is or becomes publicly available through no act or omission of the transferee or its consultants or advisors;
 - (b) is subsequently obtained lawfully from a third party, which, after reasonable inquiry, HONI does not reasonably believe is obligated to the transferor to maintain that information as confidential;
 - (c) is already in HONI's possession at the time of disclosure to it hereunder, without restriction on disclosure; or
 - (d) is required to be disclosed under the Regulations or by the direction of any court, tribunal or other regulatory body having jurisdiction.

However, specific items of information will not be considered to be in the public domain merely because more general information respecting the Lands is in the public domain.

After Closing, the Parties will cooperate with each other in releasing to third parties information concerning this Agreement and the transaction contemplated herein. However, a Party may only provide information about this transaction to any governmental agency, any regulatory authority or to the public, insofar only as it is required by law to do so and prior to doing so the Party shall advise the other Party of the disclosure to be made.

INDEMNITY

24. HONI covenants and agrees at all times to indemnify and to hold Nyon and its successors, assigns and its respective directors, officers, employees, and agents (Nyon) harmless against and from any and all claims, liabilities, suits, actions, debts, damages, costs, losses, obligations, judgments, orders, charges, and expenses, of any nature whatsoever, suffered or incurred by any such party as a result of the presence of any contamination upon, in, or below the Hydro Corridor and adjacent lands, drainage systems or waterways or the release of any contamination arising out of or occurring in respect of HONI's or its predecessors occupancy of the Hydro Corridor (including without limitation the Ontario Hydro Commission and Ontario Hydro), including without limitation, the construction, use or maintenance of any Infrastructure, which may have occurred or which may occur in the future. The obligations under this Indemnity are to remediate the Hydro Corridor and or any contaminated adjacent lands to a pristine state and extends to any migration, release, deposit, transfer, and or spill beyond the Hydro Corridor.
25. In the event Nyon incurs any expense, cost, fine, or penalty with regard to the contamination and/or remediation, including any costs associated with the supervision by Nyon's consultants or agents, HONI shall pay same forthwith upon being invoiced by Nyon with interest at the rate HONI charges its customers.
26. In the event that any remediation is necessary or required, HONI shall provide a work plan on a timely basis, including a system by which HONI produces a remediation plan that is acceptable and approved by Nyon, acting reasonably, on the basis of professional advice. Such remediation shall be carried out on a timely basis relative to the circumstances.

NOTICE

27. Any notice, instruction, document or other thing required or permitted to be given or served by this Agreement or by law may be given personally or by telex, fax, or email (where the intended recipient is equipped to receive such a form of telecommunication) or by prepaid courier or registered mail to the intended recipient at its address as set out below and either Party may by notice given in accordance with this section change its address for the purposes of this subsection. Any notice instruction, document or other thing given, served or sent as provided above shall be deemed (in the absence of evidence of prior receipt) to have been received by the intended recipient the same day if personally served, the next business day if sent by telex or fax, and on the third business day next following where sent by courier or by registered mail.

If to Nyon at: 200-2 Lombard Street
Toronto, Ontario
M5C 1M1
Attention: Gordon Baker
President
Fax: 416-365720
Email: gord@gordbaker.com

If to HONI at: Hydro One Networks Inc.:
483 Bay Street, 5th Floor, South Tower
Toronto, Ontario, M5G 2P5
Attention: Lou Fortini
Director, Facilities & Real Estate
Fax: 416-345-6600
Email: Lou.Fortini@HydroOne.com

GENERAL

28. In addition to any specific language of non-merger found in certain sections of this Agreement, any provision herein, including, but not limited to paragraphs 23, 24, 25 and 26, shall not merge upon the closing of this Agreement or upon the closing of any further agreement between the parties, unless expressly provided otherwise.
29. Time shall be of the essence in the performance of all obligations by all Parties to this Agreement.
30. The responsibilities and rights contained herein are in the nature of an enforceable agreement between the Parties, and shall enure to the benefit of and be binding upon each of the Parties and their respective successors and assigns.
31. This Agreement shall come into force once executed by all Parties.
32. This Agreement is a binding agreement and shall be construed and enforced in accordance with, and the rights of the Parties and shall be governed by, the laws of the Province of Ontario and of Canada applicable thereto, and the Parties hereby submit to the jurisdiction of the Courts of the Province of Ontario.
33. This Agreement constitutes the entire agreement between the Parties and there are no covenants, promises, agreements, conditions or understandings, whether oral or written, between the parties concerning this Agreement or any other related matter, except those that are set out in this Agreement, and this Agreement supersedes all prior agreements, arrangements and undertakings of the parties in respect of the subject matter hereof. No alteration, amendment, change or addition to this Agreement is binding unless it is in writing and signed by the parties.
34. This Agreement may be signed in counterparts and may be executed by Counsel for the respective Parties.

