ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, c. 15, Sched. B;

AND IN THE MATTER OF an application by Hydro One Networks Inc. for authority to expropriate land for the purpose of an electricity transmission line in the City of Port Colborne;

WRITTEN SUBMISSIONS OF NYON OIL INC. AND 1170367 ONTARIO INC.

August 8, 2025

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PART I – OVERVIEW

1. Hydro One Networks Inc. (**"Hydro One"**) has made an application to the Ontario Energy Board (the **"Board"**) seeking two grounds of relief:

   (a) A declaration that it is the owner of the Existing Transmission Lines as defined hereafter; and

   (b) Authority to expropriate certain easements.

2. With respect to the first request for relief, the Board does not have jurisdiction to resolve a property dispute of this nature. Regardless, Nyon Oil Inc. (**"Nyon"**) and 1170367 Ontario Inc. (**"117"**) (collectively, **"Nyon"**) are the owners of the Existing Transmission Lines on their respective lands as a product of their expropriation by the St. Lawrence Seaway Authority (the **"Seaway"**) in the 1960s, and the payment by the Seaway for any portion of the Existing Transmission Lines constructed post-expropriation. The Seaway never transferred the Existing Transmission Lines to Hydro One, instead they were transferred to The Corporation of the City of Port Colborne (**"Port Colborne"**) and then to Nyon.

3. With respect to the second request for relief, the Board does not have jurisdiction to authorize the expropriation because Hydro One has failed to prove that it obtained the requisite leave, pursuant to s. 99(1)1. of the *Ontario Energy Board Act, 1998*[1] (the **"*OEB Act*"**). Regardless, the Board should refuse to grant the requested authority to expropriate since Hydro One has failed to demonstrate that the expropriation is in the

[1] *Ontario Energy Board Act, 1998*, SO 1998, c 15, Sch B [*OEB Act*].

public interest. Hydro One's sole motive is a financial one – it aims to resolve certain issues between itself and Nyon for the least amount possible. If Hydro One's motive was the public interest, it would have brought the herein application in 2013, when it first discovered that it did not have property rights or contractual rights to occupy the subject lands. The only change in circumstance between 2013 and 2024 is that Nyon began to actively pursue Hydro One for damages stemming from its use of Nyon's property and infrastructure.

PART II – BACKGROUND

A. Ownership of the Lands at issue

4. 117 owns Parts 1, 2, 3, 5, 8, 9, 15, 16, and 17 on Lots 23, 24 and 25, Concession 4, Plan 59R15310 (the **"117 Con 4 Lands"**).[2]

5. Nyon owns Parts 4, 11, 12 and 13 on Lot 24, Concession 4, Plan 59R15310 (the **"Nyon Con 4 Lands"**).[3]

6. 117 owns Parts 2, 3, 4, 12, and 13, on Lot 17, 18, and 19, Concession 5, Plan 59R-15312 (the **"117 Con 5 Lands"**).[4]

7. The 117 Con 4 Lands, the Nyon Con 4 Lands and the 117 Con 5 Lands are collectively referred to herein as the **"Lands"**.

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[2] Nyon's Evidence – Document 24: Parcel Register – 64456-0103.
[3] Nyon's Evidence – Document 24: Parcel Register – 64456-0103.
[4] Nyon's Evidence – Document 23: Parcel Register – 64454-0109.

B. The Existing Transmission Lines

8. The transmission lines on the Lands run through Lot 24, Concession 4 and through Lots 17, 18 and 19 on Concession 5.[5]

9. Hydro One has informed Nyon and the Board that these transmission lines are called the "A6C" and "C2P" transmission lines (the **"Existing Transmission Lines"**) and are the sole subject of Hydro One's application.[6]

C. The History

(a) The Phillips Easement

10. On December 16, 1929, Charles C. Phillips granted an easement in favour of The Hydro-Electric Power Commission of Ontario (the **"Commission"**) permitting it, and its successors and assigns: "the right and easement to erect and maintain ***three towers*** with all necessary anchors, guys and braces and to string wires thereon and to operate the same" **[emphasis added]** (the **"Phillips Easement"**).[7]

11. The Phillips Easement was the only registered easement on the Lands in favour of the Commission. There has never been any other easement registered on title.

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[5] See Hydro One's Response to OEB Staff Interrogatory – 01: Attachment 2, Appendices 2B and 2I (the positioning of the Existing Transmission Lines in Appendices 2B and 2I is approximate), and Hydro One's Application - Appendices 2A and 2B.
[6] Hydro One's Response to OEB Staff Interrogatory – 01 (Response a); Hydro One's Response to Nyon Interrogatory – 02 (Responses a, b, and c).
[7] Nyon's Evidence – Document 1: the Philips Easement, dated December 16, 1929.

12. The Phillips Easement no longer exists. In the 1960s, the Seaway expropriated the lands that were subject to the Phillips Easement. The expropriation extinguished the easement.

(b) The 1960s Expropriations

13. On December 2, 1965, the federal government issued an Order in Council approving the expropriation of:

- all of Lots 23, 24 and 25 of Concession 4 in the Township of Humberstone; and
- part of Lot 17, the southerly part of Lot 18, and all of Lot 19, Concession 5, in the Township of Humberstone.[8]

14. This December 3, 1965 expropriation is referred to herein as the **"1965 Expropriation"**.

15. Three years later, on December 10, 1968, the federal government issued an Order in Council approving the expropriation of:

- part of lots 17 and 18 and part of the road allowance between lots 16 and 17 (known as Kleinsmith Road), part of the road allowance between lots 18 and 19 (known as Horton Road); and
- part of the road allowance between Concessions 4 and 5 (known as Forkes Road).[9]

[8] Nyon's Evidence – Document 2: Order in Council dated December 2, 1965.
[9] Nyon's Evidence – Document 4: Order in Council, dated December 10, 1968.

16. This December 10, 1968 expropriation is referred to herein as the **"1968 Expropriation"**. The 1965 Expropriation and the 1968 Expropriations are collectively referred to herein as the **"Expropriations"**.

17. Both Expropriations were completed pursuant to s. 18 of the *St. Lawrence Seaway* Authority *Act*, R.S.C. 1952, c. 242, as amended (the "***Seaway Act***")[10] and the *Expropriation Act*, R.S.C. 1952, c. 106 (the "***Expropriation Act***").[11] The Expropriations vested ownership of the Lands in the Seaway.

18. Section 3(4) of the *Seaway Act* confirms that all of the land and title expropriated thereunder vested in the federal government. Section 3(4) states:

> (4) Property acquired by the Authority [the Seaway] is the property of Her Majesty and title thereto may be vested in the name of Her Majesty or in the name of the Authority.

19. Accordingly, as of December 10, 1968, the federal government owned the entirety of the Lands, which included any fixtures attached thereto. The A6C line south of Concession 5 was affixed to the Lands at the time of the Expropriations and continues to be affixed to the Lands today.[12]

(c) The Master Agreement

20. On October 6, 1969, the Seaway and the Commission entered into a Master Agreement regarding the permanent relocation of power lines and electricity supply

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[10] Hydro One's Argument in Chief – Appendix 11: *St. Lawrence Seaway Authority Act*, R.S.C. 1952, c. 242, as amended.
[11] **Appendix 1**: *Expropriation Act*, RSC 1952, c 106.
[12] Hydro One's Responses to OEB Interrogatories – 4 (Response a).

facilities in the counties of Lincoln and Welland including those on the Lands (the **"Master Agreement"**).[13]

21. Section 2.1 of the Master Agreement addressed the relocation and the costs thereof:

> 2.1 The Commission shall permanently relocate and restore those power lines and electricity supply facilities as requested by the Authority [the Seaway] in writing from time to time and the entire cost of such relocation and restoration shall be paid for by the Authority [the Seaway] in the manner as hereinafter set out.

22. At s. 4.1, the Seaway grants the Commission permission to access the Seaway's lands, which includes the Lands, "for the purposes of relocation and restoration of its said power lines and electricity supply facilities."

23. There is no term set out in the Master Agreement.

(d) The Supplemental Agreement

24. Nearly seven years later, on June 1, 1976, the Seaway and Ontario Hydro (a successor of the Commission) entered into a Supplemental Agreement, as contemplated by the Master Agreement (the **"Supplemental Agreement"**).[14] In the period between the execution of the Master Agreement and the Supplemental

[13] Nyon's Evidence – Document 6: Master Agreement between St. Lawrence Seaway Authority and the Commission, dated October 6, 1969.
[14] Nyon's Evidence – Document 8: Supplemental Agreement between St. Lawrence Seaway Authority and Ontario Hydro, dated June 1, 1976.

Agreement, there were no other legal agreements reached or executed regarding the Lands.

25. At s. 1 of the Supplemental Agreement, the Seaway granted Ontario Hydro the right to maintain, operate and/or renew:

- four 230 K.V. overhead power transmission line crossings on steel towers over the Welland Canal Channel;
- together with 115-230 K.V. lines on wooden poles on, over and/or across adjoining Welland Canal reserve land; and
- two 27.6 K.V. cable crossings in ducts under the Welland Canal and overhead on wooden poles on, over and/or across adjoining Welland Canal reserve land easterly and westerly of the Welland Canal channel,

26. The Supplemental Agreement grants the above noted rights in perpetuity and free of charge.

(e) The Licence

27. Reference to the **"Feeder Line"** herein refers to the portion of the C2P line that extends east from the canal and is more particularly described in the Licence (defined immediately below).

28. On April 4, 1977, the Seaway and Ontario Hydro entered into a licence for the Feeder Line (the **"Licence"**).[15] The Licence specifically permitted Ontario Hydro to:

> erect, maintain, operate and/or renew a 115 k.v. electrical transmission line (hereinafter referred to as "the said line") 4,715 feet in length, more or less, on, over and/or across Welland Canal reserve land in Lots no. 17 and 18, Concession no. 5 for the former Township of Humberstone, in the

[15] Nyon's Responses to Interrogatories – Appendix 2: License dated April 4, 1977.

> county of Welland, now in the Cities of Welland and Port Colborne, in the Regional Municipality of Niagara, all in the Province of Ontario, the location of the said line being indicated coloured in red on Plan no. W.C. 77-2 hereto annexed.[16]

29. A significant portion of the Feeder Line is located on the 117 Con 5 Lands.[17]

30. As noted above, apart from the Phillips Easement (which was extinguished by the Expropriations), there are no easements, covenants or other rights registered on the Lands in favour of Hydro One, or any of its predecessors.

31. Between 1977 and 2005, there were no additional licenses or changes to the legal status or ownership of the Lands, or the rights that Hydro One and its predecessors had with respect to the Lands.

(f) The First Port Colborne APS

32. On May 10, 2005, Canada Lands CLC Limited (**"Canada Lands"**) and The Corporation of the City of Port Colborne (**"Port Colborne"**) entered into an Agreement of Purchase and Sale for lands that included the 117 Con 5 Lands (the **"First Port Colborne APS"**).[18]

33. Section 4 of the First Port Colborne APS addresses encumbrances. Section 4 states:

> 4. Notwithstanding the provisions of Paragraph 10, the Purchaser agrees to accept title subject to (i) all registered or unregistered agreements with

[16] Nyon's Evidence – Document 7: Plan No. WC-77-2.
[17] Nyon's Evidence – Document 11: Plan No. 59R12469
[18] Nyon's Evidence – Document 12: Agreement of Purchase and Sale from Canada Lands to Port Colborne, dated December 12, 2005.

> municipalities and publicly or privately regulated utilities; (ii) all registered or unregistered easements, rights, covenants and/or restrictions in favour of municipalities, publicly or privately regulated utilities or adjoining owners, or that otherwise run with the land…. and (iv) the Permitted Encumbrances set out in Schedule "C"…

34. Schedule "C" lists the Master Agreement, the Supplemental Agreement and the Licence.

35. Section 6 states that no fixtures, buildings or chattels are included in the Purchase Price.

36. Section 20 contains an Entire Agreement clause that confirms there was no warranty, representation, collateral agreement, etc. except as stated in the First Port Colborne APS.

37. When the transaction set out in the First Port Colborne APS closed, there were no references to encumbrances, exclusions or allocations of purchase price in the deed.

(g) The Second Port Colborne APS

38. On December 12, 2005, Canada Lands and Port Colborne entered into a second agreement of purchase and sale for lands that included the 117 Con 4 Lands and the Nyon Con 4 Lands, which included the Lot 24 Double Pole Line, the Lot 24 Single Pole Line, and the Lot 24 Tower Line (the **"Second Port Colborne APS"**).[19]

[19] Nyon's Evidence – Document 13: Agreement of Purchase and Sale from Canada Lands to Port Colborne, dated January 9, 2006.

39. Section 4 of the Second Port Colborne APS addresses encumbrances. Section 4 states:

> 4. Notwithstanding the provisions of Paragraph 10, the Purchaser agrees to accept title subject to (i) all registered or unregistered agreements with municipalities and publicly or privately regulated utilities; (ii) all registered or unregistered easements, rights, covenants and/or restrictions in favour of municipalities, publicly or privately regulated utilities or adjoining owners, or that otherwise run with the land…. and (iv) the Permitted Encumbrances set out in Schedule "C"…

40. Section 20 contains an Entire Agreement clause that confirms there was no warranty, representation, collateral agreement, etc. except as stated in the Second Port Colborne APS.

41. When the transaction set out in the Second Port Colborne APS closed, there were no references to encumbrances, exclusions or allocations of purchase price in the deed.

(h) The Nyon APS

42. On January 30, 2006, Port Colborne entered into an agreement of purchase and sale with Nyon Energy Corp.[20] for approximately 800 acres of land on Concessions 4 and 5, in the City of Port Colborne, Regional Municipality of Niagara, which included the

[20] Nyon Energy Corp. is a corporation controlled by the same controlling shareholder as Nyon Oil Inc. and 1170367 Ontario Inc.

Lands (the **"Nyon APS"**).[21] The Nyon APS was later assigned to Nyon by Nyon Energy Corp.

43. At s. 25 of the Nyon APS there is an Entire Agreement provision, stating that there is no representation, warranty or collateral agreement that affects the Nyon APS.

44. On May 1, 2015, Port Colborne transferred title to the Lands. Pursuant to s. 9 of the Nyon APS, the lands were transferred to Nyon on an "as-is where-is" basis. There were no encumbrances, exclusions or references to allocation of purchase price in the deeds.

(i) The Assignment of Port Colborne's Interest to Nyon

45. On April 30, 2015, Port Colborne assigned all of its rights, title and interest, both in law and equity, to and in respect of the occupancy by Hydro One and its predecessors of the Lands and any benefits or advantages to be derived therefrom to Nyon.[22] This included an assignment and assumption of the Master Agreement, Supplemental Agreement and the Licence, and all of the rights, privileges and obligations thereunder.

46. On April 27, 2015, Port Colborne provided notice to Hydro One that it had transferred and assigned the above noted rights to Nyon and directed Hydro One to pay

[21] Nyon's Evidence – Document 14: Agreement of Purchase and Sale from Port Colborne to Nyon, dated January 30, 2006.
[22] Nyon's Evidence – Document 20: Assignment of Master Agreement and Supplemental Agreement from Port Colborne to Nyon, dated April 30, 2015.

all past and future payments with respect to the aforesaid rights to Nyon, or as it may otherwise direct.[23]

D. Correspondence between Nyon and Hydro One

(a) The Notice to Pay or Quit and the Notice to Remove

47. On September 22, 2015, Nyon delivered a Notice to Pay or Quit to Hydro One. In the Notice to Pay or Quit, Nyon demanded that Hydro One pay rent, and notified Hydro One that if it failed to pay the past due rent owing, as well as rent on a go-forward basis, that it would be entitled to seize and sell Hydro One's goods and chattels located on the Lands.[24] Nyon has never taken such action.

48. On September 22, 2015, Nyon also delivered to Hydro One a Notice to Remove the Feeder Line.[25]

(b) Correspondence between counsel in 2015

49. Together with the Notice to Pay or Quit and the Notice to Remove, Nyon delivered a letter to Hydro One, wherein Nyon made it clear that the Master Agreement, the Supplemental Agreement, and the Licence were terminated; Nyon was the owner of the hydro infrastructure; and that rent that was becoming due and owing to Nyon by Hydro One. With respect to rent, Nyon demanded that going forward, rent be paid in the amount of $157,165.33 per month with interest for late payment at 19.56% per annum,

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[23] Nyon's Evidence – Document 19: Notice of Transfer of Rights of Occupancy from Port Colborne to Hydro One, dated April 27, 2015.
[24] **Appendix 2**: Notice to Pay or Quit from Nyon to Hydro One, dated September 22, 2015.
[25] Nyon's Evidence – Document 21: Notice to Remove the License from Nyon to Hydro One, dated September 22, 2015.

and notified Hydro One that it considered it to currently be in the position of an overholding tenant and demanded an additional 50% in rent until Hydro One vacated the property, or a new licence or agreement was entered into.[26]

50. On October 2, 2015, Hydro One and Nyon, through their respective counsel, spoke and agreed to hold the letters and notices "in abeyance" pending an effort to understand their respective clients' positions and to map out a process for resolution.[27] The parties continued to exchange correspondence until December 2015, after which there was no further discussion. Nyon did not agree to hold its rights in abeyance indefinitely while there was no further correspondence being exchanged between the parties.

(c) Correspondence between counsel in 2024

51. On February 22, 2024, Nyon delivered a comprehensive letter to Hydro One, setting out its position regarding its ownership of the Lands and the Existing Transmission Lines. Nyon also reasserted its demands for back rent and continued rent that it initially made to Hydro One in 2015.[28]

52. Additionally, Nyon also proposed that the parties resolve the issues by attempting to negotiate and then attending a mediation and arbitration.[29] Nyon anticipated that

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[26] **Appendix 3**: Letter from Nyon to Hydro One, dated September 22, 2015.
[27] **Appendix 4:** Email from Hydro One to Nyon, dated October 2, 2015.
[28] Hydro One's Expropriation Application – Appendix 4: Letter from Nyon to Hydro One, dated February 22, 2024.
[29] Hydro One's Expropriation Application – Appendix 4: Letter from Nyon to Hydro One, dated February 22, 2024 (Expropriation Application, page 53).

Hydro One would be amenable to a proposal of that nature since it was of the same spirit as the proposal Hydro One made to Nyon in December 2015.[30]

E. Litigation

53. Nyon was wrong. Hydro One ignored Nyon's February 2024 correspondence.[31]

54. After continuously prompting Hydro One to advise whether Hydro One would participate in a dispute resolution process, Hydro One finally responded on April 8, 2024, advising that it would not participate in a dispute resolution process, and instead was going to expropriate Nyon's lands.[32]

55. Thus, Nyon filed its Statement of Claim on April 9, 2024.[33] Hydro One responded with its Statement of Defence on May 17, 2024,[34] and later amended its Statement of Defence on February 24, 2025.[35]

56. Eight months after Nyon filed its Statement of Claim, Hydro One filed this application to expropriate before the Board on December 16, 2024.

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[30] Hydro One's Expropriation Application – Appendix 2G: Letter from Hydro One to Nyon, dated December 9, 2015.
[31] **Appendix 5**: Follow up emails from Nyon to Hydro One re: dispute resolution process, dated March 2024.
[32] Nyon's Supplemental Evidence – Document 6: Letter from Hydro One re: intent to expropriate, dated April 8, 2024.
[33] **Appendix 6**: Nyon's Statement of Claim (CV-24-00014768-0000).
[34] **Appendix 7**: Hydro One's Statement of Defence (CV-24-00014768-0000), dated May 17, 2024.
[35] **Appendix 8**: Hydro One's Amended Statement of Defence (CV-24-00014768-0000), dated February 24, 2025.

PART III – ISSUES

57. Issues 1 through 4 are set out in Procedural Order No. 2. The preliminary issues are dealt with at the outset because if there is no jurisdiction to grant the expropriation or to determine the property rights related to the ownership of the infrastructure, it is unnecessary for the Board to address the balance of the issues. Issue 5 is a response to Hydro One's submissions on the issue from its Argument-in-Chief.

58. To be more exact, Issue 1 is only necessary for the Board to determine if it has jurisdiction to determine the ownership of the subject transmission lines, and Issues 2, 3 and 4 are only necessary for the Board to determine if it has jurisdiction under s. 99(1)1 of the *OEB Act* to grant the expropriation as a result of Hydro One (or its predecessor) obtaining leave to construct under PART VI of the *OEB Act* or a predecessor of PART VI.

> **Preliminary Issue A:** Does the Board have jurisdiction to determine property rights related to the ownership of the Existing Transmission Lines?
>
> **Issue 1:** Who owns the subject transmission facilities?
>
> **Preliminary Issue B:** Does the Board have jurisdiction to grant the expropriation?
>
> **Issue 2:** Did Hydro One lose its original easements when the federal government expropriated the subject lands?

Issue 3: If Hydro One lost its original easements, were they replaced by other rights that continue to exist?

Issue 4: If not, is it in the public interest for the Board to grant Hydro One authority to expropriate new easements?

Issue 5: A stay is required to address Hydro One's misrepresentations and abuse of process.

PART IV – SUBMISSIONS ON ISSUES

A. Preliminary Issue A: Does the Board have jurisdiction to determine property rights related to the ownership of the Existing Transmission Lines?

59. The Board does not have the jurisdiction to resolve the parties' competing arguments regarding their property rights to the Existing Transmission Lines and to provide declarations pronouncing same.

60. Hydro One's factum lays bare that one of its purposes in this proceeding is to have the Board declare it the owner of the Existing Transmission Lines and where the jurisdiction to make that determination emanates from. The Board has no jurisdiction, under s. 99 or any other section of the *OEB Act* to declare a party as the owner of specific property. Only the Ontario Superior Court of Justice has the jurisdiction to resolve the competing property rights claims.

61. Hydro One has not made an application to expropriate the Existing Transmission Lines; the application only seeks the expropriation of easements upon which the

Existing Transmission Lines are affixed. The pronouncement of personal property rights is not the proper subject of a s. 99 application, which deals specifically with expropriations.

62. As the Board is a statutory authority, when it exercises its expropriation authority under s. 99, the *Expropriations Act* applies.[36]

63. The definition of "expropriation" in the *Expropriations Act* is as follows:

> "expropriate" means the taking of land without the consent of the owner by an expropriating authority in the exercise of its statutory powers;[37]

64. Both Hydro One's application, as well as its written argument, refer only to this application as proceeding under s. 99. It points to no other section which could purportedly give the Board the jurisdiction to issue declaratory relief in the context of an ownership dispute. There is good reason for this omission: no such provision exists. The legislature has not provided that jurisdiction to the Board.

65. The jurisdiction of a statutory tribunal must be found in a statute and must extend not only to the subject matter of the application and the parties, but also to the remedy sought.[38] A Tribunal cannot arrogate to itself powers that are not clearly bestowed on it by statute, because to do so would create a "patchwork of the rule of law."[39]

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[36] *Expropriations Act*, RSO 1990, c E.26, s 2.
[37] *Expropriations Act*, RSO 1990, c E.26, s 1.
[38] *Douglas/Kwantlen Faculty Ass'n v Douglas College*, 1990 CanLII 63(SCC), [1990] 3 SCR 570.
[39] *Arzem v. Ontario (Community and Social Services)*, 2005 HRTO 11 (CanLII) at para 232 citing *Brotherhood of Maintenance of Way Employees Canadian Pacific System Federation v. Canadian Pacific Ltd.*, 1996 CanLII 215 (SCC), [1996] 2 SCR 495, at para 8.

66. There is no provision in the *OEB Act* to allow a transmitter to apply to the Board for a determination of competing ownership rights. Hydro One has not pointed to any that can be interpreted in such a way.

67. Section 19(6) of the *OEB Act*, provides that "The Board has exclusive jurisdiction in all cases and in respect of all matters in which jurisdiction is conferred on it by this or any other *Act*."[40] This section establishes how jurisdiction operates: once granted, it is broad and expansive.

68. However, it is incorrect to suggest that s. 19(6) establishes the Board's jurisdiction to make a determination regarding the ownership of the Existing Transmission Lines. The Board's jurisdiction is established through the various provisions of the *OEB Act*. While that jurisdiction is broad once granted, it relates to specific issues and is clearly identifiable from the statutory provisions.

69. The Board does have the authority, in some instances, to indirectly impact property rights. For example, s. 59(1) provides a process by which the Board can issue an interim license to a party which permits it to, *inter alia*, take possession and control of the business of a transmitter.[41] Likewise, the *OEB Act* permits the Board to override contracts and determine rights related to property owners where oil and gas rights or storage take place.[42]

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[40] *OEB Act*, s 19.
[41] *OEB Act*, s 59(2)(a).
[42] *OEB Act*, s 38; *Snopko v. Union Gas Ltd.*, 2010 ONCA 248 [***Snopko***].

70. In its Argument-in-Chief, Hydro One references paragraph 27 of *Snopko* from the Ontario Court of Appeal and suggests that this paragraph coupled with s. 19 of the *OEB Act* provide the Board jurisdiction to make declarations regarding property rights. However, that is drastic misstatement of what the Court of Appeal determined in *Snopko.* In *Snopko,* the Court of Appeal determined that the Board has broad jurisdiction, but only in connection with matters that are properly before it. Specifically addressing s. 19 of the *OEB Act*, the Court of Appeal stated:

> This **generous and expansive conferral of jurisdiction** ensures that the Board has the requisite power to hear and decide all questions of fact and of law arising **in connection with claims or other matters that are properly before it**. This includes, inter alia, the power to rule on the validity of relevant contracts and to deal with other substantive legal issues. [Emphasis added].[43]

71. There was no request before the Board in *Snopko* to make declarations regarding property rights. In *Snopko* the plaintiffs alleged breach of contract and negligence (among other things) against Union Gas, which stemmed from leases entered into in the 1970s and 1980s. The Court of Appeal correctly determined that the Board had jurisdiction to review and interpret petroleum and natural gas leases to make determinations regarding just and equitable compensation in respect of those gas or oil rights and any damages resulting therefrom.[44] The Board had jurisdiction under s. 38 of the *OEB Act* to determine compensation with respect to gas or oil rights.[45] No equivalent provision exists with respect to the matter-at-hand, and indeed, Hydro One

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[43] *Snopko*, at para 27.
[44] *Snopko*, at para 24.
[45] *OEB Act*, s. 38.

has not brought its application under any other section of the *OEB Act* – it has only brought an application for expropriation under s. 99. The subject matter of s. 99 is expropriations; it does not confer jurisdiction on the Board to pronounce existing property rights.

72. Jurisdiction must be explicitly delegated to the Board through identifiable and discrete statutory provisions, rather than a single broad, sweeping reservation of powers which would accompany a jurisdiction such as that which is suggested by Hydro One. This approach is consistent with the general requirement set out in the jurisprudence. An explicit grant of jurisdiction is required to establish authority in an administrative tribunal.[46] For the Board to assert jurisdiction over an entire sector in the absence of statutory authority would be an error of law.

73. Since there is no statutory provision that grants the Board authority to determine and declare property rights, the Board must refrain from pronouncing Nyon or Hydro One as the owner of the Existing Transmission Lines and deny that request for relief.

B. Issue 1: Who owns the subject transmission facilities?

74. The following submissions are applicable should the Board determine that it has jurisdiction to make determinations regarding the ownership of the Existing Transmission Lines.

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[46] *Cuddy Chicks Ltd. v. Ontario (Labour Relations Board)*, 1991 CanLII 57 (SCC), [1991] 2 SCR 5 ; followed in *Okwuobi v. Lester B. Pearson School Board; Casimir v. Quebec (Attorney General); Zorrilla v. Quebec (Attorney General)*, 2005 SCC 16 (CanLII) and *A.C. Concrete Forming Ltd. v. Residential Low Rise Forming Contractors Association of Metropolitan Toronto*, 2009 ONCA 292.

75. This analysis is best divided into parts based on history and construction of those lines. Those parts are as follows:

(a) Who owns the Existing Transmission Lines that were on the property at the time of expropriation by the Seaway?

(b) Who owns the Existing Transmission Lines that were wholly rebuilt under the Master Agreement and Supplemental Agreement?

(c) Who owns the Existing Transmission Lines that were partially rebuilt under the Master Agreement and Supplemental Agreement?

(d) Who owns the Existing Transmission Lines that were built after expropriation by the Seaway pursuant to the Licence?

(a) Who owns the Existing Transmission Lines that were on the property at the time of expropriation by the Seaway?

76. Nyon owns the Existing Transmission Lines that were on the property at the time of the Expropriations by the Seaway in the 1960's. Undoubtedly, the legal effect of an expropriation of title of real property is to transfer title, including fixtures attached thereto, to the expropriating authority. This is the starting point of the analysis and the general principle seems to be uncontroversial between the parties. It is also uncontroversial that no agreement exists whereby the Seaway (or any other federal entity) transferred Hydro One's predecessor property rights to the Existing Transmission Lines after the Expropriations.

77. The primary controversy between the parties arises as a result of the interplay between the federal statutes, being the *Seaway Act* and the *Expropriation Act*, and the provincial statute, being the *Power Commission Act*.[47] Hydro One states that the *Power Commission Act* prevented property rights in the Existing Transmission Lines from transferring to the federal government (the Seaway) as a product of its expropriation. Nyon states that the federal expropriation transferred the portion of the Existing Transmission Lines on the Lands, at that time, to the Seaway and they were subsequently transferred to Port Colborne and then to Nyon.

78. Hydro One argues that s. 45 of the *Power Commission Act* prevented certain property rights from transferring to the federal government as a product of the expropriation. This is wrong. Section 45 of the *Power Commission Act* conflicts with the provisions of the *Seaway Act* and the *Expropriation Act*, which are federal statutes. These federal statutes contained no exceptions to the expropriation completed by the Seaway. Paramountcy requires that to the extent of an inconsistency between federal and provincial laws, the federal law prevails.[48]

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[47] Hydro One's Argument in Chief – Appendix 7: *Power Commission Act*, RSO 1960, c. 300, s. 45 (page 83).
[48] Hydro One's Argument in Chief – Appendix 12 (page 105); See also *Alberta (Attorney General) v. Moloney*, 2015 SCC 51 (CanLII), [2015] 3 SCR 327 [***"Moloney"***] and *407 ETR Concession Co. v. Canada (Superintendent of Bankruptcy)*, 2015 SCC 52 (CanLII), [2015] 3 SCR 397 [***"407 ETR"***].

(i) The governing case law

79. On November 13, 2015, the Supreme Court concurrently issued two seminal unanimous decisions[49] addressing federal paramountcy – *Alberta (Attorney General) v. Moloney*[50] and *407 ETR Concession Co. v. Canada (Superintendent of Bankruptcy).*[51]

80. In *Moloney*, the respondent (Moloney) caused a car accident and was found liable for the damages. The province of Alberta compensated the individual injured in the accident and sought to recover the amount of compensation from Moloney. Section 102 of Alberta's *Traffic Safety Act* (**"*TSA*"**) allowed the province to suspend Moloney's licence and permits until he paid the amount of the compensation. Moloney declared bankruptcy and was later discharged. He listed the province's claim in his Statement of Affairs and the debt was a claim provable in bankruptcy. Section 178(2) of the *Bankruptcy and Insolvency Act* (**"*BIA*"**) provides that, upon discharge, Moloney is released from all debts that are claims provable in bankruptcy. As a result of his bankruptcy and discharge, Moloney did not pay the amount of the compensation in full; however, because of this failure to pay, Alberta suspended his vehicle permits and driver's licence. Moloney contested the suspension. The Court of Queen's Bench and the Court of Appeal found that there was a conflict between the federal and provincial laws. Relying on the doctrine of federal paramountcy, they declared s. 102 of the *TSA* to be inoperative to the extent of the conflict. The Supreme Court upheld the lower court decisions and confirmed that federal paramountcy rendered s. 102 of the *TSA*

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[49] Justices Cote and McLachlin concurring in separate reasons.
[50] *Moloney*, 2015 SCC 51 (CanLII), [2015] 3 SCR 327.
[51] *407 ETR*, 2015 SCC 52 (CanLII), [2015] 3 SCR 397.

constitutionally inoperative to the extent that it is used to enforce a debt discharged in bankruptcy.[52]

81. In its reasons, the Supreme Court set out the analysis that must be undertaken when determining whether a federal law is paramount to a provincial law. The first step to the analysis is to determine if the overlapping laws are independently valid. If so, then an analysis is to be undertaken to determine whether their concurrent operation results in a conflict.[53] In *Moloney*, the impugned provisions were independently valid.[54]

82. There are two instances whereby a conflict can be developed: (1) there is an operational conflict because it is impossible to comply with both laws, or (2) although it is possible to comply with both laws, the operation of the provincial law frustrates the purpose of the federal enactment.

83. The first branch of the test is described as an actual conflict in operation as where one enactment says “yes” and the other says “no”.[55] If there is no conflict under the first branch of the test, one may still be found under the second branch. The question under the second branch is whether operation of the provincial statute is compatible with the federal legislative purpose.[56] The effect of the provincial law may frustrate the purpose of the federal law, even though it does not entail a direct violation of the federal law’s provisions. A province cannot do indirectly what it is precluded from

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[52] *Moloney*, at para 18.
[53] *Moloney*, at para 17.
[54] *Moloney*, at para 31.
[55] *Moloney*, at para 19.
[56] *Moloney*, at para 25.

doing directly. In both cases, the burden of proof rests with the party alleging the conflict.[57]

84. In *Moloney*, with respect to the first branch, the Court determined that the laws at issue gave inconsistent answers to the question of whether there was an enforceable obligation. One law provides for the release of all claims provable in bankruptcy and prohibits creditors from enforcing them, while the other disregards this release and allows for the use of a debt enforcement mechanism on such a claim by precisely excluding a discharge in bankruptcy.[58]

85. The provincial law also frustrated the federal law. The Court found that if the provincial law is permitted to operate despite Moloney's discharge, he would not be offered the opportunity to rehabilitate that Parliament intended to give him. If Parliament had intended for these particular debts to survive bankruptcy, they would have expressly stated that in the *BIA*.[59]

86. Similarly, in *407 ETR*, the Supreme Court addressed a conflict between *The Highway 407 Act, 1998* (the **"*407 Act*"**) and the *BIA*. The *407 Act* empowers the 407 ETR Concession Company Limited (**"ETR"**) to enforce the payment of tolls. Under s. 22(1) of the *407 Act*, if a person fails to pay a toll debt, ETR may notify the Registrar of Motor Vehicles. Under s. 22(4), upon receipt of this notice, the Registrar must refuse to issue or renew the debtor's vehicle permit until he or she is notified by ETR that the debt

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[57] *Moloney*, at para 27.
[58] *Moloney*, at para 60.
[59] *Moloney*, at para 79.

and related fees and interest have been paid. As a result of the driver's failure to pay his toll debt, ETR notified the Registrar and the Registrar refused to renew his permits. The driver obtained a discharge from bankruptcy. His Statement of Affairs listed ETR as an unsecured creditor. Pursuant to s. 178(2) of the *BIA*, a discharge from bankruptcy releases a debtor from claims that are provable in bankruptcy. The driver sought an order that his toll debt had been released by his discharge and an order compelling the Ministry of Transportation to issue his vehicle permits. The motions judge concluded that s. 22(4) of the *407 Act* was not in conflict with the *BIA* and he had no jurisdiction, absent a conflict, to order the reinstatement of his vehicle permits. The Superintendent of Bankruptcy filed an appeal. Applying the doctrine of federal paramountcy, the Court of Appeal declared s. 22(4) inoperative to the extent that it conflicted with the *BIA*'s purpose of giving a discharged bankrupt a fresh start.

87. The Supreme Court again upheld the appellate court decision and confirmed there was a conflict between the provincial and federal statute and that the provincial statute was inoperative to the extent of the conflict.[60] With respect to the inconsistency principle, the Supreme Court simply stated it at paragraph 25:

> Under the federal law, the debt is not enforceable; under the provincial law, it is. The inconsistency is clear and definite. One law allows what the other precisely prohibits.[61]

[60] *407 ETR*, at para 33.
[61] *407 ETR*, at para 25.

88. Accordingly, there was an operational conflict, which alone, created an inconsistency and rendered the provincial statute inoperative to the extent of the conflict.[62]

89. In addition to the operational conflict, the Court also unanimously found that the provincial law frustrated the purpose of the federal law, and for that reason there was a conflict, which also would independently render the provincial statute inoperative to the extent of the conflict. [63] Two purposes of the *BIA* are: (1) financial rehabilitation, and (2) equitable distribution. The provincial legislation frustrated both purposes, and for these additional reasons it was also declared inoperative to the extent of the conflict.[64]

(ii) Application to the current proceeding

90. Turning to the current circumstances, there is no question regarding the validity of the two statutes. The *Power Commission Act*, the *Expropriation Act*, and the *Seaway Act*, and specifically the provisions at hand, were properly enacted for purposes that are constitutionally bestowed on the provincial and federal governments.[65]

91. The analysis then turns to whether there is an operational conflict – is it impossible to comply with both laws?

92. Section 45 of the *Power Commission Act*, which was in force at the time of the Expropriations, stated:

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[62] *407 ETR*, at para 33.
[63] *407 ETR*, at para 34.
[64] *407 ETR*, at paras 28 and 32.
[65] *The Constitution Act, 1867*, 30 & 31 Vict, c 3, s. 92A.

> **45.** Notwithstanding this Act or any other general or special Act, where works of the Commission have been affixed to realty they remain subject to the rights of the Commission as fully as they were before being so affixed and do not become part of the realty unless otherwise agreed by the Commission in writing.[66]

93. Here, there is a clear operational conflict: the federal statutes aim to expropriate property, without exception, and the provincial statute purportedly prevents certain property affixed to those lands from being expropriated.

94. Compliance with the federal law is impossible while also acknowledging the supposedly superior property rights bestowed on the Commission by the Legislature. Had Parliament intended to permit certain fixtures to be excused from its expropriation, it would have stated so expressly in the *Expropriation Act*, or the *Seaway Act*. It did not. Therefore, s. 45 of the *Power Commission Act* was inoperative to the extent that it conflicted with the federal expropriation under the *Seaway Act* and the *Expropriation Act*.

95. The purpose of the federal legislation is also frustrated by the application of s. 45 of the *Power Commission Act* and its predecessors. The purpose of the *Seaway Act* is set out in s. 10:

> **10.** The Authority is incorporated for the purposes of
>
> > (a) **acquiring lands** for and constructing, maintaining and operating all such works as may be necessary **to provide and maintain**, either wholly in Canada or in conjunction with works

[66] Hydro One's Argument in Chief – Appendix 7: *Power Commission Act*, RSO 1960, c. 300, s. 45 (page 83).

> undertaken by an appropriate authority in the United States, **a deep waterway between the Port of Montreal and Lake Erie**, and
>
> (b) constructing, maintaining and operating all such works in connection with such a deep waterway as the Governor in Council may deem necessary to fulfil any obligation undertaken or to be undertaken by Canada pursuant to any present or future agreement. [Emphasis added].[67]

96. Accordingly, the purpose of the *Seaway Act* is to incorporate a company whose purpose is to acquire lands and to provide and maintain a deep waterway between the Port of Montreal and Lake Erie, and to construct and operate works that are incidental thereto.