35. This Agreement is open for acceptance by Honi on or before 12 noon on Thursday, June 18, 2015.

IN WITNESS WHEREOF the parties have executed this Agreement:

DATED: June , 2015

HYDRO ONE NETWORKS INC.

per:

I have authority to bind the Corporation

per:

I have authority to bind the Corporation

DATED: June, 2015

NYON OIL INC.

per:

I have authority to bind the Corporation

SCHEDULE "A"

Lands acquired by Nyon from the City on Closing

DRAFT

SCHEDULE “B”

Assignment Agreement between Nyon and the City

DRAFT

SCHEDULE "C"

Reference Plan 59R – 15312

DRAFT

SCHEDULE “D”

Reference Plan 59R – 15310

DRAFT

SCHEDULE "E"

Acquired Assets

DRAFT

SCHEDULE "F"

Mediation / Arbitration Process

Mediation

1. Nothing herein shall preclude any Party from seeking injunctive relief in the event that the Party perceives that without such injunctive relief, serious harm may be done to the party.
2. The mediation will be held at Toronto, Ontario.
3. The Parties agree to attempt to resolve their dispute at mediation.
4. The costs of the mediator shall be exclusively born by HONI.
5. HONI shall bear Nyon's costs of the mediation on a full indemnity basis.

Arbitration

6. If the dispute requiring mediation is not resolved within 30 days of the request being made for mediation then the dispute will be resolved by final and binding arbitration.
7. Each party represents, warrants and undertakes not to appeal any award made at the final and binding arbitration.

Choice of Arbitrator and Independence

8. Nyon shall choose the arbitrator.
9. The arbitrator shall be independent and at arm's length from both parties. The arbitrator shall be wholly impartial and shall not act as an advocate for any of the parties.
10. The arbitration shall be conducted by a single arbitrator.
11. The arbitration shall be held in Toronto, Ontario.
12. The arbitration shall proceed in accordance with the provisions of the *Arbitration Act, 1991*, S.O. 1991, c. 17.

Commencement of Arbitration

13. The party commencing the arbitration (the "Claimant") shall deliver a Notice of Arbitration to the opposing party (the "Respondent"). The Notice of Arbitration shall contain:
 - a. a demand that the dispute be referred to arbitration;

- b. the names, addresses and detailed contact information of the parties and any representatives; and
 - c. a statement of the nature of the dispute, the material facts being relied on and the issues being raised.
14. On or before the 10th day after the deliver of the Notice of Arbitration, each party shall disclose to the other party the names of all parties and, to the extent known, all witnesses who will be or are reasonably likely to be involved in the arbitration.
15. Nyon shall select an arbitrator within 15 days of the Notice of Arbitration being delivered by either party.
16. Before accepting appointment, a prospective arbitrator shall sign a statement of independence and disclose in writing to each party any facts or circumstances that might be of such a nature as to give rise to any apprehension of bias in the eyes of the parties, and shall undertake to avoid and, if necessary, disclose to the parties any such circumstances arising after that time and before the arbitration is concluded. Said circumstances include, but are not limited to any bias or financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their representatives.
17. After receiving the arbitrator's statement of independence, if either party believes that the arbitrator may have an apprehension of bias, they may provide notice to the other party of their belief of the apprehension of bias and a new arbitrator shall be chosen by Nyon. Each party shall only be able to deliver a maximum of two notices of their belief of apprehension of bias to the other party. (i.e. if HONI delivers notice of belief of apprehension of bias regarding the first two arbitrators chosen by Nyon, HONI will not be permitted to deliver a notice of apprehension of bias concerning the third arbitrator chosen by Nyon and the third arbitrator will arbitrate the matter, save and except for Nyon delivering a notice of belief of apprehension of bias). Said notice of belief of apprehension of bias shall be delivered within 5 days of each party receiving the arbitrator's statement of independence.
18. Any arbitrator who is unable to serve or continue to serve due to disqualification, death or disability shall be replaced in the same manner as his or her original appointment.

Jurisdiction and Procedure

19. Any challenge to the jurisdiction of the arbitrator shall be heard by the arbitrator (or an arbitrator selected in accordance with this Agreement) and any decision of the arbitrator shall be final and binding.
20. Any procedural question or controversy on which the parties are not agreed may be resolved by the arbitrator. If the procedural question or controversy arises before the arbitrator is chosen the said procedural question or controversy must be referred to the Canadian Arbitration Association and will be resolved by an Arbitral Tribunal chosen in accordance with the Canadian Arbitration Association Arbitration Rules.

21. At the request of either party, the arbitrator may convene a preliminary hearing to resolve procedural issues and to establish a timetable. A preliminary hearing agenda may include points for discussion leading to identification and clarification of the issues in dispute.
22. All preliminary hearings shall take place in person at a location determined by the arbitrator in Toronto, Ontario.
23. Subject to this Agreement, the arbitrator may conduct the arbitration in such manner as he or she considers appropriate, provided that the parties are treated equally and fairly, and each party is given an opportunity to present its case and to respond to the other party's case.
24. Any party may be represented by counsel or other authorized representative.
25. The arbitrator may dispense with an oral hearing if it determines, after hearing the submissions of the parties, that oral evidence is not necessary given the issues in dispute.
26. In the event of an oral hearing, witnesses may be required to swear an oath or affirm oral evidence.
27. The arbitrator, in its discretion, may appoint one or more neutral experts whose testimony shall be subject to cross-examination and rebuttal. **NTD: consider whether we want to include this clause.**
28. All documents or information submitted to the arbitrator shall be submitted to the other party, unless ordered otherwise by the arbitrator.

Failure to Comply

29. Where a party fails to comply with this Agreement, or any order of the arbitrator, in a manner deemed material by the arbitrator, the arbitrator may fix a reasonable period of time for compliance and, if the party does not comply within said period, the arbitrator may impose a remedy it deems just, including an award on default. Prior to entering an award on default, the arbitrator shall require the non-defaulting party to produce evidence and legal argument in support of its contentions as the arbitrator may deem appropriate. The arbitrator may receive such evidence and argument without the defaulting party's presence or participation.

Emergency Relief

30. The parties agree to adopt these rules for emergency measures protection.
31. A party in need of emergency relief prior to the appointment of the arbitrator shall notify all other parties in writing of the nature of the relief sought and the reasons why such relief is required on an emergency basis. The application shall also set forth the reasons why the party is entitled to such relief. Such notice must include a statement certifying that all other parties have been notified or an explanation of the steps taken in good faith to notify other parties.

32. Within one (1) business day of receipt of notice as provided in Section 31 herein the parties shall refer the matter to the Canadian Arbitration Association to appoint a mediator in accordance with their Arbitration Rules. The Appointing Committee shall appoint a single emergency arbitrator from the panel of Canadian Arbitration Association arbitrators. The emergency arbitrator shall immediately disclose any circumstance likely, on the basis of the facts disclosed in the application, to affect such arbitrator's impartiality or independence. Any challenge to the appointment of the emergency arbitrator must be made within one (1) business day of the communication by the Canadian Arbitration Association to the Parties of the appointment of the emergency arbitrator and the circumstances disclosed.
33. The emergency arbitrator shall, as soon as possible, but in any event within two (2) Business Days of appointment, establish a schedule for considering the application for emergency relief. Such schedule shall provide a reasonable opportunity to all Parties to be heard, but may provide for proceeding by telephone conference or on written submissions as alternatives to a formal hearing.
34. If, after consideration of the emergency, the emergency arbitrator is satisfied that the Party seeking the emergency relief has shown that immediate and irreparable loss or damage will result in the absence of emergency relief, and that such Party is entitled to such relief, the emergency arbitrator may enter an interim award granting the relief and stating the reasons therefore.
35. Any application to modify an interim award of emergency relief must be based on changed circumstances and may be made to the emergency arbitrator until the Arbitral Tribunal is constituted; thereafter such a request shall be addressed to the Arbitral Tribunal. The emergency arbitrator shall have no further power to act after the Arbitral Tribunal is appointed unless the Parties agree that the emergency arbitrator is named as a member of the Arbitral Tribunal.
36. Any interim award of emergency relief may be conditional on provision by the Party seeking such relief of appropriate security.