97. The purpose of the *Expropriation Act* is to provide a process and authority by which the federal government can expropriate land and compensate landowners.[68]

98. Section 45 of the *Power Commission Act* attempted to excuse the property of the Commission that was affixed to real property from expropriation. The federal purpose is thereby frustrated. The purpose of acquiring lands for the construction of a deep waterway that connects Lake Erie with the Atlantic Ocean is frustrated by provincial legislation that aims to excuse certain fixtures from that expropriation – the operation of the provincial law is not compatible with the federal legislative purpose. Therefore, s. 45 of the *Power Commission Act* was inoperative to the extent that it frustrated the federal purpose.

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[67] Hydro One's Argument in Chief – Appendix 11: *St. Lawrence Seaway Authority Act*, R.S.C. 1952, c. 242, s. 10 (page 99).
[68] **Appendix 1:** *Expropriation Act*, RSC 1952, c 106.

(iii) Practical implications

99. The Board should also consider the upcoming practical implications should Hydro One's position regarding paramountcy be successful. Canada is currently on the cusp of pursuing national projects that will undoubtedly require federal expropriations in many, if not all, provinces. On June 6, the House of Commons passed the first reading of Bill C-5 the *One Canadian Economy Act*.[69] Part 2 of Bill C-5 would enact the *Building Canada Act*, the purpose of which is to streamline processes for approving projects that are designated by the federal Cabinet as "national interest projects".[70]

100. If Hydro One's position is correct, each time the federal government sets out to expropriate property interests in a province, a separate and independent analysis will need to be completed to ensure the Legislature in which the subject land is located has not enacted unique legislation to prevent the expropriation of certain lands or fixtures, and if such legislation does exist, the federal government will have to engage in an independent negotiation with the statute-exempted property owner regarding the land or fixtures at issue since there will be no authority to expropriate them. This plainly defeats the purpose that the federal legislation is attempting to accomplish, which is to streamline the process for approving and constructing "national interest projects."

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[69] C-5, *One Canadian Economy Act*, 1st Sess, 54th Parl, 2025 (first reading on June 6, 2025).
[70] C-5, *One Canadian Economy Act*, 1st Sess, 54th Parl, 2025, Part 2.

(iv) Hydro One's argument that the Existing Transmission Lines were not part of the realty

101. At paragraphs 50 to 57 of Hydro One's Argument-in-Chief, it argues that the Existing Transmission Lines could not be expropriated by the federal government because the Legislature beat Parliament to the punch. Hydro One's argument can be summarized as follows: because the Legislature passed legislation before the expropriation occurred, which provided that notwithstanding the infrastructure was affixed to the land, it remained the property of the Commission, and therefore the federal government could not expropriate that fixture.[71]

102. For the same reasons set out above, the predecessor of s. 45 of the *Power Commission Act* is inconsistent with the federal legislation and the purpose of federal legislation is frustrated. It cannot be as simple for the Legislature to defeat Parliament by pre-emptively passing a law that states notwithstanding property is affixed to land, the affixed property does not transfer to the landowner, and as a by-product, that property is prevented from being expropriated. In addition to the clear operational conflict and frustration of the federal purpose, this would also permit the Legislature to do indirectly that which it cannot do directly.

[71] Hydro One's Argument in Chief, at paras 50 – 57.

(b) Who owns the Existing Transmission Lines that were <u>wholly rebuilt</u> under the Master Agreement and Supplemental Agreement?

103. Between 1967 and 1973, Hydro One states that the balance of the Existing Transmission Lines were **<u>wholly or partially rebuilt</u>**.[72]

104. Nyon owns the Existing Transmission Lines that were **<u>wholly rebuilt</u>**.[73]

105. Hydro One admits in its response to interrogatories that the entirety of the rebuilt A6C line was paid for by the Seaway and 75% of the wholly or partially rebuilt C2P line was paid for by the Seaway.[74] Hydro One paid for 25% of the rebuilding of the C2P line because of a betterment to the line.[75]

106. When the Seaway paid for the reconstruction of those Existing Transmission Lines, it owned them. Simply because the Commission may have been responsible for their construction did not transfer the Commission the ownership of the infrastructure. There is no document whereby the Seaway transfers ownership of the infrastructure that it paid for to the Commission. When one party pays for or purchases property, it is presumed to own it. The onus is on Hydro One to rebut that universal presumption and it has failed to do so.

107. The Seaway then transferred the rebuilt infrastructure to Port Colborne and Port Colborne transferred it to Nyon. The provisions of the First Port Colborne APS and the

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[72] Hydro One's Argument in Chief, at para 11.
[73] See Nyon's Evidence – Document 6: Master Agreement between St. Lawrence Seaway Authority and the Commission, dated October 6, 1969; and Nyon's Evidence – Document 8: Supplemental Agreement between St. Lawrence Seaway Authority and Ontario Hydro, dated June 1, 1976.
[74] Hydro One's Response to OEB Staff Interrogatory – 04 (Response a(2)).
[75] Hydro One's Response to OEB Staff Interrogatory – 04 (Response a(2)).

Second Port Colborne APS merged in the deeds on closing and there were no exceptions to the transfer or encumbrances registered on title. Nyon was entitled to rely on the deed from the immediately preceding transaction and took the real property, including the fixtures, infrastructure and buildings attached thereto from Port Colborne.

(c) Who owns the Existing Transmission Lines that were partially rebuilt under the Master Agreement and Supplemental Agreement?

108. Nyon owns the Existing Transmission Lines that were **partially rebuilt** post-expropriation. For the reasons set out above in *(i)* and *(ii)*, the expropriation by the Seaway resulted in the transmission infrastructure on the lands being conveyed to the Seaway and ultimately to Nyon. Any partial rebuilding of those lines and infrastructure as a result of regular maintenance, care or upkeep is not sufficient to transfer ownership of that transmission infrastructure from Hydro One. Any contribution by Hydro One to the cost to pay for betterments did not result in a transfer of ownership of the lines from the Seaway to Hydro One.

109. While it does not affect the analysis, it is noteworthy that in its materials, Hydro One has never actually identified what lines were **wholly rebuilt** and what lines were **partially rebuilt**.

(d) Who owns the Existing Transmission Lines that were built after expropriation by the Seaway pursuant to the Licence?

110. Nyon owns the portion of the Existing Transmission Lines that were built after expropriation pursuant to the Licence.

111. The Licence has been terminated – whether by failure for it to be assigned from vendor to purchaser, or in the alternative, Nyon's express termination of it.

112. Pursuant to s. 11 of the Licence, upon failure of the Licensee (Ontario Hydro), the property of the Licensee vested without any right of compensation. Section 11 states:

> 11. Upon cancellation of this License, the Licensee shall forthwith, under the direction of the Licensor's Regional Director, remove his property at his own cost and expense from the land and premises of the Licensor, leaving and restoring said land and premises in a neat and clean condition to the entire satisfaction of the Regional Director. In case of default of the Licensee to remove his property, said property shall be removed and the site restored by the Licensor at the expense of the Licensee **or, at the option of the Licensor, said property shall become the property of and shall vest in the Licensor without any right of compensation to the Licensee therefor in either case**. [Emphasis added].[76]

113. Since having notice that the licence was terminated, Hydro One has taken no action.

114. Accordingly, the portion of the 115 k.v. electrical transmission line that is 4,715 in length and on Lands owned by Nyon on Lots 17 and 18, Concession 5, has vested in Nyon.

[76] Nyon's Responses to Interrogatories – Appendix 2: License dated April 4, 1977.

(i) Addressing the balance of the arguments set out in Hydro One's Written Argument-in-Chief regarding the ownership of the Existing Transmission Lines

1. <u>The "its" argument</u>

115. At paragraphs 36 to 43 of its Argument-in-Chief, Hydro One examines the Master Agreement and Supplemental Agreement and argues that the use of the word "its" in the agreements reflects an understanding by the Seaway that the infrastructure was the property of the Commission.[77] This is the only evidence that Hydro One has been able to produce suggesting that the Seaway acknowledged Hydro One was the owner of the infrastructure.[78] There is no other evidence.

116. Hydro One has cherry-picked the use of the words "its" to support its argument, but ignored other instances of the use of the word "its" that defeat its argument. For example, s. 4.1 of the Master Agreement states:

> 4.1 The Authority [the Seaway] shall grant to the Commission permission to enter upon its lands for the purposes of relocation and restoration of its said power lines and electricity supply facilities.[79]

117. In the above provision, the first time "its" is used, it is unambiguously referring to the lands owned by the Seaway, and there is no indication to suggest a change to the use of the possessive pronoun prior to the phrase "its power lines and electricity supply facilities."

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[77] Hydro One's Argument in Chief, at paras 36 – 43.
[78] Hydro One's Response to Nyon's Interrogatory – 05 (Response a).
[79] Nyon's Evidence – Document 6: Master Agreement between St. Lawrence Seaway Authority and the Commission, dated October 6, 1969.

118. Notwithstanding that the first use of the word “its” in the above sentence structure refers to the lands of the Seaway, a reference is made to the Commission prior to addressing the lands – “The **Authority** shall grant to the **Commission** permission to enter upon **its lands**…” Here, it is undeniable that the Authority is granting the Commission access rights to the lands of the Authority.

119. Other provisions of the Master Agreement refer to the Seaway as the owner of the “power lines and electricity supply facilities” in the same way that the Master Agreement uses the word “its” to describe lands owned by the Seaway. For example, s. 5 states:

> 5. … the Authority shall grant fee of rental the Commission the right and privilege to maintain and operate its power lines and electricity supply facilities…[80]

120. This is the same sentence structure as the drafter of the Master Agreement used in s. 4.1 when unequivocally referring to the lands owned by the Seaway. Here, the Master Agreement used that same sentence structure and the word “its” when referring to the “power lines and electricity supply facilities”, which is a strong indicator of acknowledgement that they were owned by the Seaway. It is also noteworthy that these provisions are only separated by one subparagraph.

121. There is no provision in the Master Agreement or Supplemental Agreement that directly addresses the ownership of the transmission infrastructure in question, however

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[80] See Nyon’s Evidence – Document 6: Master Agreement between St. Lawrence Seaway Authority and the Commission, dated October 6, 1969.

there are frequent references to the “maintenance and operation” of the power lines and electricity supply facilities. If the parties intended for title to the power lines and electricity supply facilities to be transferred to the Commission after expropriation of them by the Seaway, they would have included a provision that did just that. Each party was sophisticated and would have been presumed to understand the impact of the expropriation upon its property rights. There is no evidence or even a suggestion that the parties lacked the appropriate sophistication to understand the impact of the contracts and licences that they made with one another.

122. Regardless of how the word “its” is construed in the agreements, the use of the words “its” is not sufficient to transfer ownership of the Existing Transmission Lines from the Seaway to the Commission. There is no provision in either of the agreements that could be construed as transferring ownership of the Existing Transmission Lines to Hydro One.

2. Actions consistent with ownership

123. Since taking title to the lands in 2015, Nyon has taken every step it could that was consistent with its ownership of the property and fixtures. To summarize, shortly after taking title, Nyon cancelled the agreements and licences with Hydro One;[81] advised Hydro One that it considered Hydro One to be an overholding tenant;[82] demanded rent;[83] retained counsel to pursue its rights;[84] issued Hydro One a Notice of

[81] Nyon’s Evidence – Document 21: Notice to Remove License.
[82] **Appendix 2**: Notice to Pay or Quit from Nyon to Hydro One, dated September 22, 2015.
[83] **Appendix 2**: Notice to Pay or Quit from Nyon to Hydro One, dated September 22, 2015.
[84] Nyon’s Supplementary Evidence – Documents 1 – 5.

Trespass (after Hydro One engaged in a strategy of delay in the civil litigation process);[85] and commenced a claim against Hydro One for back-rent owed, which included rent calculated on Hydro One's use of the infrastructure that Nyon owned.[86]

124. Hydro One will certainly argue that Nyon did not commence a claim until 9+ years after it made its initial demand for rent. However, Nyon was not obligated to repeatedly demand rent over and over again from Hydro One after initially putting Hydro One on notice and making its demand for rent. The *Real Property Limitations Act* permits Nyon to collect up to ten years of back-rent[87] and there is no continuing obligation to demand again and again.

125. Hydro One's argument that its maintenance of the infrastructure is consistent with its ownership of it is wrong. Commercial landlords are not obligated to maintain their property in use by their commercial tenants, especially when the tenant refuses to pay any form of rent for its occupation of the lands and use of the property. In the circumstances, Hydro One's maintenance of the infrastructure is not evidence of its ownership of it.

3. Nyon is not seeking a windfall

126. There are baseless allegations throughout Hydro One's materials suggesting that Nyon is seeking a windfall. Nothing could be further from the truth. Nyon is seeking fair and appropriate compensation from Hydro One for the use of its lands and

[85] Hydro One's Response to OEB Staff Interrogatory – 05 (Response b).
[86] **Appendix 6**: Nyon's Statement of Claim (CV-24-00014768-0000).
[87] *Real Property Limitations Act*, RSO 1990, c L.15, s. 4.

infrastructure, as well as damages for environmental harm that Hydro One caused in the 1960s and 1970s and that continues to exist today.

127. Hydro One's allegation that Nyon is attempting to make ratepayers pay for the infrastructure twice is false. The Seaway paid for a significant portion of the Existing Transmission Lines. This accusation is nothing more than a dramatic innuendo, used in an attempt to sway the Board to look past the evidence and legal principles in order to grant Hydro One the relief it wants.

128. The land and infrastructure at issue are valuable and Hydro One has not paid a cent to Nyon for their use. Hydro One has used 50+ acres of Nyon's land, in addition to the infrastructure, without any property rights thereto, for the duration of Nyon's ownership of them.

129. Nyon has maintained the land, paid the taxes, foregone the collection of rent from another tenant, and missed out on a profitable sale to a third party in order to allow Hydro One to continue to use its lands and infrastructure to make a profit. It is time for Hydro One to pay for that use. Nyon is not seeking a windfall; it is seeking fair compensation for Hydro One's use of its property.

C. Preliminary Issue B: Does the Board have jurisdiction to grant the expropriation?

130. This issue is addressed before Issues 2, 3 and 4, since if the Board determines that Hydro One cannot demonstrate that it obtained the leave required by s. 99(1) of the *OEB Act*, the Board cannot grant the expropriation. Any analysis of the balance of

Issues 2, 3 and 4 would be moot and unnecessary, and the application should be dismissed.

131. In Hydro One's written submissions, it argues that it satisfies the leave requirement in s. 99(1)1. of the *OEB Act* and is therefore permitted to apply to the Board to expropriate land for a work.[88] Subsection 99(1) states:

> **Expropriation**
>
> **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.[89]

132. The "Part" referred to is PART VI – TRANSMISSION AND DISTRIBUTION LINES.

133. Section 89 of PART VI defines a "work" as follows:

> "work" means a hydrocarbon line, electricity distribution line, electricity transmission line, interconnection or station;[90]

134. Section 89 also defines "electricity transmission line" as follows:

> "electricity transmission line" means a line, transformers, plant or equipment used for conveying electricity at voltages higher than 50 kilovolts;[91]

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[88] Hydro One's Argument in Chief, at paras 108 – 114.
[89] *OEB Act*, at s.99(1).
[90] *OEB Act*, at s. 89.
[91] *OEB Act*, at s. 89.

135. Accordingly, the Existing Transmission Lines are a “work” and only persons who have leave under Part VI or a predecessor of Part VI are entitled to apply to the Board for authority to expropriate under s. 99.

136. Section 92 (1) addresses leave to construct electricity transmission or distribution lines; it states:

> **Leave to construct, etc., electricity transmission or distribution line**
>
> **92** (1) No person shall construct, expand or reinforce an electricity transmission line or an electricity distribution line or make an interconnection without first obtaining from the Board an order granting leave to construct, expand or reinforce such line or interconnection.[92]

137. In order for the Board to have jurisdiction to authorize the expropriation, Hydro One needs to prove that it was granted leave under PART VI of the *OEB Act* or a predecessor of PART VI of the *OEB Act*.

138. It is admitted by Hydro One that it did not obtain leave under PART VI of the current *OEB Act* to construct the Existing Transmission Lines. The analysis is then focused on whether Hydro One obtained leave under a predecessor of PART VI of the *OEB Act* to construct the Existing Transmission Lines.

139. By necessity, leave to construct would have to be obtained prior to the construction of the work.

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[92] *OEB Act*, at s.92(1).

140. It is helpful to divide the leave analysis by the two separate time periods in which the Existing Transmission Lines were constructed: (i) the A6C line constructed in the 1920s that continues to compose a portion of the Existing Transmission Lines today (and runs north-south through the entirety of Nyon's property on Concession 4);[93] and (ii) the balance of the Existing Transmission Lines that were fully or partially rebuilt between 1967 and 1973.[94]

(a) The A6C line constructed in the 1920s that continues to compose a portion of the Existing Transmission Lines today

141. Hydro One has provided no evidence, whatsoever, that any leave was ever obtained under PART VI of the *OEB Act* or any predecessor of Part VI for the construction of the A6C line in the 1920s.

142. Even if an Order-in-Council (an **"OIC"**) is to be considered leave (which is denied and discussed below), Hydro One has not produced one, or even provided evidence that one exists. Hydro One admits in its response to interrogatories that it does not have one.[95]

143. The only documents that Hydro One points to are a smorgasbord of easements granted in the 1920s and 1930s that did not even apply to the property in question

[93] Hydro One's Argument in Chief, at para 11; Hydro's Responses to OEB Staff Interrogatory – 01 (Response a).
[94] Hydro One's Argument in Chief, at para 11; Hydro's Responses to OEB Staff Interrogatory – 01 (Response a).
[95] Hydro One's Responses to OEB Staff Interrogatory – 01 (Response d).

(except for the Phillips Easement).[96] Many of those easements contain the following recital:

> **Pursuant** to the Power Commission Act and amendments thereto, the Grantee has made a survey and is about to erect a line to transmit electric power of the said lands.[97]

144. Hydro One suggests that because these ***recitals*** exist in ***easements*** over ***unrelated properties***, it must mean that the Commission was granted leave to construct the entirety of the A6C line on Concession 4 under a predecessor of PART VI of the *OEB Act*.

145. A reference in an unrelated easement to the *Power Commission Act* is not evidence that leave to construct was granted pursuant to a predecessor of PART VI of the *OEB Act*.

146. Moreover, a recital referencing the *Power Commission Act* is not evidence that leave to construct was obtained. That argument is akin to stating that because one drives a car, that means they have a driver's licence. The legislature is not a party to the unrelated easements and there is no confirmation or warranty contained in them that Hydro One has secured the requisite OIC that grants it leave to construct the subject transmission infrastructure. The only thing that the recitals from these unrelated easements suggest is that **Hydro One told the Grantor** that it was going to erect a line to transmit electricity in accordance with the *Power Commission Act*.

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[96] Hydro One's Responses to OEB Staff Interrogatory – 01 (Response d).
[97] Hydro One's Responses to OEB Staff Interrogatory – 01 (Response d): Attachment 2 (pages 16 – 125).

147. The only easement produced by Hydro One that even relates to the land in question (the Phillips Easement) does not address the entirety of the A6C line on Concession 4; it only addresses the first three towers north of Concession Road 3.[98] The balance of the easements are for ***unrelated properties*** that are not the subject of this application.

148. Pursuant to s. 99(1) of the *OEB Act*, the onus is on the party seeking the expropriation to establish that leave was previously granted. The granting of leave under PART VI or a predecessor of PART VI provides the Board jurisdiction to authorize the expropriation.