Privacy and Confidentiality

37. Subject to Section 38 herein, any arbitration shall be completely private and confidential. The parties and their representatives may attend at the arbitration. Other persons may attend only with the consent of the arbitrator. The arbitrator may require the sequestering of any witness or witnesses during the testimony of other witnesses.
38. No information concerning the existence of the arbitration or anything which occurs or is disclosed within the arbitration shall be disclosed or used outside of the arbitration proceedings or for any other purpose by a Party except:
- a. for the purpose of conducting the arbitration itself including, where necessary and appropriate, interviewing and preparing witnesses, obtaining document and other support services, and the administration of the arbitration;

- b. in connection with an application to a court for interim relief or to set aside, recognize or enforce an award; or
- c. where a party is required to do so by law or by a court or competent regulatory body.

39. Where a party makes disclosure as permitted by section 38 herein, it shall only do so:

- a. by disclosing no more than what is legally required;
- b. by obtaining, where possible, an undertaking or order of confidentiality consistent with this Agreement; and
- c. by furnishing to the arbitrator and to the other party, if the disclosure takes place during the arbitration, or to the other party alone, if the disclosure takes place after the termination of the arbitration, details of the disclosure and an explanation of the reason for it.

Award

- 40. The arbitrator will render its award within twenty-five (25) business days of the close of the proceedings, provided that the Arbitral Tribunal, for good reason, may extend that time after consultation with the Parties.
- 41. The award shall set out: the nature of the claim; the decision; the relief awarded; and, unless the Parties have agreed otherwise, reasons – including such review of the issues, the facts and the law as the Arbitral Tribunal deems necessary to explain its award, and the basis of the Arbitral Tribunal's jurisdiction.
- 42. An award or interim award made under the provisions of these Rules shall be treated as a final award for the purposes of recognition and enforcement by a judicial authority and shall not be subject to any appeal to the courts.

Amendments and Corrections to the Award

- 43. Within twenty (20) business days after an award has been released, on the application of a party or on its own initiative, the arbitrator may amend an award to correct:
 - a. a clerical or typographical error;
 - b. an accidental error, slip, omission or similar mistake;
 - c. an arithmetical error made in a computation; or
 - d. a claim on which the Arbitral Tribunal failed to adjudicate.

Interest

44. In addition to any other interest payments owed, the arbitrator may award pre-judgment and / or post-judgment interest up to a maximum of 7% compounded annually.

Judgment and Costs

45. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

46. The costs of the arbitrator shall be exclusively born by HONI.

47. Nyon's cost of arbitration shall be exclusively born by HONI.

48. HONI shall bear Nyon's costs of the entire arbitration on a full indemnity basis.

49. There shall be no appeal from any decision of the arbitrator.

DRAFT



Appendix B

Pages 24-25 of Nyon's February 24, 2024, letter to Hydro One

appraisers shall provide a copy of their unredacted reports to HONI, as well as to 117 and Nyon.

6. May 10, 2024 – The parties shall each select a qualified appraiser to appraise the cost of removing and relocating the hydroelectric infrastructure on the Lands. Such appraisal shall consider the value of the hydroelectric infrastructure, the cost of purchasing or leasing alternative lands, removing the hydroelectric infrastructure from the Lands, and installing the hydroelectric infrastructure on the alternative lands. HONI shall pay the entire cost of both appraisers. Both appraisers shall provide a copy of their unredacted reports to HONI, as well as to 117 and Nyon.
7. May 10, 2024 – The parties shall mutually agree on, and jointly retain a mediator. HONI shall pay the entire cost of the mediator. The mediator shall have been called to the bar for at least 25 years, and will preferably be a retired judge with real property experience.
8. Within 60 days from the date of delivery of the final outstanding report required by paragraphs 2, 3, 4, 5 and 6 above, the parties shall exchange mediation briefs and submit them to the mediator.
9. Within 30 days following the exchange of mediation briefs, the mediator will hold the first mediation session. Any additional sessions will be scheduled by the mediator. The location of the mediation will be at a court reporter's office in Toronto. HONI will pay the entire costs charged by the court reporter's office. The parties shall be obligated to attend, at a minimum, two full-day mediation sessions.
10. If mediation fails, within 90 days of the last mediation session, the parties shall confidentially arbitrate the matter. The mediator shall be the arbitrator. The location of the arbitration shall be at a court reporter's office in Toronto. HONI shall pay the arbitrator's fees, the hosting fees charged by the court reporter's office, and any fees associated with the arbitration, except the legal fees and disbursements of 117 and Nyon. The costs awarded at the completion of the arbitration shall be at the discretion of the arbitrator, but shall not include any disbursements paid by HONI on account of reports, studies, the fees paid to the mediator/arbitrator, or any fees charged by the court reporter's office to host the mediation and arbitration, for which HONI shall remain solely responsible for.