149. Hydro One has failed to prove that it was granted the requisite leave. A recital from an easement granted in the 1920s is not evidence of leave to construct granted under a predecessor of PART VI of the *OEB Act*.

150. Accordingly, the Board does not have jurisdiction under s. 99(1) of the *OEB Act* to authorize Hydro One to expropriate an easement for the A6C line on Concession 4, and that request for relief must be denied.

(b) The balance of the Existing Transmission Lines that were fully or partially rebuilt between 1967 and 1973

151. Hydro One states that the balance of the original transmission and distribution lines were fully or partially rebuilt between 1967 and 1973. In particular:

[98] Hydro One's Responses to OEB Staff Interrogatory – 01 (Response d): Attachment 2 (pages 114 - 116).

(a) The C2P was entirely rebuilt within a wholly new alignment extending north from Concession Road 3, paralleling the A6C and consolidated north of Concession 4 at C2P17 Jct with the A6C ("B" to "C").

(b) The A6C was rebuilt north of Concession 4 commencing at Structure 17 (C2P17 Jct) ("C" to "A"). The section of line south of Structure 17 to Concession Road 3 remained unaffected ("D" to "C").

(c) The distribution lines were rebuilt between Concession 3 and Concession 4, before crossing the Welland Canal in a new duct bank ("H" to "G").[99]

152. With respect to jurisdiction set out in s. 99(1)1. of the *OEB Act* regarding these transmission lines, Hydro One alleges that its predecessors were granted leave to construct by virtue of OICs. Hydro One argues that these OICs should be interpreted as leave to construct under PART VI of the *OEB Act* or a predecessor of PART VI.[100]

153. There are several problems with this argument. First, Hydro One has not produced any of the OICs that is alleges were issued to its predecessor. In fact, it has admitted that it does not have them.[101] The Board cannot presume that these OICs exist.

154. The only OIC that Hydro One has produced is from 1976,[102] which is after the transmission infrastructure in question was built.[103] By Hydro One's own admission,

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[99] Hydro One's Responses to OEB Staff Interrogatory – 01 (Response a).
[100] Hydro One's Argument in Chief, at para 112.
[101] Hydro One's Responses to OEB Staff Interrogatory – 01 (Response d).
[102] Hydro One's Expropriation Application: Appendix 2C.
[103] Hydro One's Responses to OEB Staff Interrogatory – 01 (Response a).

construction of the Existing Transmission Lines was completed at least two years prior.[104] Accordingly, the only OIC produced by Hydro One is not evidence of leave to construct any of the infrastructure that is the subject of this application.

155. Second, even if the 1976 OIC did apply to the Existing Transmission Lines (which it did not), it only addressed Lots 17 and 18 in Concession 5.[105] The Existing Transmission Lines span the entirety of Concession 4 and Lot 19 Concession 5, in addition to Lots 17 and 18 Concession 5.[106]

156. Third, the OICs are not "leave to construct" under a predecessor of PART VI of the *OEB Act*. In Hydro One's submissions, it expands **PART VI** of the *OEB Act* to the entire ambit of the legislation that it suggests is a predecessor of the *OEB Act*. Hydro One has not provided any evidence that the *Power Commission Act* is a predecessor of the *OEB Act*. Nor has Hydro One suggested that the referred to Parts of the *Power Commission Act* are harmonious with Part VI of the *OEB Act*. In its submissions, Hydro One does not even identify what Parts of the *Power Commission Act* it is referring to. Hydro One conflates the logic as follows: because a provision that authorizes expropriation exists somewhere in a predecessor act, then it must be a predecessor of PART VI of the *OEB Act*. That logic is wrong. If the Legislature intended to allow a person to apply to the Board for authority to expropriate land for a work who had obtained leave to construct under some unrelated Part of a predecessor act, it would

[104] Hydro One's Responses to OEB Staff Interrogatory – 01 (Response a).
[105] Hydro One's Expropriation Application: Appendix 2C.
[106] Hydro One's Expropriation Application: Appendix 1.

not have limited the language in s. 99 (1) 1. to "any person who has leave under **this Part or a predecessor of this Part.**"

157. Fourth, and most importantly, there is no evidence, whatsoever, of leave to construct. Any analysis by the Board of the statutory interpretation argument offered by Hydro One that argues that an authorization from the Lieutenant Governor pursuant to a section in an unrelated Part of a supposedly predecessor statute is pointless, since there is no evidence of the authorization.

158. Accordingly, the Board should determine that it does not have the jurisdiction to authorize Hydro One to expropriate easements since Hydro One has failed to prove that it obtained leave under PART VI of the *OEB Act* or a predecessor of PART VI.

D. Issue 2: Did Hydro One lose its original easements when the federal government expropriated the subject lands?

159. Issues 2, 3 and 4 are only necessary for the Board to determine if it determines that it has jurisdiction under s. 99(1)1 of the *OEB Act* to grant the expropriation.

160. Hydro One lost any easements that it had when the lands were expropriated by the federal government. Expropriation is the taking of all lands and interests therein, including easements.[107]

[107] *Borozny v. Wolfsohn*, 2024 ONCA 58 at para 49.

161. In its response to OEB Interrogatory 1 d), Hydro One appended 14 easements, but only one previously applied to the lands that are the subject of this application. That easement is the Phillips Easement.

162. The Phillips Easement was granted December 16, 1929, and only entitled the Commission to erect three towers over a small portion of part of Lot 24, Concession 4, commencing from the south end and running north to a dead end.[108]

163. The Phillips Easement no longer has any impact on the subject lands. Notwithstanding that the Phillips Easement remained registered on title post-expropriation, it was extinguished upon expropriation of the lands by the Seaway.

164. There is no evidence of agreement or intention between the parties that the Phillips Easement was to continue to exist post-expropriation. To the contrary, the only evidence suggests that the parties understood it to be extinguished, which is why it was necessary for the Seaway and the Commission to enter into the Master Agreement and Supplemental Agreement that permitted the Commission to use the entire length of Lot 24. Had the parties understood the Phillips Easement to still be effective, they would not have required a contract to use the land that the Phillips Easement applied to pre-expropriation.

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[108] There is a second document dated January 14, 1959 from Blanche Phillips as Grantee to The Commission as Grantor that Hydro One has provided in response to Interrogatory 1 d) that addresses the same lands, being Part of Lot 24, Concession 5, and seems to marginally expand the right for The Commission to cut trees and remove shrubs on the property. This document is referred to as a "memorandum" and not an easement. Nyon is pointing this out for completeness only. This document was never registered on title and also is from the pre-expropriation time period.

165. Hydro One seems to implicitly acknowledge this position in its arguments. It acknowledges that the Phillips Easement remains on title, but does not argue that it continues to apply, and it points out that the Phillips Easement was replaced with the Master Agreement and Supplemental Agreement.[109]

166. An oversight by the land registrar with respect to the deletion of the Phillips Easement does not mean that it continues to exist. The oversight does not alter the legal effect of the expropriation.

E. Issue 3: If Hydro One lost its original easements, were they replaced by other rights that continue to exist?

167. The Master Agreement, Supplemental Agreement and Licence have been terminated. Each of these agreements are private contracts between the parties that entered them. Nyon was not given notice of these contracts, nor were any of them assigned to Nyon. Nyon is not obligated to abide by contracts that it was not a party to and that it did not know existed. Accordingly, the contracts terminated upon transfer of the lands as a product of them failing to be assigned.[110]

168. In the alternative, Nyon terminated the Master Agreement, Supplemental Agreement and Licence on notice when it delivered the Notice to Pay or Quit and the Notice to Remove to Hydro One on September 22, 2015, together with letter correspondence of the same date that set out Nyon's positions on the issues and

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[109] Hydro One's Argument in Chief, at para 94.
[110] *Goodyear Canada Inc. v. Burnhamthorpe Square Inc.*, 1998 CanLII 6091 (ON CA); *Brown v. Belleville (City)*, 2013 ONCA 148.

demanded rent. The Licence explicitly states at s. 10 that the Licence can be terminated at any time by notice in writing.[111]

169. In the further alternative, if Nyon was not permitted to terminate the Master Agreement and Supplemental Agreement on notice, Nyon was permitted to terminate the Master Agreement and Supplemental Agreement as a result of Hydro One fundamentally breaching both agreements by contaminating the lands, without the permission of the owner.

F. Issue 4: If not, is it in the public interest for the Board to grant Hydro One authority to expropriate new easements?

170. If the Board determines that it has the jurisdiction to authorize the expropriation, then Hydro One has failed to establish that the expropriations are in the public interest. Hydro One has not provided any specific reason that the expropriation of the *particular* easements requested are in the public interest. The current *status quo* has, by Hydro One's own admission, permitted it to continue to operate, service and maintain the Existing Transmission Lines. There has been no actual impact on Hydro One's ability to do so despite ten years of Nyon ownership, and well over a year of litigation.

171. If the Board deems expropriation to be in the public interest, the scope of the expropriation should be the entirety of the 117 Con 5 Lands, in addition to the necessary portions of the Nyon Con 4 Lands and 117 Con 4 Lands. The 117 Con 5 Lands are divided into the Parts reflected on Plan 59R-15312 because Hydro One demanded that

[111] Nyon's Responses to Interrogatories – Appendix 2: License dated April 4, 1977.

be so.[112] In 2013, Nyon was making an unrelated application to the Ontario Municipal Board regarding the entirety of the Lands and Hydro One threatened to intervene should Nyon not grant Hydro One the "setbacks" that it demanded.[113] Now that Hydro One has a more complete understanding of the value of the subject lands, it has pivoted to suggest that it only requires thin easements that would, in effect, deprive Nyon of the true commercial value of the 117 Con 5 Lands and leave Nyon with a hollowed-out husk.

172. An application under s. 99 of the *Act* requires that the Board be convinced that the "**expropriation** of the land is in the public interest" (**emphasis added**).[114] This means that the burden is on Hydro One to show that the expropriation, rather than the project the expropriation supports, is necessary in the public interest. It is not sufficient for Hydro One to argue, as it does at paragraph 102, that the Existing Transmission Lines serve the public interest. Instead, it must show why the particular **expropriation** is in the public interest.

173. Hydro One's submissions focus on the public interest in maintaining the existing electrical grid, which the Existing Transmission Lines forms part of. While it is not contested that maintenance of the electrical grid is an important public interest, Hydro One fails to establish the necessity of the expropriation for that purpose – Nyon has never denied Hydro One access to service or maintain the infrastructure; Nyon has only

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[112] Nyon's Evidence – Document 17: Plan 59R15312.
[113] Nyon's Response to Interrogatories – Appendix 17: Letter from Hydro One to Nyon (pp. 95-99).
[114] *OEB Act*, s. 99(5).

demanded that Hydro One pay to do so. Hydro One is a publicly traded company on the Toronto Stock Exchange – relieving it of a financial burden by now permitting it to expropriate narrow easements is not the "public interest".

174. The evidence is consistent that at no point has Hydro One's ability to operate, access or maintain the Existing Transmission Lines been impeded. In its responses to interrogatories, Hydro One admits that at no time has Nyon ever denied access to access or maintain the Existing Transmission Lines.[115] In Nyon's responses, Nyon confirmed that it never has prevented Hydro One from accessing or maintaining the Existing Transmission Lines.[116]

175. The evidence relied on by Hydro One to establish some jeopardy to its ability to maintain the electrical grid is weak and speculative. Specifically, it amounts to the assertions at paragraphs 96 and 97 that:

(a) Nyon seeks certain equitable relief from the Court in its civil action; and

(b) Nyon has issued a trespass to property notice.

176. With respect to the equitable relief requested from the Court by Nyon, Hydro One has the right to make submissions regarding that relief and its scope. Equitable relief is discretionary in nature, and the Court will examine the implications of granting it, including implications to the public.

[115] Hydro One's Responses to OEB Staff Interrogatory – 05 (Response b).
[116] Nyon's Responses to OEB Staff Interrogatory – 02 (Response c).

177. With respect to the trespass to property notice, the words of the trespass to property notice itself show that it is no threat to the continued use of the grid. The only consequence cited in the event of a trespass is that “Any breach of this will be relied on as evidence”.[117] There is no suggestion that the police will be called, or any steps would be taken to preclude Hydro from accessing the property.

178. The evidence from both parties is therefore clear that the current *status quo*, which has existed for a decade, poses no identifiable risk to Hydro One’s ability to operate and maintain the power grid.

179. Moreover, even the trespass to property notice only suggests that, if breached, Nyon will rely on it in litigation proceedings. There is no suggestion that Nyon will take steps to remove Hydro One personnel from the land, or otherwise retaliate in any way that could jeopardize the public interest.

180. The question, therefore, arises – how does the current situation engage the public interest such that the extraordinary and oppressive remedy of expropriation is required?

181. Respectfully, Hydro One has never put forward a coherent answer to this fundamental question. The closest it comes is at paragraph 104, where it attacks Nyon for its purported “aggressive and ever-evolving legal positions”. This submission,

[117] Hydro One’s Response to OEB Staff Interrogatory – 05 (Response b).

however, ignores the fact that, on the ground, nothing has changed and Nyon has confirmed that nothing *will* change.[118]

182. Hydro One states that it seeks authorization over only those interests "required to safely and reliably operate the Existing Transmission Lines now and in the future."[119] This, however, is simply a bald assertion. There is no evidence whatsoever in the record to establish that the expropriation is necessary. Nowhere does Hydro reckon with the question of why the expropriation is required for such safe and reliable operation going forward. Again, there is no argument that the current *status quo* has prejudiced Hydro One's ability to maintain the electrical grid.

183. Simply because the Existing Transmission Lines transmit electricity does not mean that an expropriation of the land is in the public interest. If the legislature intended that to be the case, it would have said so, and not used the "public interest" as the threshold to be met for an expropriation.

184. Additionally, if the true motive of Hydro One was the public interest, it would have made an application to expropriate in 2013 when it uncovered it no longer had any rights to occupy the subject lands. Instead, it dug its head in the proverbial sand, and has only withdrawn it therefrom once Nyon began to actively pursue it for compensation for the use of Nyon's property and infrastructure.

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[118] Nyon's Responses to OEB Staff Interrogatory – 02 (Response c).
[119] Hydro One's Argument in Chief, at para 105.

185. In the absence of evidence that the **expropriation** is in the public interest, the Board must dismiss Hydro One's application to expropriate.

G. Issue 5: A stay is required to address Hydro One's misrepresentation and abuse of process

186. Pursuant to section 23(1) of the *Statutory Powers Procedures Act*, the Board has authority to make such orders or give such directions as are necessary to prevent abuse of its processes.[120]

187. In this case, Hydro One has sought to abuse the Board's process, both by making demonstrably untrue and misleading statements in its submissions, which Nyon had no real opportunity to address. The prejudicial effect of these submissions risks placing the administration of justice into disrepute, and warrant a stay of proceedings.

188. The *Statutory Powers Procedures Act* empowers the Board to make any orders or directions it considers proper to prevent abuse of its processes.[121]

189. The doctrine of abuse of process is flexible and is unencumbered by specific requirements. The administration of justice and fairness are at the heart of the doctrine of abuse of process. Its purpose is to prevent the misuse of procedures in a way that would be manifestly unfair to a party to the litigation before it or would in some other way bring the administration of justice into disrepute.[122]

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[120] *Statutory Powers Procedure Act*, RSO 1990, c S.22, s 23.
[121] *Statutory Powers Procedure Act*, RSO 1990, c S.22, s 23.
[122] *Behn v. Moulton Contracting Ltd.*, 2013 SCC 26 (CanLII), [2013] 2 SCR 227, at para 40.

190. As the Board is aware, in an Application under s.99, the parties' rights are not parallel. While the party bringing an application has an opportunity to provide an in-depth, extensive survey of its position, an Intervenor (as there are no respondents in a s.99 application) does not have a parallel opportunity to do so. Instead, it must await interrogatories and written argument.

191. This places an Intervenor in a position of vulnerability with respect to the Applicant. It is not until late in the process, once procedural steps have been completed, that an intervenor has its first real opportunity to respond to the Application. This creates a period within which an Applicant can create real mischief by providing verifiably false information in a window in which an Intervenor cannot attack that information and in which the OEB will certainly rely on that information.

192. As set out in Mr. Lemke's letter of July 9, 2025, this is exactly what happened in this case. The interrogatory process revealed that Hydro One made a number of misstatements of fact in its initial application, including, most notably;

(a) "Hydro One has attempted good faith negotiations with all landowners" and "has offered consistent offers of settlement", neither of which is true as it relate to Nyon, and which it admitted in its interrogatories;[123] and

[123] Hydro One's Expropriation Application, at para 27.

(b) "The parties had exchanged draft memorandums of understanding in 2014";[124] when only Nyon had ever provided a draft Memorandum of Understanding, which Hydro One admitted in its interrogatories.[125]

193. These were not innocent slips or charitable interpretations of events. They were statements that Hydro One knew, at the time they were being made, were untrue. They were made for the sole purpose of bolstering its case, attempting to portray Nyon as unreasonable (a strategy which continues in its written submissions), and in circumstances where, due to the procedures before the Board, it knew it would be difficult for Nyon to rebut.

194. A failure by one party to appropriately and honestly disclose facts can constitute abuse of process and can warrant a stay.[126]

195. The failure to disclose is particularly acute in this case. In this application, Nyon is an intervenor, not a respondent. It does not have the opportunity to directly respond to the application brought by Hydro One. This provides Hydro One, as the applicant, with an enormous amount of power and puts Nyon in a vulnerable position. While Hydro One is entitled to argue an interpretation of the facts and the law in its favour, it is not entitled to blatantly misrepresent the facts of the case in order to secure a tactical advantage.

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[124] Hydro One's Expropriation Application, at para 27.
[125] Hydro One's Responses to Nyon Interrogatories – 12 (Response b).
[126] *Tallman Truck Centre Limited v. K.S.P. Holdings Inc.*, 2022 ONCA 66 (CanLII), at para 28.

196. Moreover, Hydro One's repeated, false, references to its purported attempts to settle the file underscore that, in Hydro One's view, its purported settlement attempts are an important and germane piece of evidence in support of its application.

197. The misrepresentations, in context, are significant and risk bringing the administration of justice, and the Board's process, into disrepute. The Board is, by necessity, reliant on the forthright and truthful submissions of applicants before it, given that the Board's process does not have "respondents" but instead has much more limited participation "intervenors." To permit Hydro One to misrepresent what it says are significant facts with impunity, and to allow them to resile from such misrepresentations only when they are caught with their hand in the proverbial cookie jar is to condone and tacitly encourage that kind of behaviour.

198. A member of the public would be shocked that an applicant seeking the extraordinary remedy of expropriation before the Board could influence the entire proceeding with a misrepresentation, with no ability of an opposed party to address it and with no consequence whatsoever to the applicant. The administration of justice, and the Board's reputation, are at risk should this be condoned.

199. In this case, a stay is the appropriate remedy. The process has been tainted by Hydro One's misstatements. There is no reasonable alternative remedy.

200. Moreover, a stay of this proceeding by the Board would occasion no particular hardship on Hydro One. It would be free to pursue its claim to ownership of the

infrastructure before the Ontario Superior Court of Justice, which in any event is the correct venue.

PART V – CONCLUSION

201. For the reasons set out herein, the Board does not have jurisdiction to determine property rights related to the Existing Transmission Lines and provide declaratory relief relating thereto.

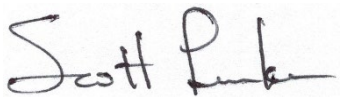
202. However, should the Board determine that it does have the jurisdiction to resolve the property dispute relating to the Existing Transmission Lines, Nyon is the owner of them for the following reasons: the Existing Transmission Lines that continue to be on the Lands from the pre-expropriation time period were expropriated by the Seaway and transferred to Port Colborne and then to Nyon; the Existing Transmission Lines that were fully or partially rebuilt post-expropriation and paid for by the Seaway were owned by the Seaway and transferred to Port Colborne and then to Nyon; and the Existing Transmission Lines that form the Feeder Line have been transferred to Nyon by operation of s. 11 of the Licence.