(b) Litigation

If the above path and timeline for dispute resolution is not acceptable to your client, we will proceed with litigation. Enclosed herewith is our issued Notice of Action. Our Statement of Claim is prepared, but has not been filed. It generally sets out the claims detailed in this letter. We have purposefully issued a short and vague Notice of Action and withheld our Statement of Claim to afford HONI the opportunity to decide if it prefers to deal with this matter privately through a med/arb process.



Should we choose to proceed with having the matter litigated, we must agree on a reasonable timetable for the matter to ensure it moves forward promptly. If we are unable to mutually agree on a litigation timetable by May 3, 2024, we will schedule a case conference in accordance with the Niagara South Practice Direction to have one set. If this matter is going to be litigated in the Superior Court of Justice, it will follow a timetable ordered by the Court.

Yours very truly,
MASSEY LLP

Scott Lemke
SGL/ac
cc. Frank Portman, Partner, Massey LLP.
cc. James Ayres, Counsel, Massey LLP.
cc. Alexa Cheung, Associate, Massey LLP.
cc. client.



Appendix C

Email correspondence between counsel preceding Hydro One's April 2024 letter

From: [Scott Lemke](#)
To: [Rogers, Sam](#); [Nettleton, Gordon M.](#)
Cc: [Frank Portman](#); [Alexa Cheung](#); [Malti Mahajan](#)
Subject: RE: [EXT] RE: Nyon and Hydro One
Date: March 18, 2024 4:32:00 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)

Sam,

We contacted you to request your consent to file our claim after the 30-day deadline so that we could honour the April 8 deadline set out in our letter. We have only asked to receive notice of whether your client prefers a litigation or a med/arb process by April 8. We could have issued and served our claim on February 22, the same date that we sent you our letter, and even with indulgences, you would have been obligated to complete a full Statement of Defence some time shortly after April 8.

It's our clients' perspective that they have already granted a significant indulgence by permitting Hydro 6+ weeks to simply advise whether it prefers a med/arb or formal litigation process. If Hydro chooses the med/arb process, we don't require you to deliver us your formal position (to the extent it has changed from Sarit's 2015 letter) until certain studies and appraisals are complete.

If Hydro prefers to formally litigate, you will have another 30 days from April 8 to prepare the Statement of Defence.

This matter has been outstanding for a long time. It's in the parties' interests to prudently pursue a conclusion to it. We're going to stick with the timeline set out in our letter. It shouldn't take 6+ weeks to determine what process Hydro prefers.

Regards,

Scott Lemke
Partner, Massey LLP
10 King Street East | Suite 600
Toronto, ON | M5C 1C3

Office: +1-416-775-0675
Direct: +1-647-490-8302
Email: slemke@masseylaw.ca

From: Rogers, Sam <sbrogers@mccarthy.ca>
Sent: Friday, March 15, 2024 4:47 PM
To: Scott Lemke <slemke@masseylaw.ca>; Nettleton, Gordon M. <GNETTLETON@mccarthy.ca>

Cc: Frank Portman <fportman@masseylaw.ca>; Alexa Cheung <acheung@masseylaw.ca>; Malti Mahajan <mmahajan@masseylaw.ca>

Subject: RE: [EXT] RE: Nyon and Hydro One

Hi Scott,

My client is willing to consent to an extension of time for your client to file their claim. I am reviewing your letter and the background material with my client. However, I am starting a 3 week trial on Monday and then another 3 week trial starting mid-April so I will not be able to get you and your client a response until the end of May. Given the lengthy history of this matter, I hope your client is willing to wait another few weeks so we can get them a substantive response before entering into litigation.