203. With respect to the expropriation, the Board does not have the jurisdiction to grant an order authorizing it because Hydro One has failed to demonstrate that it obtained leave under PART VI of the *OEB Act* or a predecessor of PART VI in accordance with s. 99(1)1. Hydro One has not produced any evidence of leave to construct and has admitted that it does not have any records of it.

204. Should the Board determine that it does have jurisdiction to grant an order authorizing the expropriation, Hydro One has failed to demonstrate that the expropriation is in the public interest. Hydro One has operated and maintained the Existing Transmission Lines on the Lands for the past ten years. There is no threat to the electrical grid; the only threat is to Hydro One's wallet, in the sense that it will be obligated to pay rent. Hydro One's public interest argument is a guise for Hydro One's real motive, which is weighing the cost of an expropriation versus the cost of relocating the Existing Transmission Lines. Hydro One only made the decision to apply for authority to expropriate after Nyon set out the issues between the parties in its February 2024 letter, which made apparent the significant cost for Hydro One to rectify those issues. The only logical conclusion regarding Hydro One's motive to apply for an expropriation is a financial one. Had Hydro One's motive been the public interest, it would have made the application to expropriate in 2013, immediately after becoming aware that it did have any rights to occupy the Lands.

205. For those reasons, Hydro One's application for a declaration that it owns the Existing Transmission Lines, and for authority to expropriate easements should be dismissed, with costs.

DATED THE 8TH DAY OF AUGUST, 2025, AT TORONTO, ONTARIO.



Nyon Oil Inc. and 1170367 Ontario Inc.
By their counsel

Massey LLP
Per: Scott Lemke, Frank Portman, Alexa Cheung

Appendices

Appendix 1 – *Expropriation Act*, RSC 1952, c 106.

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CHAPTER 106.

An Act respecting the Expropriation of Lands.

SHORT TITLE.

1. This Act may be cited as the *Expropriation Act.* Short title.
R.S., c. 64, s. 1.

INTERPRETATION.

2. In this Act, Definitions.

(a) "conveyance" includes a "surrender" to the Crown; and any conveyance to Her Majesty, or to the Minister, or to any officer of the department, in trust for or to the use of Her Majesty, shall be held to be a surrender; "Conveyance."

(b) "department" means the department of the Government of Canada charged with the construction and maintenance of public work; "Department."

(c) "Exchequer Court" or "the Court" means the Exchequer Court of Canada; "Exchequer Court" or "Court."

(d) "land" includes all granted or ungranted, wild or cleared, public or private lands, and all real property, messuages, lands, tenements and hereditaments of any tenure, and all real rights, easements, servitudes and damages, and all other things done in pursuance of this Act, for which compensation is to be paid by Her Majesty under this Act; "Land."

(e) "lease" includes any agreement for a lease; "Lease."

(f) "Minister" means the head of the department charged with the construction and maintenance of the public work; "Minister."

(g) "public work" or "public works" means and includes the dams, hydraulic works, hydraulic privileges, harbours, wharfs, piers, docks and works for improving the navigation of any water, the lighthouses and beacons, the slides, dams, piers, booms and other works for facilitating the transmission of timber, the roads and "Public works."

and bridges, the public buildings, the telegraph lines, Government railways, canals, locks, dry-docks, fortifications and other works of defence, and all other property, which now belong to Canada, and also the works and properties acquired, constructed, extended, enlarged, repaired or improved at the expense of Canada, or for the acquisition, construction, repairing, extending, enlarging or improving of which any public moneys are voted and appropriated by Parliament, and every work required for any such purpose, but not any work for which the money is appropriated as a subsidy only;

"Registrar of deeds." *(h)* "registrar of deeds" or "registrar" includes the registrar of land titles, or other officer with whom the title to the land is registered;

"Registry of deeds." *(i)* "registry of deeds" or other words descriptive of the office of the registrar of deeds, includes the land titles office, or other office in which the title to the land is registered;

"Superintendent." *(j)* "superintendent" means the superintendent of the public work of which he has, under the Minister, the charge and direction. R.S., c. 64, s. 2.

POWER TO TAKE LAND, ETC.

Powers of the Minister. **3.** The Minister may by himself, his engineers, superintendents, agents, workmen and servants,

Entering lands. *(a)* enter into and upon any land to whomsoever belonging, and survey and take levels of the same, and make such borings, or sink such trial pits as he deems necessary for any purpose relative to the public work;

Taking possession. *(b)* enter upon and take possession of any land, real property, streams, waters and watercourses, the appropriation of which is, in his judgment, necessary for the use, construction, maintenance or repair of the public work, or for obtaining better access thereto;

Deposit and removal of materials. *(c)* enter with workmen, carts, carriages and horses upon any land, and deposit thereon soil, earth, gravel, trees, bushes, logs, poles, brushwood or other material found on the land required for the public work, or for the purpose of digging up, quarrying and carrying away earth, stones, gravel or other material, and cutting down and carrying away trees, bushes, logs, poles and brushwood therefrom, for the making, constructing, maintaining or repairing the public work;

Temporary roads. *(d)* make and use all such temporary roads to and from such timber, stones, clay, gravel, sand or gravel pits

as are required by him for the convenient passing to and from the works during their construction and repair;

(e) enter upon any land for the purpose of making proper drains to carry off the water from the public work, or for keeping such drains in repair; Drains.

(f) alter the course of any river, canal, brook, stream or watercourse, and divert or alter, as well temporarily as permanently, the course of any rivers, streams, railways, roads, streets or ways, or raise or sink the level of the same, in order to carry them over or under, on the level of, or by the side of the public work, as he thinks proper; but before discontinuing or altering any railway or public road or any portion thereof, he shall substitute another convenient railway or road in lieu thereof; and in such case the owner of such railway or road shall take over the substituted railway or road in mitigation of damages, if any, claimable by him under this Act, and the land theretofore used for any railway or road, or the part of a railway or road so discontinued, may be transferred by the Minister to, and shall thereafter become the property of, the owner of the land of which it originally formed part; and Changing course of streams, etc.

(g) divert or alter the position of any water-pipe, gas-pipe, sewer, drain, or any telegraph, telephone or electric light wire or pole. R.S., c. 64, s. 3. Alteration of water-pipes, etc.

4. Whenever it is necessary, in the building, maintaining or repairing of the public work, to take down or remove any wall or fence of any owner or occupier of land or premises adjoining the public work, or to construct any back ditches or drains for carrying off water, such wall or fence shall be replaced as soon as the necessity which caused its taking down or removal has ceased; and after the same has been so replaced, or when such drain or back ditch is completed, the owner or occupier of such land or premises shall maintain such walls or fences, drains or back ditches, to the same extent as such owner or occupier might be by law required to do, if such walls or fences had never been so taken down or removed, or such drains or back ditches had always existed. R.S., c. 64, s. 4. Removal and replacement of fences, etc., adjoining any public work.

5. (1) Whenever any gravel, stone, earth, sand or water is taken as aforesaid, at a distance from the public work, the Minister may lay down the necessary sidings, water-pipes or conduits, or tracks over or through any land intervening between the public work and the land on which such material or water is found, whatever the distance is; and all Power to make sidings, etc., to land from which materials are taken.

the provisions of this Act, except such as relate to the filing of plans and descriptions, shall apply and may be used and exercised to obtain the right of way from the public work to the land on which such materials are situate; and such right may be acquired for a term of years, or permanently, as the Minister thinks proper.

And for maintaining the public work.

(2) The powers in this section contained may, at all times, be exercised and used in all respects, after the public work is constructed, for the purpose of repairing and maintaining the same. R.S., c. 64, s. 5.

When whole lot can be more advantageously purchased than a part.

6. Whenever for the purpose of procuring sufficient lands for railway stations or gravel pits, or for constructing, maintaining and using the public work, any land may be taken under the provisions of this Act, and by purchasing the whole of any lot or parcel of land, of which any part may be taken under the said provisions, the Minister can obtain the same at a more reasonable price, or to greater advantage than by purchasing such part only as aforesaid, he may purchase, hold, use or enjoy the whole of such lot or parcel, and also the right of way thereto, if the same is separated from the public work, and may sell and convey the same, or any part thereof, from time to time, as he deems expedient; but the compulsory provisions of this Act shall not apply to the taking of any portion of such lot or parcel which is not, in the opinion of the Minister, necessary for the purposes aforesaid. R.S., c. 64, s. 6.

Who may be employed to make surveys of land.

7. (1) The Minister may employ any person duly licensed or empowered to act as a surveyor for any province of Canada or any engineer, to make any survey, or establish any boundary and furnish the plans and descriptions of any property acquired or to be acquired by Her Majesty for the public work.

Boundaries.

(2) The boundaries of such properties may be permanently established by means of proper stone or iron monuments planted by the engineer or surveyor so employed by the Minister.

Effect of survey.

(3) Such surveys, boundaries, plans and descriptions shall have the same effect to all intents and purposes as if the operations pertaining thereto or connected therewith had been performed and such boundaries had been established and such monuments planted by a land surveyor duly licensed and sworn in and for the province in which the property is situate.

Boundaries true and unalterable.

(4) Such boundaries shall be held to be the true and unalterable boundaries of such property, if

(a) they are so established, and such monuments of iron or stone so planted, after due notice of the intention to establish and plant the same has been given in writing to the proprietors of the land thereby affected,

(b) a procès-verbal or written description of such boundaries is approved and signed in the presence of two witnesses by such engineer or surveyor on behalf of the Minister and by the other person concerned, or in case of the refusal of any proprietor to approve or to sign such procès-verbal or description, such refusal is recorded in such procès-verbal or description, and

(c) such boundary marks or monuments are planted in the presence of at least one witness who shall sign the said procès-verbal or description.

Formalities not obligatory.

(5) It shall not be incumbent on the Minister or those acting for him to have boundaries established with the formalities in this section mentioned, but the same may be resorted to whenever the Minister deems necessary. R.S., c. 64, s. 7.

Governor in Council may order material to be excavated or removed on any public work by blasting or use of explosives.

8. (1) In any case where Her Majesty has contracted with any person, whether corporation or individual, for the construction or execution of any public work, or where by direction of the Governor in Council, or of the Minister within the scope of his powers, any officer, employee or agent of Her Majesty is charged with the construction or execution of any public work, if in the opinion of the Governor in Council it be necessary or expedient that any material, wherever situate, which is required to be excavated or removed for the purposes of the work shall be excavated or removed by blasting, or by the use of explosives, the Governor in Council may authorize the work to be performed in that manner, notwithstanding that the blasting or explosions may cause damage to or may injuriously affect lands, buildings or property or the prosecution of any industry or work situate in the vicinity of the works or which may be thereby affected.

Due care and precautions to be used

(2) Any such contractor, officer, employee or agent when so authorized by Order in Council may proceed with the blasting and use of explosives as by the Order in Council authorized, using due care and such precautions and prudent means as the circumstances of the case permit in order to avoid any unnecessary damage; and in any such case the owner or any person interested in the lands, buildings or other property which may be damaged or injuriously affected by the blasting or the explosions, and whether such damages or injurious affection be necessarily caused thereby or by negligence on the part of the contractor, his

officers or servants, or any officer, employee or servant of Her Majesty in the operation of blasting or in the use of explosives, shall be entitled to receive compensation therefor from Her Majesty.

Compensation for damages.

Liability of contractor.

(3) Where the construction or execution of the public work is contracted for, then, unless the contract otherwise provides, the amount of compensation payable by Her Majesty shall be chargeable to the contractor; and, if not paid by him forthwith upon demand, may be recovered from him by Her Majesty as money paid to the contractor's use, or may be deducted from any moneys in the hands of Her Majesty belonging or in anywise payable to the contractor.

Provisions to be effective notwithstanding pending actions or future proceedings, or judgment, injunction or restraining order.

(4) The provisions of this section have effect and apply notwithstanding any action, suit or proceeding now pending or hereafter to be instituted in which it is sought to enjoin or restrain the contractor, his servants or agents or any officer, servant or agent of Her Majesty from proceeding with the work by means of blasting or the use of explosives or from blasting or using explosives in a manner to cause any damage or injury and notwithstanding any judgment, injunction or restraining order that may have been heretofore pronounced, entered or granted by any court enjoining or restraining the contractor, his servants or agents, or any officer, servant or agent of Her Majesty from blasting or using explosives, or from so doing in a manner to cause any damage or injury or otherwise from doing anything that has been authorized by the Governor in Council pursuant to this section, or that may be necessary to be done for carrying into effect or executing any power or authority hereunder conferred. R.S., c. 64, s. 8.

EXPROPRIATION.

Proceedings, for taking possession of lands.

9. (1) Land taken for the use of Her Majesty shall be laid off by metes and bounds; and when no proper deed or conveyance thereof to Her Majesty is made and executed by the person having the power to make such deed or conveyance, or when a person interested in such land is incapable of making such deed or conveyance, or when, for any other reason, the Minister deems it advisable so to do, a

Deposit of plans and description.

plan and description of such land signed by the Minister, the deputy of the Minister or the secretary of the department, or by the superintendent of the public work, or by an engineer of the department, or by a land surveyor duly licensed and sworn in and for the province in which the land is situate, shall be deposited of record in the office of the registrar of deeds for the county or registration divi-

sion in which the land is situate, and such land, by such deposit, shall thereupon become and remain vested in Her Majesty.

If a limited estate only is required.

(2) When any land taken is required for a limited time only, or only a limited estate or interest therein is required, the plan and description so deposited may indicate, by appropriate words written or printed thereon, that the land is taken for such limited time only, or that only such limited estate or interest therein is taken, and by the deposit in such case, the right of possession for such limited time, or such limited estate or interest, shall become and be vested in Her Majesty.

All provisions of this Act apply.

(3) All the provisions of this Act, so far as they are applicable, apply to the acquisition for public works of such right of possession and such limited estate or interest. R.S., c. 64, s. 9.

Corrections.

10. In case of any omission, mis-statement or erroneous description in such plan or description, a corrected plan and description may be deposited with like effect. R.S., c. 64, s. 10.

Plan of land in possession of H.M. may be deposited at any time.

11. A plan and description of any land at any time in the occupation or possession of Her Majesty, and used for the purposes of any public work, may be deposited at any time in like manner and with like effect as herein provided, saving always the lawful claims to compensation of any person interested therein. R.S., c. 64, s. 11.

Deposit deemed to be by authority of Minister.

12. In all cases, when any such plan and description, purporting to be signed by the deputy of the Minister, or by the secretary of the department, or by the superintendent of the public work, or by an engineer of the department, or by a land surveyor duly licensed as aforesaid, is deposited of record as aforesaid, the same shall be deemed and taken to have been deposited by the direction and authority of the Minister, and as indicating that in his judgment the land therein described is necessary for the purposes of the public work; and the said plan and description shall not be called in question except by the Minister, or by some person acting for him or for the Crown. R.S., c. 64, s. 12.

Certified copy to be evidence.

13. A copy of any such plan and description, certified by the registrar of deeds, to be a true copy thereof, shall, without proof of the official character or handwriting of such registrar, be deemed and taken as *prima facie* evidence of the original, and of the depositing thereof. R.S., c. 64, s. 13.

Notwithstanding death of registrar.

14. A copy of any such plan and description, certified by the registrar of deeds, as mentioned in section 13, is *prima facie* evidence of the original and of the depositing thereof, although such registrar at the time the same is so offered in evidence, is dead, or has resigned or has been removed from office. R.S., c. 64, s. 14.

When provincial Crown lands are taken.

15. When the land taken is Crown land, under the control of the government of the province in which such land is situate, a plan of such land shall also be deposited in the Crown land department of the province. R.S., c. 64, s. 15.

AGREEMENTS AND CONVEYANCES.

Contracts on behalf of persons legally incapable to contract.

16. Any tenant in tail or for life, *grevé de substitution,* seigneur, guardian, tutor, curator, executor, administrator, master or person, not only for and on behalf of himself, his heirs, successors and assigns, but also for and on behalf of those whom he represents, whether infants, issue unborn, lunatics, idiots, married women, or other persons, seized, possessed or interested in any land or other property, may contract and agree with the Minister for the sale of the whole or any part thereof, and may convey the same to the Crown; and may also contract and agree with the Minister as to the amount of compensation to be paid for any such land or property, or for damages occasioned thereto, by the construction of any public work, and give acquittance therefor. R.S., c. 64, s. 16.

Appointment by Court of legal representative.

17. In any case in which there is no guardian or other person to represent any person under any disability, the Court may, after due notice to the persons interested, appoint a guardian or person to represent for the purposes hereof such person so under such disability, with authority to give such acquittance. R.S., c. 64, s. 17.

Disposal of compensation money.

18. The Court in making any order mentioned in sections 16 and 17 shall give such directions as to the disposal, application or investment of such compensation money as it deems necessary to secure the interests of all persons interested therein. R.S., c. 64, s. 18.

Contracts under this Act valid.

19. Any contract or agreement made hereunder and any conveyance or other instrument made or given in pursuance of such contract or agreement are good and valid to all intents and purposes whatsoever. R.S., c. 64, s. 19.

20. Every such contract or agreement made before the deposit of plans and description, and before the setting out and ascertaining of the land required for the public work, shall be binding at the price agreed upon for the same land, if it is afterwards so set out and ascertained within one year from the date of the contract or agreement, and although such land has, in the meantime, become the property of a third person. R.S., c. 64, s. 20.

Effect of contract made before deposit of plan.

21. No surrender, conveyance, agreement or award under this Act shall require registration or enrolment to preserve the rights of Her Majesty under it, but the same may be registered in the registry of deeds for the place where the land lies, if the Minister deems advisable. R.S., c. 64, s. 21.

Registration not necessary.

WARRANT FOR POSSESSION.

22. (1) When any resistance or opposition is made by any person to the Minister, or any person acting for him, entering upon and taking possession of any lands, a judge of the Court, or any judge of any superior court may, on proof of the execution of a conveyance of such lands to Her Majesty, or agreement therefor, or of the depositing in the office of the registrar of deeds of a plan and description thereof as aforesaid, and after notice to show cause given in such manner as he prescribes, issue his warrant to the sheriff of the district or county within which such lands are situate directing him to put down such resistance or opposition, and to put the Minister, or some person acting for him, in possession thereof.

Warrant for possession, how issued and executed.

(2) The sheriff shall take with him sufficient assistance for such purpose, and shall put down such resistance and opposition, and shall put the Minister, or such person acting for him, in possession thereof; and shall forthwith make return to the Exchequer Court of such warrant, and of the manner in which he executed the same. R.S., c. 64, s. 22.

Return to be made to the Exchequer Court.

COMPENSATION.

23. The compensation money agreed upon or adjudged for any land or property acquired or taken for or injuriously affected by the construction of any public work shall stand in the stead of such land or property; and any claim to or encumbrance upon such land or property shall, as respects Her Majesty, be converted into a claim to such compensation money or to a proportionate amount thereof, and shall be void as respects any land or property so acquired or taken, which shall, by the fact of the taking

Compensation money to stand in lieu of land.

possession thereof, or the filing of the plan and description, as the case may be, become and be absolutely vested in Her Majesty. R.S., c. 64, s. 23.

Abandonment of land not required.