Regards,
Sam



Sam Rogers (he / him)

Partner | Associé
Litigation | Litige
T: 416-601-7726
C: 416-433-3787
F: 416-868-0673
E: sbrogers@mccarthy.ca

McCarthy Tétrault LLP
Suite 5300
TD Bank Tower
Box 48, 66 Wellington Street West
Toronto ON M5K 1E6

Visit www.mccarthy.ca for strategic insights and client solutions.

From: Scott Lemke <slemke@masseylaw.ca>

Sent: Wednesday, March 13, 2024 5:48 PM

To: Rogers, Sam <sbrogers@mccarthy.ca>; Nettleton, Gordon M. <GNETTLETON@mccarthy.ca>

Cc: Frank Portman <fportman@masseylaw.ca>; Alexa Cheung <acheung@masseylaw.ca>; Malti Mahajan <mmahajan@masseylaw.ca>; Windsor, Christine <cawindsor@mccarthy.ca>

Subject: RE: [EXT] RE: Nyon and Hydro One

Sam,

As you recall, we issued our Notice of Action on February 21, 2024. The Statement of Claim must be filed within 30 days from the date of issue of the Notice of Action (which would be March 22, 2024). Nevertheless, we are prepared to honour the timeline set out in our correspondence and provide you until April 8, 2024, to advise whether your client prefers for the matter to be dealt with through a formal litigation process or a med/arb process. In order for us to do so, we will require the written consent of your client to file our Statement of Claim outside the 30-day period, pursuant to r. 14.03(3).

We need to hear from you by March 19 in order to ensure the consent is executed by the 22nd.

Regards,

Scott Lemke
Partner, Massey LLP
10 King Street East | Suite 600
Toronto, ON | M5C 1C3

Office: +1-416-775-0675
Direct: +1-647-490-8302
Email: slemke@masseylaw.ca

From: Scott Lemke <slemke@masseylaw.ca>
Sent: Thursday, February 29, 2024 6:45 PM
To: Rogers, Sam <sbrogers@mccarthy.ca>; Nettleton, Gordon M. <GNETTLETON@mccarthy.ca>
Cc: Frank Portman <fportman@masseylaw.ca>; Alexa Cheung <acheung@masseylaw.ca>; Malti Mahajan <mmahajan@masseylaw.ca>; Windsor, Christine <cawindsor@mccarthy.ca>
Subject: RE: [EXT] RE: Nyon and Hydro One

Will do.

Scott Lemke
Partner, Massey LLP
10 King Street East | Suite 600
Toronto, ON | M5C 1C3

Office: +1-416-775-0675
Direct: +1-647-490-8302
Email: slemke@masseylaw.ca

From: Rogers, Sam <sbrogers@mccarthy.ca>
Sent: Thursday, February 29, 2024 6:43 PM
To: Scott Lemke <slemke@masseylaw.ca>; Nettleton, Gordon M. <GNETTLETON@mccarthy.ca>
Cc: Frank Portman <fportman@masseylaw.ca>; Alexa Cheung <acheung@masseylaw.ca>; Malti Mahajan <mmahajan@masseylaw.ca>; Windsor, Christine <cawindsor@mccarthy.ca>
Subject: RE: [EXT] RE: Nyon and Hydro One

Thanks Scott. Could you kindly copy our colleague, Christine Windsor, copied here, on future correspondence?

Sam



Sam Rogers (he/him)
Partner | Associé
Litigation | Litige

T: 416-601-7726
C: 416-433-3787
F: 416-868-0673
E: sbrogers@mccarthy.ca

McCarthy Tétrault LLP
Suite 5300
TD Bank Tower
Box 48, 66 Wellington Street West
Toronto ON M5K 1E6

Visit www.mccarthy.ca for strategic insights and client solutions.

From: Scott Lemke <slemke@masseylaw.ca>

Sent: Thursday, February 29, 2024 12:57 PM

To: Rogers, Sam <sbrogers@mccarthy.ca>; Nettleton, Gordon M. <GNETTLETON@mccarthy.ca>

Cc: Frank Portman <fportman@masseylaw.ca>; Alexa Cheung <acheung@masseylaw.ca>; Malti Mahajan <mmahajan@masseylaw.ca>

Subject: RE: [EXT] RE: Nyon and Hydro One

Counsel,

The following link contains an update of our February 22, 2024 letter: [2024.02.22 - Nyon - HONI - Letter to Nettleton and Rogers with appendices - updated 2024.02.29.pdf](#).

The only substantive updates are:

1. The Notice of Expropriation at Appendix M has been replaced with a clearer version that also includes maps reflecting the legal descriptions in the body of document. By this expropriation, the Seaway expropriated most of the subject lands (being LT 24, CON 4 and LTS 18 & 19, CON 5), which contain nearly all of the hydroelectric infrastructure referred to in our letter.
2. The Notice of Expropriation at Appendix O has been replaced with a clearer version that contains a sharper image map that clearly identifies the expropriation by the Seaway of LT 17, CON 5, which the Feeder Line passes through.

If you have any issues accessing the document, please contact Alexa Cheung at acheung@masseylaw.ca.

Regards,

Scott Lemke
Partner, Massey LLP
10 King Street East | Suite 600
Toronto, ON | M5C 1C3

Office: +1-416-775-0675
Direct: +1-647-490-8302
Email: slemke@masseylaw.ca

From: Scott Lemke <slemke@masseylaw.ca>
Sent: Thursday, February 22, 2024 11:35 AM
To: Rogers, Sam <sbrogers@mccarthy.ca>; Nettleton, Gordon M. <GNETTLETON@mccarthy.ca>
Cc: Frank Portman <fportman@masseylaw.ca>; Alexa Cheung <acheung@masseylaw.ca>; Malti Mahajan <mmahajan@masseylaw.ca>
Subject: RE: [EXT] RE: Nyon and Hydro One

Good morning,

Please see the correspondence at the following link: [2024.02.22 - Nyon - HONI - Letter to Nettleton and Rogers with appendices.pdf](#).

Once you've accessed the document, it should be available for download. If you have any issues accessing the document, please contact Alexa Cheung at acheung@masseylaw.ca.

Regards,

Scott Lemke
Partner, Massey LLP
10 King Street East | Suite 600
Toronto, ON | M5C 1C3

Office: +1-416-775-0675
Direct: +1-647-490-8302
Email: slemke@masseylaw.ca

From: Rogers, Sam <sbrogers@mccarthy.ca>
Sent: Friday, January 19, 2024 1:54 PM
To: Scott Lemke <slemke@masseylaw.ca>
Cc: Frank Portman <fportman@masseylaw.ca>; Alexa Cheung <acheung@masseylaw.ca>; Nettleton, Gordon M. <GNETTLETON@mccarthy.ca>; Batner, Sarit E. <SBATNER@MCCARTHY.CA>
Subject: RE: [EXT] RE: Nyon and Hydro One

Good afternoon,

Writing to confirm that we have your letter and email and will respond in due course. You can direct further correspondence on this matter to my attention with a copy to Mr. Nettleton.

Thank you,
Sam

Sam Rogers
Partner | Associé



Litigation | Litige
T: 416-601-7726
C: 416-433-3787
F: 416-868-0673
E: sbrogers@mccarthy.ca

McCarthy Tétrault LLP
Suite 5300
TD Bank Tower
Box 48, 66 Wellington Street West
Toronto ON M5K 1E6

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From: Batner, Sarit E. <SBATNER@MCCARTHY.CA>

Sent: Thursday, January 18, 2024 10:01 AM

To: Nettleton, Gordon M. <GNETTLETON@mccarthy.ca>; Rogers, Sam <sbrogers@mccarthy.ca>

Subject: FW: [EXT] RE: Nyon and Hydro One



Sarit Batner
Partner | Associée
Litigation | Litige
T: 416-601-7756
C: 416-902-7756
F: 416-868-0673
E: sbatner@mccarthy.ca

McCarthy Tétrault LLP
Suite 5300
TD Bank Tower
Box 48, 66 Wellington Street West
Toronto ON M5K 1E6

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From: Scott Lemke <slemke@masseylaw.ca>

Sent: Thursday, January 18, 2024 9:31 AM

To: Batner, Sarit E. <SBATNER@MCCARTHY.CA>

Cc: Frank Portman <fportman@masseylaw.ca>; Alexa Cheung <acheung@masseylaw.ca>

Subject: [EXT] RE: Nyon and Hydro One

Ms. Batner,

I'm following up on this.