24. (1) Whenever, from time to time, or at any time before the compensation money has been actually paid, any parcel of land taken for a public work, or any portion of any such parcel, is found to be unnecessary for the purposes of such public work, or if it is found that a more limited estate or interest therein only is required, the Minister may, by writing under his hand, declare that the land or such portion thereof is not required and is abandoned by the Crown, or that it is intended to retain only such limited estate or interest as is mentioned in such writing.

Written notice.

Registration of abandonment.

(2) Upon such writing being registered in the office of the registrar of deeds for the county or registration division in which the land is situate, such land declared to be abandoned shall revest in the person from whom it was taken or in those entitled to claim under him.

Land to revest subject to interest retained.

(3) In the event of a limited estate or interest therein being retained by the Crown, the land shall so revest subject to the estate or interest so retained.

Compensation in case of abandonment.

(4) The fact of such abandonment or revesting shall be taken into account, in connection with all the other circumstances of the case, in estimating or assessing the amount to be paid to any person claiming compensation for the land taken. R.S., c. 64, s. 24.

Payment where price does not exceed $100.

25. Where the compensation money agreed for or adjudged does not exceed one hundred dollars, it may, in any province, be paid to the person who, under this Act, can lawfully convey the land or property or agree for the compensation to be made in the case, saving always the rights of any other person to such compensation money as against the person receiving the same. R.S., c. 64, s. 25.

Particulars of estate or interest to be declared upon demand.

26. Every person who has any estate or interest in any land or property acquired or taken for, or injuriously affected by the construction of any public work, or who represents or is the husband of any such person, shall, upon demand made therefor by or on behalf of the Minister, furnish to the Minister a true statement showing the particulars of such estate and interest and of every charge, lien or encumbrance to which the same is subject, and of the claim made by such person in respect of such estate or interest. R.S., c. 64, s. 26.

27. In any case in which land or property is acquired or taken for, or injuriously affected by, the construction of any public work, the Attorney General of Canada may cause to be exhibited in the Court an information in which shall be set forth. Information by Attorney General showing.

(a) the date on which and the manner in which such land or property was so acquired, taken or injuriously affected; Date of acquisition, etc.

(b) the persons who, at such date, had any estate or interest in such land or property and the particulars of such estate or interest and of any charge, lien or encumbrance to which the same was subject, so far as the same can be ascertained; Persons interested.

(c) the sums of money which the Crown is ready to pay to such persons respectively, in respect of any such estate, interest, charge, lien or encumbrance; and Amount of tender.

(d) any other facts material to the consideration and determination of the questions involved in such proceedings. R.S., c. 64, s. 27. Other facts

28. (1) Such information shall be deemed and taken to be the institution of a suit against the persons named therein, and shall conclude with a claim for such a judgment or declaration as, in the opinion of the Attorney General, the facts warrant. Information beginning of action.

(2) The information shall be served in like manner as other informations, and all proceedings in respect thereof or subsequent thereto shall be regulated by and shall conform as nearly as may be to the procedure in other cases instituted by information in the Court. R.S., c. 64, s. 28. Service.

29. Any person who is mentioned in any such information, or who afterwards is made or becomes a party thereto, may, by his answer, exception or defence, raise any question of fact or law incident to the determination of his rights to such compensation money or any part thereof, or in respect of the sufficiency of such compensation money. R.S., c. 64, s. 29. Defences thereto.

30. Such proceedings, so far as the parties thereto are concerned, bar all claims to the compensation money or any part thereof, including any claim in respect of dower, or of dower not yet open, as well as in respect of all mortgages, hypothecs or encumbrances upon the land or property; and the Court shall make such order for the distribution, payment or investment of the compensation Proceedings a bar to all claims for compensation money.

money and for the securing of the rights of all persons interested, as to right and justice, and according to the provisions of this Act, and to law appertain. R.S., c. 64, s. 30.

Alterations in or additions to works may be ordered.

31. Where the injury to any land or property alleged to be injuriously affected by the construction of any public work may be removed wholly or in part by any alteration in, or addition to, any such public work, or by the construction of any additional work, or by the abandonment of any portion of the land taken from the claimant, or by the grant to him of any land or easement, and the Crown, by its pleadings, or on the trial, or before judgment, undertakes to make such alteration or addition, or to construct such additional work, or to abandon such portion of the land taken, or to grant such land or easement, the damages shall be assessed in view of such undertaking, and the Court shall declare that, in addition to any damages awarded, the claimant is entitled to have such alteration or addition made, or such additional work constructed, or portion of land abandoned, or such grant made to him. R.S., c. 64, s. 31.

INTEREST.

Rate of interest five per cent from date of tender.

32. (1) Interest at the rate of five per cent per annum may be allowed on such compensation money from the time when the land or property was acquired, taken or injuriously affected to the date when judgment is given; but no person to whom has been tendered a sum equal to or greater than the amount to which the Court finds him entitled shall be allowed any interest on such compensation money for any time subsequent to the date of such tender.

Interest may be refused or diminished in certain cases.

(2) Where the Court is of opinion that the delay in the final determination of any such matter is attributable in whole or in part to any person entitled to such compensation money or any part thereof, or that such person has not, upon demand made therefor, furnished to the Minister within a reasonable time a true statement of the particulars of his claim required to be furnished as hereinbefore provided, the Court may, for the whole or any portion of the time for which he would otherwise be entitled to interest, refuse to allow him interest, or it may allow the same at such rate less than five per cent per annum as to the Court appears just.

If expropriation is prior to July 7th, 1900.

(3) This section does not apply to any case where the land was expropriated or injuriously affected prior to the 7th day of July, 1900. R.S., c. 64, s. 32.

COSTS.

33. The costs of and incident to any proceedings hereunder shall be in the discretion of the Court, which may direct that the whole or any part thereof shall be paid by the Crown or by any party to such proceeding. R.S., c. 64, s. 33. As to costs.

PAYMENT OF COMPENSATION OR COSTS.

34. The Minister of Finance may pay to any person, out of any unappropriated moneys forming part of the Consolidated Revenue Fund of Canada, any sum to which, under the judgment of the Court, in virtue of the provisions of this Act, he is entitled as compensation money or costs. R.S., c. 64, s. 34. Payment of compensation and costs.

LANDS VESTED IN HER MAJESTY.

35. (1) All lands, streams, watercourses and property acquired for any public work shall be vested in Her Majesty and, when not required for the public work, may be sold or disposed of under the authority of the Governor in Council. Lands acquired vested in Her Majesty.

(2) All hydraulic powers created by the construction of any public work, or the expenditure of public money thereon, shall be vested in Her Majesty, and any portion thereof not required for the public work may be sold or leased under the authority aforesaid. Hydraulic powers.

(3) Any portion of the shore or bed of any public harbour vested in Her Majesty, as represented by the Government of Canada, not required for public purposes, may, on the joint recommendation of the Ministers of Public Works and of Transport, be sold or leased under the authority aforesaid. Shores and beds of public harbours may be sold or leased.

(4) No such sale or lease shall prejudice or affect any right or privilege of any riparian owner. Private rights saved.

(5) The proceeds of all such sales and leases shall be accounted for as public money. R.S., c. 64, s. 35; 1936, c. 34, s. 4. Proceeds of sale or lease.

WORKS INTERFERING WITH NAVIGATION.

36. (1) Whenever in any Act of the Parliament of Canada authority is given by the appropriation of public money or otherwise to construct any bridge, wharf or other public work in any navigable water, such authority includes authority to interfere with the navigation of such water in Interference with navigation.

such manner and to such extent as is approved by the Governor in Council, subject always to any provisions of any such Act for limiting such interference.

Certain works are lawful works.

(2) Every bridge, wharf or other public work heretofore constructed with the public money of Canada in or over navigable water, is and shall be deemed to be a lawful work or structure. R.S., c. 64, s. 36.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1952

Appendix 2 – Notice to Pay or Quit from Nyon to Hydro One, dated September 22, 2015.

1170637 ONTARIO INC.
NYON OIL INC.
2 Lombard Street, Suite 200
Toronto, Ontario M5C 1M1
T: 416-365-7203
F: 416-365-75204

September 22, 2015

Lou Fortini, Director Facilities & Real Estate
and to: Gary Schneider, Vice President
Hydro One Networks Inc.
8th Floor, South Tower,
483 Bay Street,
Toronto, Ontario
M5G 2P5

NOTICE TO PAY OR QUIT

NOTICE TO: HYDRO ONE NETWORKS INC. ("HONI")

Re: HONI occupancy and use of the lands described in Schedule "A" attached hereto (the "Lands") located in the city of Port Colborne and the towers, poles, lines and related infrastructure thereon

TAKE NOTICE THAT:

1. HONI uses the hydro towers, hydro poles, hydroelectricity transmission and distribution lines and related infrastructure on the Lands (collectively referred to as the "Infrastructure").

2. 1170637 Ontario Inc. and Nyon Oil Inc. (collectively referred to herein referred to as the "Landlord") owns the Lands which include the Infrastructure thereon.

3. HONI does not have a lease, easement or right-of-way in respect of the Lands or the use of the Infrastructure and is occupying and using the Lands and the Infrastructure thereon as a tenant by sufferance.

4. The Landlord claims FORTY SEVEN MILLION EIGHT HUNDRED SEVEN THOUSAND FOUR HUNDRED TWENTY FIVE DOLLARS AND FORTY ONE CENTS ($47,807,425.41) for rent and interest , since February 14, 2006 to September 15, 2015, due to it in respect of the Lands that HONI uses and occupies as a tenant at sufferance; and unless the said rent is paid, the Landlord demands from HONI immediate possession of the Lands; and the Landlord is ready to leave in HONI's possession such goods and chattels that HONI is entitled to claim exemption for.

5. If HONI does not pay the said rent due nor give the Landlord possession of the Lands within three (3) days after the service of this notice, the Landlord is by the *Landlord and Tenant Act* entitled to seize and sell, and the Landlord intends to seize and sell, all of HONI's goods and chattels, or such part thereof as may be necessary for the payment of the said rent and costs.

6. If a court of competent jurisdiction determines that the Landlord is not the owner of the Hydro Infrastructure, the Landlord reserves the right to seize and sell the Hydro Infrastructure, pursuant to its rights under the Ontario *Commercial Tenancies Act*, and the *Landlord and Tenant Act* and all of the Landlord's rights thereunder.

Dated this 22nd day of September, 2015.

1170367 ONTARIO INC.

Per: _____
Gordon Baker
President
I have the authority to bind the Corporation.

NYON OIL INC.

Per: _____
Gordon Baker
President
I have the authority to bind the Corporation.

SCHEDULE "A"

Reference Plan 59R-15312: Parts 1, 2, 3, 4, 6, 7, 8, 12, 13, 14, 15 and 38.

Reference Plan 59R-15310: Parts 1, 2, 3, 4, 5, 8, 9, 15, 16 and 17

Appendix 3 – Letter from Nyon to Hydro One, dated September 22, 2015.

NYON OIL INC. AND 1170637 ONTARIO INC.

2 Lombard Street
Suite 200
Toronto, Ontario
M5C 1M1
Office: 416-365-7202
Direct: 416-365-7203
Fax: 416-365-7204
Cellular: 416-543-5374
Email: gord@gordbaker.com

WITH PREJUDICE

Delivered via Special Courier

September 22, 2015

Lou Fortini, Director Facilities & Real Estate
and to: Gary Schneider, Vice President
Hydro One Networks Inc.
483 Bay Street, 8th Floor
South Tower
Toronto, Ontario
M5G 2P5

Dear Sirs:

Re: HONI One Networks Inc. ("HONI") use of Nyon Oil Inc. and 1170637 Ontario Inc. (collectively referred to as "Nyon") lands in Port Colborne, Ontario

We are in receipt of your email dated September 16, 2015, addressed to Gordon Baker, and respond as follows:

1. Since March 28, 2013, none of our meetings, discussions or correspondence have been "without prejudice". I remind you that at our March 28, 2013 meeting your counsel requested that the meeting be without prejudice. I advised that the meeting would be "with prejudice" and that discussions would only proceed on that basis. Since then we have always taken the position that our correspondence and meetings have been "with prejudice".

2. You advised me on August 20, 2015 that HONI engineers had come up with a plan which they had costed for the removal of the four towers at the north end of Nyon's property and that such a move would not be expensive. You were not aware whether any environmental assessments or hearings would be required. You refused to provide the costing projection when requested and you provided no drawings (engineered or otherwise) to show the intended route. It appears that this just leads to further delay,

which is consistent with HONI's course of conduct hereto. Very little has been accomplished since our discussions began on March 22, 2013. HONI has not offered Nyon anything with regard to rent nor has it made an offer to purchase the property. Furthermore, you have refused to address the Technical Agreement since March 26, 2014.

3. With regard to the ownership of the assets on the property, you stated that you were going to provide us with documentation that would prove that HONI owned the towers, lines and poles on Nyon's property. Pursuant to your September 16 email, you confirmed that HONI is relying on section 44 of the Electricity Act 1998, S. O. 1998, C. 15, Sch. A.

   At the June 22, 2015 meeting, you stated that the property had not been expropriated by the federal government. I handed you a copy of The St. Lawrence Seaway Authority Notice of Expropriation No. 94755B registered in the registry office for the County of Welland at 9:45 AM on the 26th day of December 1968. That was one of a number of expropriations by the St. Lawrence Seaway on behalf of her Majesty the Queen in Right of Canada. All of the lands transferred by the St. Lawrence Seaway Authority (now the St. Lawrence Seaway Management Corporation) were lands that had been expropriated and then transferred to Canada Lands Corporation. Canada Lands Corporation sold the lands to the Corporation of the City of Port Colborne on or about 2006, except for the property acquired by the City in 1994, which forms part of the Nyon lands. The Corporation of the City of Port Colborne sold the lands to the Nyon Oil Inc. pursuant to an Agreement of Purchase and Sale dated January 30, 2006.

   The expropriated property included all heredíments i.e. the poles, towers, wires and related infrastructure in exchange for consideration paid by the St. Lawrence Seaway Authority to Ontario Hydro. Accordingly, the towers, poles, lines and related infrastructure located in the hydro corridor running north and south from Concession 3 to Concession 5 and on the Nyon property were no longer the property of HONI.

   The St. Lawrence Seaway Authority Master Agreement with Ontario Hydro, dated June 1, 1969, and a Supplemental Agreement dated June 1, 1976 granted "permits" to Ontario Hydro, which were "personal"; the permits did not provide for any successor or assigns' rights, nor did they run with the land. As you pointed out to us in the meeting of March 28, 2013, the situation was unusual in that HONI had to deal with the Federal Government / Seaway and they only provided permission to be on the property and they do not provide easements or rights of way or any interest in the land. These permits expired upon transfer of the property from the federal government to the Corporation of the City of Colborne. Furthermore, there was never any assumption of the said permits by the City of Port Colborne nor by Nyon as a subsequent purchaser, nor were the licenses / permits registered in any way in the land registry office and they do not run with the land.

HONI obtained a license in 1977 for the construction and maintenance of what we refer to as the Welland pole line or the Welland Infrastructure (the "1977 License"). The term of the 1977 License was "during pleasure". As such, the 1977 License expired upon the transfer of the land; it did not have a successors and assigns clause; and it was not assumed by the Corporation of the City of Port Colborne, or Nyon. Furthermore, this 1977 License provides as follows:

> 11. Upon cancellation of the License the Licensee shall forthwith under the direction of the Licensee's regional Director remove his property at his own cost and expense from the lands and premises of the Licensor, leaving and restoring said land and premises in a neat and clean condition to the satisfaction of the Regional Director. In case of default of the licensee to remove his property, said property shall be removed and the site restored by the Licensor or at the expense of the Licensee or, at the option of Licensor, said property shall become the property of and shall vest in the Licensor without any right of compensation to the Licensee therefore, in either case. (Emphasis added.)

HONI (the Licensee) did not remove the "property" upon the expiration of the 1977 License in 2006. To date, neither the Corporation of the City of Port Colborne nor Nyon have removed the said property. As such, the said property became the property of Nyon. As we have previously advised, Nyon's position is that it owns all poles, towers, lines and other fixtures on its property. Even with regard to the Welland infrastructure, which was constructed after the expropriation, the Electricity Act (the "Act") does not apply, as per the 1977 License and the exception noted at section 44 of the Act. Furthermore, the Act does not apply to transmission or distribution infrastructure owned by the federal government or its agencies. The federal government transferred all of its rights, title and privileges pertaining to the lands to the Corporation of the City of Port Colborne, and Nyon, as a subsequent purchaser, received same.

4. Nyon's position is that the Technical Agreement is not premature, as the purpose of the Technical Agreement was to provide a framework governing the relationship between Nyon and HONI– allowing Nyon to move forward on the tank farm project and HONI to coexist on Nyon's lands. Nyon has been forthcoming with the Technical Agreement and has gone to great expense, from both a legal and engineering standpoint, in having the terms of the agreement negotiated, engineered and drafted. On March 26, 2014, Nyon forwarded HONI the final draft of the Technical Agreement, and understood from your response that HONI had no material comments. Despite Nyon's understanding that there were no material changes needed to the Technical Agreement, we have not been able to finalize this agreement for more than a year and a half. Nyon recently submitted a slightly revised Technical Agreement to you that depicted a concrete trench for the pipeline that ran through the lands upon which the infrastructure is located. Please

provide your comments, if any. If there are no further material revisions required, we would appreciate finalizing this agreement by September 30, 2015.

In the March 28, 2013 meeting we discussed HONI's desire to acquire the lands as freehold for payment and we discussed the need to get appraisals or opinions of value. Mr. Sheehan, on behalf of HONI, pointed out it would take at least four months to get appraisals done. At the June 22, 2015 meeting you said that HONI had no appraisals. We have had opinions of value for some time for the purpose of negotiation, but as we discussed on March 28, 2013 we would only be exchanging opinions of value or prices for the purpose of negotiating an agreement of purchase and sale. To date, we have not received an offer from HONI with regard to back rent or the purchase of the property. We have also informed you that we would appreciate it if HONI moved off the Nyon property.

Accordingly, please find a "Notice to Pay or to Quit" with respect to Nyon's property. Also enclosed is a "Notice of Removal" with respect to the Welland infrastructure. Any outstanding offers or agreements with regard to the sale and purchase of any property owned by Nyon or its related companies are withdrawn. The Notice to Pay or to Quit calculates rent to September 15, 2015. From September 15, 2015, forward, Nyon expects to be paid rent on a monthly basis, prorated for the month September, to be paid on September 30, and with payment on the first day of each month thereafter, commencing October 1, 2015. The said monthly rent is calculated at $157,165.33 per month, with interest for late payment at 19.56% per annum. If said monthly rent is disputed, any overpayment or underpayment will be adjusted when rent is finally determined. If HONI does not pay by September 30, 2015, Nyon considers HONI an overholding tenant and demands an additional 50% increase in said rent until HONI vacates the property.

If we do not receive the interim payment, in accordance with the Notice to Pay or to Quit by September 30, 2015, we intend to issue and serve a Notice of Application shortly thereafter, requesting the Court to declare Nyon's ownership of the infrastructure; Nyon's right to payment for all due and outstanding rent and interest; an order to pay the said due and outstanding rent and interest; an order for HONI to pay rent on a go-forward basis as an overholding tenant, with interest in default, until HONI ceases its use of Nyon's property, as requested herein; an order for HONI to immediately cease and desist from using the infrastructure until the said rent owing is paid in full; an order that HONI forthwith take all appropriate action to cease and desist using Nyon's property and infrastructure, and to report to the Court, on a timely basis, regarding the foregoing, and for the foregoing to be subject to the Court's supervision; an order that HONI provide all records relating to contamination of the property; an order that an independent detailed study for contaminants, in, on, or under, the property, be completed by a qualified person, chosen by the Court, at the expense of HONI; an order for an environmental site assessment, including, but not limited to, surface, subsurface and ground water samples, by a qualified person, appointed by the Court, at the expense of HONI; an order that the aforementioned studies be peer-reviewed by an independent qualified person, chosen by the

Court, at the expense of HONI; an order that, if required, HONI remediate the property to a pristine state; and such other relief as we may then advise or request.