Regards,

Scott Lemke
Partner, Massey LLP

10 King Street East | Suite 600
Toronto, ON | M5C 1C3

Office: +1-416-775-0675

Direct: +1-647-490-8302

Email: slemke@masseylaw.ca

From: Scott Lemke

Sent: Wednesday, December 20, 2023 9:00 AM

To: 'sbatner@mccarthy.ca' <sbatner@mccarthy.ca>

Cc: Frank Portman <fportman@masseylaw.ca>; Alexa Cheung <acheung@masseylaw.ca>

Subject: Nyon and Hydro One

Ms. Batner,

We are counsel to Nyon Oil Inc. and 1170367 Ontario Inc. Please see the attached correspondence.

Regards,

Scott Lemke

Partner

10 King Street East | Suite 600

Toronto, ON | M5C 1C3

Office: +1-416-775-0675

Direct: +1-647-490-8302

Email: slemke@masseylaw.ca

MASSEY LLP
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Appendix D

Hydro One's April 8, 2024 letter



McCarthy Tétrault LLP
PO Box 48, Suite 5300
Toronto-Dominion Bank Tower
Toronto ON M5K 1E6
Canada
Tel: 416-362-1812
Fax: 416-868-0673

Sam Rogers
Partner | Associé
Direct Line: 416-601-7726
Direct Fax: 416-868-0673
Email: sbrogers@mccarthy.ca

Assistant: Debbie Dala
Direct Line: 416-601-8200 (542156)
Email: ddala@mccarthy.ca

April 8, 2024

Via Email (slemke@masseylaw.ca)

Scott Lemke
Partner
Massey LLP
10 King Street East, Suit 600
Toronto ON M5C 1C3

Dear Scott:

Re: Hydro One Networks Inc. (“HONI”) and Nyon Oil / 1170367 Ontario Inc. (together, “Nyon”)

We are counsel to HONI. We write further to your letter of February 22, 2024.

HONI disagrees with Nyon’s position regarding the ownership of the transmission assets and its right to operate those assets on the land now owned by Nyon. HONI’s position regarding ownership and its rights have not substantively changed since Ms. Batner’s letters of October 8, 2015 and November 5, 2015. Your letter raises certain new issues including an allegation of environmental contamination. HONI has not had an opportunity to investigate these new allegations, but nothing in this letter should be taken as HONI’s agreement with any allegation in your letter.

As you note, HONI and Nyon agree to hold all letters and notices in abeyance pending agreement on a process for a resolution of the dispute. Nyon never responded to Ms. Batner’s letter of November 5, 2015, and Nyon’s attempt to now claim back rent for an 8 year period is wholly without merit and contrary to the prior agreement between counsel.

In any event, HONI disagrees that either litigation or alternative dispute resolution are the appropriate method for resolving this matter. The transmission lines have been operated on the land in question by HONI for over 90 years and are critical infrastructure supporting the Ontario electricity transmission grid. There is significant public interest in their continued operation.

HONI intends to bring an application before the Ontario Energy Board under section 99 of the *Ontario Energy Board Act* for expropriation of the land necessary to continue to operate its transmission infrastructure. The Ontario Energy Board has previously ordered expropriation of land in nearly identical circumstances based on public interest in *Enbridge Gas Distribution Inc.*, EB-2011-0391.

If the expropriation is ordered, compensation will be determined by the Ontario Land Tribunal in accordance with the *Expropriations Act*. If your client is willing to consent to the expropriation, HONI expects that the Ontario Energy Board expropriation application can be advanced quickly

and the parties can move to the Ontario Land Tribunal to determine compensation without significant delay.

Finally, we note that some of the infrastructure referenced in your letter is not owned by HONI, but rather are distribution assets owned by another LDC.

Yours truly,

A handwritten signature in blue ink, appearing to be 'S. Rogers', with a long horizontal stroke extending to the right.

Sam Rogers
Partner | Associé

ec Gord Nettleton (McCarthy Tétrault)