Sean Gosnell from Borden Ladner Gervais LLP will be present at our October 2, 2015 meeting at 10 AM at Nyon's office Suite 200 – 2 Lombard Street.

Yours truly,

Gordon R. Baker
President Nyon Oil Inc. and 1170637 Ontario Inc.
Encl.
cc: Sean Gosnell, Borden Ladner Gervais LLP – email: sgosnell@blg.com

Appendix 4 – Email from Hydro One to Nyon, dated October 2, 2015

Borden Ladner Gervais LLP | It begins with service
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*Sean Gosnell Professional Corporation

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From: Batner, Sarit E. [mailto:SBATNER@MCCARTHY.CA]
Sent: October-02-15 3:45 PM
To: Gosnell, Sean L.
Subject: Agreement to stand down

Hi Sean. Further to our discussions today I confirm your client's agreement that we hold the letters of September 22, 2015 to Mr. Schmidt and Mr. Fortini together with the two attached Notices (all collectively the "September 22 Letters") in abeyance pending our efforts towards understanding each other's client's legal positions and perhaps seeing if there is a manner to either resolve this matter in some fashion agreeable to them, or to agree to a process towards that goal. To be clear, your client will take no steps in respect of, and expects no response in respect of, its September 22 Letters. If in the future your client intends to take any steps or action in respect of its September 22 Letters, it has agreed it will first give my client reasonable notice in advance in order to provide us an opportunity to meaningfully address the September 22 Letters before any precipitous action is taken.

I confirm I will write to you to set out my client's position about its rights to carry on its business through that part of its transmission system which is on the lands your client asserts it owns by way of having acquired them from the City of Port Colborne. I confirm as well I will set out some proposals for potential resolution of this matter, along the lines we discussed today. I hope to get you my letter by the end of next week if at all possible and am mindful of your request that it be by then or not much beyond then.

I confirm you will provide whatever paperwork your client relies on to assert its ownership of the hydro towers/wires.

If I have left something off, please let me know.

Best,
Sarit

mccarthy tetrault

Sarit Batner
Partner | Associée
Litigation | Litige

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Toronto ON M5K 1E6

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Appendix 5 – Follow up emails from Nyon to Hydro One re: dispute resolution process, dated March 2024

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: April 8, 2024 9:55:57 AM
Attachments: image001.png
image002.png
image003.png

Sam,

As a reminder, if we don't hear from you today, we do intend to issue our Statement of Claim late this afternoon and serve it tomorrow morning.

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: Monday, March 25, 2024 7:47 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

I'm sympathetic to your trial schedule; however, our client already granted a six-week indulgence by not filing its claim in February when it was prepared. If it had done that, the time for serving a Statement of Defence would already be passing by. We are only asking that your client advises whether it prefers a med/arb or formal litigation process by April 8. We are not asking for a pleading on that day or threatening to note HONI in default, etc. Additionally, extending the offer of either route to your client is an indulgence and a gesture of good faith by ours. Our client wasn't obligated to do that.

In the circumstances, it's fair to let us know by April 8 what direction we're proceeding in. If we don't hear from you on that simple issue, we will file and serve the claim.

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: Tuesday, March 19, 2024 5:28 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,

That's a disappointing response. As I explained in my email, the issue is my trial schedule and my ability to get up to speed on this historic matter while I have multiple trials ongoing. I appreciate a desire to move this forward, but it has been over 8 years since our clients last exchanged positions, and it took you 2 months to get us your letter after you reached out in December. I'm simply looking for a commensurate amount of time to review your detailed letter and respond. I'd ask you and your client to reconsider.

Sam

mccarthy tétrault

Sam Rogers (he / him)
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C: 416-433-3787
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E: sbrogers@mccarthy.ca

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Toronto ON M5K 1E6

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From: Scott Lemke <slemke@masseylaw.ca>
Sent: Monday, March 18, 2024 4:33 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

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
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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

mccarthy tetrault

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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
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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

mccarthy tetrault

Sam Rogers (he/him)
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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,

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Toronto, ON | M5C 1C3

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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. Your can direct further correspondence on this matter to my attention with a copy to Mr. Nettleton.

Thank you,
Sam

mccarthy tetrault

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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

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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

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Appendix 6 – Nyon's Statement of Claim (CV-24-00014768-0000)

Court File No. CV-24-00014768-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

NYON OIL INC. and 1170367 ONTARIO INC.

Plaintiffs

and

HYDRO ONE NETWORKS INC.

Defendant

STATEMENT OF CLAIM

Notice of Action issued on February 21, 2024

1. The Plaintiffs claim the following relief:

(a) Damages in the amount of $56,483,814.37 as overdue and outstanding rent and interest from September 15, 2015 to March 31, 2024;

(b) An order that the Defendant pay monthly rent, as of April 1, 2024 in the amount of $314,330.66 monthly (being $157,165.33 with an overholding premium of 100% in accordance with ss. 58 and 59 of the *Commercial Tenancies Act*), together with interest on overdue amounts calculated at 19.56% compounded annually;

(c) An order that the Defendant pay all taxes, assessments, and levies charged by any authority having jurisdiction for which the Defendant was obligated to pay but refused or neglected to pay;

(d) A declaration that the Plaintiffs are the owners of the hydroelectric fixtures and infrastructure on the Plaintiffs' Lands (as defined below);

(e) A declaration that the Defendant has no right, privilege or permission to the use the hydroelectric fixtures and infrastructure on the Plaintiffs' Lands;

(f) A declaration that the Defendant's use, maintenance and operation of the hydroelectric fixtures and infrastructure on the Plaintiffs' Lands is a trespass;

(g) A permanent injunction restraining the Defendant from trespassing upon the Plaintiffs' Lands for the purpose of constructing, operating, maintaining or renewing any hydroelectric fixtures or infrastructure thereon;

(h) A declaration that the Master Agreement and Supplemental Agreement (as defined below) have been terminated;

(i) A declaration that the Feeder Line Licence (as defined below) has been terminated;

(j) An order that the Defendant complete an environmental site assessment of the Plaintiffs' Lands and the adjacent lands, which shall include, but not be limited to, surface, subsurface and ground water samples, by a qualified person, appointed by the Court, at the expense of the Defendant;

(k) An order that an independent detailed study for contaminants, in, on, and under the Plaintiffs' Lands, and the adjacent lands, be completed by a qualified person, chosen by the Court, and at the expense of the Defendant;

(l) An order that the Defendant provide all records that may be relevant to any environmental contamination of the Plaintiffs' Lands or the adjacent lands;

(m) An order that the Defendant compensate the Plaintiffs for environmental contamination of the Plaintiffs' Lands and the adjacent lands in accordance with the *Environmental Protection Act*, R.S.O. 1990, c. E.19;

(n) An order that the Defendant remediate the Plaintiffs' Lands and adjacent lands to a pristine state;

(o) A permanent injunction restraining the Defendant from using prohibited and toxic environmental contaminants on the Plaintiffs' Lands or any adjacent lands;

(p) Prejudgment interest at a rate of 19.56%, or in the alternative, in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

(q) Post-judgment interest at a rate of 19.56%, or in the alternative, in accordance with section 129 of the *Courts of Justice Act*;

(r) The costs of this proceeding, plus all applicable taxes; and

(s) Such further and other Relief as to this Honourable Court may deem just.

The Parties

2. The Defendant, Hydro One Networks Inc. ("**HONI**") is a corporation controlled by the Ontario provincial government and governed by the laws of Ontario. HONI is the largest electricity transmission and distribution company in Ontario, and is principally regulated by the Ontario Energy Board. HONI is a successor of Ontario Hydro and the Hydro-Electric Power Commission of Ontario.

3. Nyon Oil Inc. is a corporation incorporated under the laws of Ontario ("**Nyon**").

4. 1170637 Ontario Inc. is a corporation incorporated under the laws of Ontario ("**117**").

Overview

5. HONI operates hydroelectric fixtures and infrastructure on lands owned by the Plaintiffs, and has done so since approximately 1929. In 1965 and 1968, the hydroelectric fixtures and infrastructure were expropriated together with the subject lands by Transport Canada in the name of the St. Lawrence Seaway Authority (the **"Seaway"**). Upon expropriation, the fixtures and infrastructure became the property of the Seaway, and thereafter, the Seaway granted licenses to HONI to continue to maintain and use that infrastructure.

6. Ultimately, the lands, fixtures, and infrastructure, owned by the Seaway were transferred to the Plaintiffs, along with the licences.

7. HONI failed to live up to its obligations under the licenses, which included failing to pay rent and contaminating the Plaintiffs' Lands.

8. The licenses continued until September 2015, at which time the Plaintiffs gave notice that the licenses were being terminated, and that rent would be charged to HONI if they continued to use Plaintiffs' Lands, and the hydroelectric fixtures and infrastructure thereon. Notwithstanding the notices, HONI did continue to use the lands, hydroelectric fixtures and infrastructure, and refused or neglected to pay rent. This has resulted in significant arrears owing to the Plaintiffs.

9. In addition, the Plaintiffs' Lands are in need of environmental remediation as a result of HONI's use of long-lasting chemicals, such as arsenic trioxide, fuel oil, gasoline, PCBs, pentachlorophenol, and other substances to keep vegetation and wildlife off of the towers, poles and wires.

The Plaintiffs' Lands

10. This action concerns HONI's use of hydroelectric fixtures and infrastructure and various parcels of land owned by the Plaintiffs. The ownership of these lands, and their legal descriptions, are as follows:

(a) 117 owns Parts 2, 3, 4, 12, and 13, on Lot 17, 18, and 19, Concession 5, Plan 59R-15312 (the "**117 Con 5 Lands**").

(b) 117 owns Parts 1, 2, 3, 5, 8, 9, 15, 16, and 17 on Lots 23, 24 and 25, Concession 4, Plan 59R-15310 (the "**117 Con 4 Lands**") (the 117 Con 4

Lands and the 117 Con 5 Lands are collectively referred to herein as the **"117 Lands"**).

(c) Nyon owns Parts 4, 11, 12 and 13 on Lot 24, Concession 4, Plan 59R-15310 (the "**Nyon Lands**".)

11. The 117 Lands and the Nyon Lands are collectively referred to herein as the "**Plaintiffs' Lands**".

12. There are significant hydroelectric fixtures and infrastructure on the Plaintiffs' Lands. These fixtures and infrastructure consist of:

(a) a set of double poles and wires spanning approximately 7,100 feet north-south across Lot 24, Concession 4 (the **"Lot 24 Double Pole Line"**);

(b) a set of single poles and wires spanning approximately 4,500 feet north-south across Lot 24, Concession 4, adjacent to the west of the Lot 24 Double Pole Line (the **"Lot 24 Single Pole Line"**);

(c) a set of towers and wires spanning approximately 7,100 feet north-south across Lot 24, Concession 4, adjacent to the east of the Lot 24 Double Pole Line (the **"Lot 24 Tower Line"**);

(d) an amalgamated tower line, which is as an amalgamation of the Lot 24 Double Pole Line and the Lot 24 Tower Line, and enters upon Lot 19, Concession 5 from its west boundary and runs east for approximately 700 feet and on to Lot 18 where it turns north to run approximately 200 feet, and

then it turns nearly 90 degrees west to run for approximately 700 feet again across Lots 18 and 19, Concession 5 forming a sideways “U” shape and then crosses over the Welland canal (the **“Amalgamated Tower Line”**);

(e) a set of single poles that anchor three wires and stem from the bottom of the “U” of the Amalgamated Tower Line on Lot 18, Concession 5, and that runs approximately 65 feet northeast, then north for approximately 100 feet, and then northwest for approximately 65 feet to reconnect to the north edge of the Amalgamated Tower Line (the **“U Triple Line”**);

(f) a set of single poles and wires that runs east-west for approximately 2,000 feet across Parts 2 and 3 on Lots 17 and 18, Concession 5, towards the northeast point of the sideways “U” of the Amalgamated Tower Line, then juts northwest for approximately 150 feet and expands to triple pole infrastructure, and then the lines jut southwest to another set of triple poles immediately below a tower on the Amalgamated Tower Line and approximately 60 feet west of the said tower, and then travel approximately 60 feet east to connect to that tower and join the Amalgamated Tower Line (the **“Feeder Line”**); and

(g) a single pole line and wires that enter Part 2, Lot 19, Concession 5 from the north and run 40 feet south to a single pole and turns west and runs for approximately 520 feet and then juts southwest for approximately 265 feet

to connect to the tower on the Amalgamated Tower Line immediately adjacent to the Welland canal (the **"Lot 19 Single Pole Line"**).

13. There are also various anchors tied in the Plaintiffs' Lands that secure the hydroelectric fixtures and infrastructure.

The History of the Plaintiffs' Lands

14. The above-noted hydroelectric fixtures and infrastructure are located on a two-kilometer stretch of land adjacent to the east of the Welland Canal (the **"Canal"**). The Canal is now a relied upon shipping route that connects Lake Erie and Lake Ontario. For at least 90 years, some portion of the Plaintiffs' Lands has been used by HONI (or its predecessors) for the transmission of hydroelectric power.

15. The portion of the Canal adjacent to the west of the Plaintiffs' Lands was constructed in the late 1960s and early 1970s to bypass a 14.6 kilometer section of the Canal that travelled directly through Welland, Ontario. As part of the bypass project, approximately 6,500 acres of land was expropriated by the Seaway, including the property that is now the Plaintiffs' Lands.

(a) <u>The Expropriations</u>

16. Beginning in December 1965, through a set of expropriations, the federal government took ownership of property that included the Plaintiffs' Lands and all of the fixtures upon them, including the hydroelectric fixtures and infrastructure.

17. On December 2, 1965, the federal government issued an Order in Council approving the expropriation of:

- all of Lots 23, 24 and 25 of Concession 4 in the Township of Humberstone; and
- part of Lot 17, the southerly part of Lot 18, and all of Lot 19, Concession 5, in the Township of Humberstone.

18. On December 3, 1965, Transport Canada issued Notice of Expropriation No. 153041 (the "**1965 Expropriation**") expropriating:

> ALL AND SINGULAR that certain parcel or tract of land and premises (herein referred to as "the said Land"), situate and lying partly in the Township of Humberstone and partly in the City Welland, in the County of Welland, and the Province of Ontario, **being composed of Lots 19**… and **parts of Lots 18, in Concession 5**; **Lots 23 and 24… Concession 4**; those portions of the road allowances between the lots and concessions within the herein to be described parcel… **[Emphasis added]**.

19. Three years later, on December 10, 1968, the federal government issued an Order in Council approving the expropriation of:

- part of lots 17 and 18 and part of the road allowance between lots 16 and 17 (known as Kleinsmith Road), part of the road allowance between lots 18 and 19 (known as Horton Road); and
- part of the road allowance between Concessions 4 and 5 (known as Forkes Road).

20. On December 10, 1968, the same day as the Order in Council was issued, Transport Canada issued Notice of Expropriation File No. 36-76-2-0 (the "**1968 Expropriation")** expropriating:

> ALL AND SINGULAR that certain parcel or tract of land and premises (herein referred to as "the said Land"), situate and lying partly in the Township of Humberstone and partly in the City Welland, in the County of Welland, and the Province of Ontario, **being composed of Lots 19**… and **parts of Lots 18, in Concession 5**; **Lots 23 and 24… Concession 4**;

> those portions of the road allowances between the lots and concessions within the herein to be described parcel… **[Emphasis added]**.

21. The 1965 Expropriation and the 1968 Expropriation are collectively referred to herein as the **"Expropriations"**.

22. The Expropriations vested ownership of the Plaintiffs' Lands in Her Majesty in the name of the Seaway.

23. Accordingly, as of December 10, 1968, the federal government owned the entirety of the Plaintiffs' Lands, which included all fixtures and infrastructure attached thereto.

24. At the time of the Expropriations, the Lot 24 Double Pole Line, the Tower Line, and the Lot 24 Single Pole Line were affixed to the Plaintiffs' Lands.

25. There may have been additional hydroelectric infrastructure or fixtures attached to the Plaintiffs' Lands at the time of the Expropriations. If so, the Plaintiffs will identify them prior to trial.

(b) <u>The Master Agreement</u>

26. On October 6, 1969, the Seaway and the Hydro-Electric Power Commission of Ontario (the **"Commission"**) entered into a Master Agreement regarding the permanent relocation of power lines and electricity supply facilities in the counties of Lincoln and Welland (the **"Master Agreement"**). This was necessitated since HONI no longer had legal title to the infrastructure and no longer had any right to undertake any activities upon the Plaintiffs' Lands.

27. Section 2.1 of the Master Agreement addressed the relocation and the costs thereof:

> 2.1 The Commission shall permanently relocate and restore those power lines and electricity supply facilities as requested by the Authority [the Seaway] in writing from time to time and the entire cost of such relocation and restoration shall be paid for by the Authority [the Seaway] in the manner as hereinafter set out.

28. Section 4.1 of the Master Agreement grants the Commission permission to access the Seaway's lands, which includes the Plaintiffs' Lands "for the purposes of relocation and restoration of its said power lines and electricity supply facilities."

29. Section 5 of the Master Agreement addresses rent:

> 5. In lieu of all rights and privileges hitherto enjoyed by the Commission within the expropriated area the Authority [the Seaway] shall grant free of rental to the Commission the right and privilege to maintain and operate its power lines and electricity supply facilities across the relocated channel and equivalent lands as more particularly set out in an agreement supplemental hereto.

30. There is no term set out in the Master Agreement.

31. The Master Agreement did not grant an easement or any interest in land, but was instead a licence between the Seaway and the Commission.

(c) <u>The Supplemental Agreement</u>

32. Nearly seven years later, on June 1, 1976, the Seaway and Ontario Hydro (which is, presumably, a successor of the Commission) entered into a Supplemental Agreement, as contemplated by the Master Agreement (the **"Supplemental Agreement"**). In the period between the execution of the Master Agreement and the Supplemental

Agreement, there were no other legal agreements reached or executed regarding the Plaintiffs' Lands.

33. At s. 1 of the Supplemental Agreement, the Seaway granted Ontario Hydro the right to maintain, operate and/or renew:

- four 230 K.V. overhead power transmission line crossings on steel towers over the Welland Canal Channel;
- together with 115-230 K.V. lines on wooden poles on, over and/or across adjoining Welland Canal reserve land; and
- two 27.6 K.V. cable crossings in ducts under the Welland Canal and overhead on wooden poles on, over and/or across adjoining Welland Canal reserve land easterly and westerly of the Welland Canal channel,

34. A significant portion of the infrastructure contemplated by the Supplemental Agreement is located on the Plaintiffs' Lands.

35. The Supplemental Agreement grants the above noted rights in perpetuity and free of charge.

(d) <u>The Feeder Line Licence</u>

36. On April 4, 1977, the Seaway and Ontario Hydro entered into a licence for the Feeder Line (the **"Feeder Line Licence"**). This licence specifically permitted Ontario Hydro to:

> erect, maintain, operate and/or renew a 115 k.v. electrical transmission line (hereinafter referred to as "the said line") 4,715 feet in length, more or less, on, over and/or across Welland Canal reserve land in Lots no. 17 and 18, Concession no. 5 for the former Township of Humberstone, in the county of Welland, now in the Cities of Welland and Port Colborne, in the Regional Municipality of Niagara, all in the Province of Ontario, the location of the said line being indicated coloured in red on Plan no. W.C. 77-2 hereto annexed.

37. A significant portion of the Feeder Line is located on the 117 Con 5 Lands.

38. Section 1 of the Feeder Line Licence required Ontario Hydro to pay $75.00 annually for the licence, and s. 2 required Ontario Hydro to pay:

> … all rates, taxes and assessments, of whatsoever description, that may be at any time during the existence of these Presents be lawfully imposed, or become due and payable, upon, or in respect of the rights and privileges herein granted.

39. Neither Ontario Hydro, nor any of its successors, including HONI, have ever paid the annual rent due under the Feeder Line Licence to 117, or contributed to the payment of any taxes as they became due and payable.

40. Section 3 of the Feeder Line Licence required Ontario Hydro to comply with all lawful rules, regulations and by-laws of any governing body. This included environmental laws and regulations.

41. The term of the Feeder Line Licence was “during pleasure” and s. 10 permitted the licensor or the licensee to cancel the license forthwith upon notice to the other party. Section 11 required Ontario Hydro to forthwith remove its property after cancellation at its own expense and to restore the property to a neat and clean condition.

42. Section 12 of the Feeder Line Licence provides the licensor security for losses or damages in the form of a lien on Ontario Hydro’s property.

43. Between 1977 and 2005, there were no additional licenses or changes to the legal status or ownership of the Plaintiffs’ Lands, or the rights that HONI and its predecessors had with respect to the Plaintiffs’ Lands.

(e) Environmental Damage

44. HONI and/or its predecessors used long-lasting chemicals to deter wildlife and vegetation from encroaching upon the lines and infrastructure. HONI has admitted this repeatedly in various public disclosure documents.

45. A significant portion of Lots 24 and 25, Con 5 are environmentally protected provincially significant wetlands, and with almost no maintenance, the hydro corridor remains barren of vegetation and wildlife, while either side of the corridor is overrun with forest.

(f) The First Port Colborne APS

46. On May 10, 2005, Canada Lands CLC Limited (**"Canada Lands"**), a successor to the Seaway, and The Corporation of the City of Port Colborne (**"Port Colborne"**) entered into an Agreement of Purchase and Sale for lands that included the 117 Con 5 Lands, which included the Amalgamated Tower Line, the U Triple Line, the Feeder Line, and the Lot 19 Single Pole Line (the **"First Port Colborne APS"**).

47. Section 4 of the First Port Colborne APS addressed encumbrances, and stated that the purchaser agreed to accept title subject to all registered and unregistered agreements and easements, as well as the Master Agreement, Supplemental Agreement and Feeder Line Licence.

(g) The Second Port Colborne APS

48. On December 12, 2005, Canada Lands and Port Colborne entered into a second agreement of purchase and sale for lands that included the 117 Con 4 Lands and the Nyon Con 4 Lands, which included the Lot 24 Double Pole Line, the Lot 24 Single Pole Line, and the Lot 24 Tower Line (the **"Second Port Colborne APS"**).

49. Section 4 of the Second Port Colborne APS addressed encumbrances, and stated that the purchaser agreed to accept title subject to all registered and unregistered agreements and easements.

(h) The Nyon APS

50. On January 30, 2006, Port Colborne entered into an agreement of purchase and sale with Nyon Energy Corp. for approximately 800 acres of land on Concessions 4 and 5, in the City of Port Colborne, Regional Municipality of Niagara, which included the Plaintiffs' Lands (the **"Nyon APS"**).

51. There were several onerous conditions in the Nyon APS, including an obligation for Nyon to rezone the lands, which included public consultations, and the commissioning of various reports and studies.

52. On May 1, 2015, after the successful rezoning of the lands, Port Colborne transferred title to the lands to several corporations, as directed by Nyon (Nyon Energy Corp. assigned the Nyon APS to Nyon). Nyon and 117 took title to the Plaintiffs' Lands, as set out at paragraph 10, above.

53. Pursuant to s. 9 of the Nyon APS the lands were transferred to Nyon on an “as-is where-is” basis.

(i) The Assignment of any Interest of Port Colborne to Nyon and 117

54. On April 30, 2015, Port Colborne assigned all of its right, title and interest, both in law and equity, to and in respect of the occupancy by HONI and its predecessors of the Plaintiffs’ Lands and any benefits or advantages to be derived therefrom to Nyon and 117. This included an assignment and assumption of the Master Agreement, the Supplemental Agreement and the Feeder Line Licence, and all of the rights, privileges and obligations thereunder.

55. On April 27, 2015, Port Colborne provided notice to HONI that it had transferred and assigned the above noted rights to the Plaintiffs and directed HONI to pay all past and future payments with respect to the aforesaid rights to the Plaintiffs, or as they may otherwise direct.

(j) The Notice to Pay or Quit and the Notice to Remove

56. On September 22, 2015, the Plaintiffs delivered a Notice to Pay or Quit to HONI, care of Lou Fortini, Director Facilities and Real Estate and Gary Schneider, Vice President. In the Notice to Pay or Quit, the Plaintiffs demanded that HONI pay rent, and notified HONI that if it failed to pay the past due rent owing, as well as rent on a go-forward basis, that it would seize and sell HONI’s goods and chattels located on the Plaintiffs’ Lands.

57. On September 22, 2015, the Plaintiffs also delivered to HONI a Notice to Remove the Feeder Line.

58. Together with the Notice to Pay or Quit and the Notice to Remove, the Plaintiffs delivered a letter to Mr. Fortini and Mr. Schneider, wherein the Plaintiffs made it clear that the Master Agreement, the Supplemental Agreement, and the Feeder Line Licence were terminated; the Plaintiffs were the owners of the hydroelectric infrastructure; and that rent that was becoming due and owing to the Plaintiffs by HONI. With respect to rent, the Plaintiffs demanded that going forward, rent be paid in the amount of $157,165.33 per month with interest for late payment at 19.56% per annum, and notified HONI that it considered it to currently be in the position of an overholding tenant and demanded an additional 50% in rent until HONI vacated the property, or a new licence or agreement was entered into.

59. On February 22, 2024, the Plaintiffs demanded that HONI begin to pay double rent as an overholding tenant, in addition to 19.56% interest on the outstanding amount due to the Plaintiffs.

60. To date, HONI continues to occupy the Plaintiffs' Lands and use the fixtures and infrastructure, but has not paid anything to the Plaintiffs.

The Positions of the Plaintiffs regarding the Ownership of the Fixtures and Infrastructure, and Rent Due and Owing

(a) Ownership of the Hydro-electric Fixtures and Infrastructure

61. The Plaintiffs state that the hydroelectric fixtures and infrastructure on the Plaintiffs' Lands were expropriated and became the property of the federal government in the 1960s. Title passed from the federal government to Port Colborne and then to the Plaintiffs.

62. Accordingly, the Plaintiffs state that 117 is the owner of the hydroelectric fixtures and infrastructure on the 117 Con 4 Lands and the 117 Con 5 Lands, and Nyon is the owner of the hydroelectric fixtures and infrastructure on the Nyon Con 4 Lands.

63. In the alternative, the hydroelectric fixtures and infrastructure on the Plaintiffs' Lands are considered unauthorized improvements to lands and have thereby become the property of the owner and have been transferred with the lands to the Plaintiffs, being the current owners.

(b) The Current Status of the Master Agreement and the Supplemental Agreement

64. It was an explicit or implied term of the Master Agreement and the Supplemental Agreement that they could be terminated for any reason on no notice or, in the alternative, notice.

65. The Master Agreement and the Supplemental Agreement were terminated on notice on September 22, 2015, upon delivery of the Notice to Pay or Quit and

correspondence that unequivocally stated the Plaintiffs' intentions to terminate the agreements if payment was not received by September 30, 2015.

66. The Master Agreement and Supplemental Agreement are not permanent easements and do not create any interest in land. They are contracts/licences that are personal in nature.

67. There are no easements on the Plaintiffs' Lands. Since 1968, HONI has had opportunities to negotiate with the Seaway, Transport Canada and/or Canada Lands to obtain registrable, permanent easements, and has either failed to do so, or attempted to do so and was rejected.

68. In the alternative, if the Master Agreement and the Supplemental Agreement are not permitted to be terminated on notice, Nyon and 117 were permitted to terminate them because HONI fundamentally breached both by contaminating the Plaintiffs' Lands, without permission of the owner.

69. HONI contaminated the Plaintiffs' Lands and has refused or neglected to remedy the contamination. The contamination was an intentional act by HONI, for only its benefit, and has had a significant negative impact on the value of the Plaintiffs' Lands.

70. Accordingly, the contamination was a fundamental breach of the Master Agreement and the Supplemental Agreement that entitled Nyon and 117 to terminate them on September 22, 2015.

(c) The Current Status of the Feeder Line Licence

71. Subsection 10(a) of the Feeder Line Licence permitted the licensor to cancel it forthwith at any time by notice in writing, which 117 did on September 22, 2015.

72. The Feeder Line Licence was terminated upon the delivery by 117 of the Notice to Remove dated September 22, 2015.

73. In the alternative, the Feeder Line License was terminated by 117 on September 22, 2015, which was permitted as a result of HONI fundamentally breaching the license by contaminating the Plaintiffs' Lands for the same reasons set out above regarding the termination of the Master Agreement and the Supplemental Agreement.

74. Section 1 of the Feeder Line Licence obligated HONI and its predecessors to pay $75.00 annually to the licensor, and s. 2 obligated the licensee to pay "all rates, taxes and assessment, of whatsoever description, that may be at any time during the existence of these Presents be lawfully imposed, or become due and payable, upon, or in respect of the rights and privileges herein granted."

75. HONI, nor any of its predecessors has ever paid the rent or any of the s. 2 payments.

76. By failing to pay rent and the payments required under s. 2, HONI failed to fulfill its obligations under the license and deprived 117, and its predecessors in title, of the entire benefit contracted for.

77. Accordingly, in the further alternative, HONI's ongoing failure to make the payments to 117 and its predecessors under the Feeder Line Licence also constitutes a fundamental breach, which permitted 117 to terminate it on September 22, 2015.

Environmental Contamination

78. The Plaintiffs state that HONI has willfully and/or negligently contaminated the Plaintiffs' Lands through the use of long-lasting chemicals, such as arsenic trioxide, fuel oil, gasoline, PCBs, pentachlorophenol, and other substances. This contamination requires remediation.

Damages

79. The outstanding rent due and owing by the Defendant, as of April 1, 2024, is $56,483,814.37.[1]

80. Monthly rent continues to accrue to the Defendant as an overholding tenant at the rate of $314,330.66, being double the monthly rent of $157,165.33 and accruing interest at a rate of 19.56% on overdue amounts.

81. In accordance with s. 2 of the Feeder Line Licence, the Defendant must pay all taxes, assessments, and levies charged by any authority having jurisdiction, until the date

[1] $**56,483,814.37** = $358,762.45 (being $78,582.67 with interest at 19.56% for 8 years and 6 months) + $55,805,006.70 (being $157,165.33 monthly rent with interest at 19.56% for 8 years and 5 months) + $319,045.22 (being $314,330.66 monthly rent with interest at 19.56% for 1 month)

of termination of the Feeder Line Licence, plus interest at a rate of 19.56% on overdue amounts.

82. The Plaintiffs are entitled to a permanent injunction requiring the Defendant to immediately cease trespassing upon the Plaintiffs' Lands for the purpose of constructing, operating, maintaining or renewing any hydroelectric fixtures or infrastructure.

83. The Plaintiffs are entitled to a permanent injunction requiring the Defendant to immediately cease its use of the hydroelectric fixtures and infrastructure on the Plaintiffs' Lands.

84. The Defendant must remediate the Plaintiffs' Lands to a pristine state, or to such state as is required by the *Environmental Protection Act,* its regulations and all other applicable environmental laws, and to pay all compensation required by law to the Plaintiffs.

85. The Plaintiffs are entitled to a permanent injunction requiring the Defendant to immediately cease its use of prohibited and toxic environmental contaminants on the Plaintiffs' Lands.

86. The Plaintiffs plead the *Trespass to Property Act*, the *Negligence Act*, the *Commercial Tenancies Act*, the *Environmental Protection Act*, the *Canadian Environmental Protection Act, 1999*, the *St. Lawrence Seaway Authority Act*, and the *Courts of Justice Act*.

87. The Plaintiffs propose that this action be tried in Welland.

April 9, 2024

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Court File No. CV-24-00014768-0000

NYON OIL INC. et al.
Plaintiffs

-and-

HYDRO ONE NETWORKS INC.
Defendant

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
WELLAND

STATEMENT OF CLAIM

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Appendix 7 – Hydro One's Statement of Defence (CV-24-00014768-0000), dated May 17, 2024

Court File No. CV-24-00014768-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N

NYON OIL INC. and 1170367 ONTARIO INC.

Plaintiffs

and

HYDRO ONE NETWORKS INC.

Defendant

STATEMENT OF DEFENCE

1. Except as is admitted herein, the Defendant, Hydro One Networks Inc. ("**HONI**") denies each and every allegation in the Statement of Claim.

Overview

2. In 2006, Nyon Energy Corp. purchased certain land near the Welland Canal from the City of Port Colborne for $1 for the purpose of developing an "energy park" for the storage and transportation of petroleum products, as described in the Statement of Claim (the "**Land**"). The Land is now owned by the Plaintiffs Nyon Oil Inc. and 1170367 Ontario Inc. (the "**Plaintiffs**" or "**Nyon**"). Certain portions of the Provincial electricity transmission grid are located on the Land (the "**Transmission Infrastructure**") and are owned and operated by HONI.

3. In 2015, Nyon sent a letter to HONI claiming ownership of the Transmission Infrastructure and purporting to terminate certain agreements that permit the operation and maintenance of the Transmission Infrastructure on the Land. That letter was held in abeyance by the parties while they attempted to determine a method for resolving their disputes. HONI's counsel wrote to Nyon in December 2015 with a without prejudice proposal. Nyon did not substantively respond until February 22, 2024, when it delivered a letter to HONI enclosing a Notice of Action.

4. The Statement of Claim in this action was served by Nyon on April 9. In this action, Nyon seeks more than $55M in damages for "rent", advances claims of ownership of the Transmission Infrastructure, and makes allegations based on unspecific environmental contamination on the Land.

5. On April 17, 2024, HONI advised Nyon of its intention to bring an expropriation application before the Ontario Energy Board to expropriate land rights sufficient to operate and maintain the Transmission Infrastructure on the Land in light of the relief requested in Nyon's Statement of Claim, including Nyon's request for a permanent injunction to shut down a portion of the Provincial electricity transmission grid. The Ontario Energy Board has exclusive jurisdiction to consider and decide such an application in the public interest.

6. HONI requested that Nyon consent to a temporary stay of this action while the expropriation application is decided. If successful, the expropriation application will moot many, if not all, of Nyon's claims. This action should be stayed while the Ontario Energy Board exercises its exclusive jurisdiction.

7. Nyon refused to consent to a temporary stay and threatened to note HONI in default if HONI did not file a Statement of Defence, despite HONI's stated intention to move for a stay.

8. HONI files this defence to respond in summary fashion to the allegations in the Statement of Claim and to avoid a precipitous noting in default. In the event that this action proceeds, HONI intends to amend its Statement of Defence to more particularly respond to the allegations in the Statement of Claim.

The Parties

9. The Plaintiffs are corporations incorporated pursuant to the laws of Ontario. The Plaintiffs purport to own the Land.

10. Details of the relationship between Nyon and 117 Ontario are within the knowledge of the Plaintiffs, or either of them, but are unknown to HONI.

11. HONI is a company incorporated pursuant to the laws of Ontario. HONI's principal business is the transmission and distribution of electricity to customers in Ontario. HONI owns, maintains and operates electricity transmission and distribution infrastructure throughout Ontario, including certain infrastructure on Land owned by the Plaintiff(s). Throughout this Statement of Defence, HONI refers to the entity "Hydro One Networks Inc." as well as all predecessor corporations.

12. HONI is principally regulated by the Ontario Energy Board, which has exclusive jurisdiction in respect of all matters in which jurisdiction is conferred on it by the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched. B, or otherwise.

The Transmission Infrastructure Was Not Expropriated by the Seaway Authority

13. HONI has owned and operated a transmission system on the Land since about 1930. Originally HONI was the beneficiary of easements permitting the operation and maintenance of the transmission system.

14. In the 1960s, the St. Lawrence Seaway Authority (the "**Seaway Authority**") expropriated certain lands in the area of the Welland Canal as part of a re-alignment expansion project.

15. HONI's original transmission line had to be relocated to accommodate the expansion. The Seaway Authority and HONI entered into an October 1969 agreement (the "**Master Agreement**") and a June 1976 Supplemental Agreement (the "**Supplemental Agreement**") in order to facilitate that relocation.

16. Pursuant to those agreements, at the Seaway Authority's request, HONI removed existing transmission infrastructure and constructed new transmission infrastructure in a new location.

17. The intention of the parties was to accommodate the Seaway Authority's Canal project of relocating its channel between Port Robinson and Port Colborne while allowing HONI's rights to operate a transmission line for the public benefit to continue in perpetuity.

18. The Seaway Authority did not intend to, and in fact did not, expropriate the Transmission Infrastructure.

The Master Agreement Confirms that HONI Owns the Transmission Infrastructure

19. Contrary to the allegation at paragraph 26 of the Statement of Claim, nothing in the Master Agreement provides that HONI no longer had title to the Transmission Infrastructure. Rather, the Master Agreement confirmed that "the power lines and electrical supply facilities" continued to be owned by HONI. For example, Section 1.1 provides that HONI would be required to prepare an estimate of the cost of relocating "its" power lines and electrical supply facilities.

20. Section 2.4 provides that in the event that HONI's power lines and electrical supply facilities were relocated, HONI was only responsible for paying the cost of betterments or improvements to "its" power lines or electrical supply facilities.

21. Section 5, confirms that HONI has the right to operate "its" power lines and electricity facilities rent free and in perpetuity:

> In lieu of all rights and privileges hitherto enjoyed by the Commission within the expropriated area the Authority **shall grant free of rental to [HONI] the right and privilege to maintain and operate its power lines and electricity supply facilities** across the relocated channel and equivalent lands more particularly set out in an agreement supplemental hereto.
>
> [Emphasis added.]

22. Schedule "A" to the Master Agreement similarly grants HONI the "right and privilege to erect, maintain, operate and/or renew" certain specified power transmission lines and/or electricity supply facilities.

23. Since the signing of the Master Agreement, HONI and its predecessors have undertaken erection, maintenance, operation and renewal of the Transmission Infrastructure in accordance with the rights granted under the Master Agreement.

Subsequent Agreements Confirm that HONI Owns the Transmission Infrastructure

24. On June 1, 1976, the Seaway Authority entered into the Supplemental Agreement, to permit HONI to "maintain, operate and/or renew" certain Transmission Infrastructure.

25. The Supplemental Agreement confirms that the Transmission Infrastructure was understood by the parties, and was in fact, the property of HONI:

> … in lieu of all rights and privileges hereto enjoyed by [HONI] within the expropriated area the Authority did agree to grant free of rental to HONI the right and privilege to maintain and operate **its existing power transmission lines and electricity supply facilities**…
>
> [Emphasis added.]

26. As admitted by the Plaintiffs at paragraph 35 of the Statement of Claim, the Supplemental Agreement granted the right to maintain, operate and/or renew the Transmission Infrastructure in perpetuity and free of charge.

27. On April 4, 1977, the Seaway Authority and HONI entered into a licence agreement to permit HONI to "erect, maintain, operate and / or renew" certain Transmission Infrastructure (the "**April 1977 Licence Agreement**").

28. Section 7 of the April 1977 Licence Agreement provides that all "buildings, structures, materials, supplies, effects, and things… constructed, erected, brought, placed or made upon the lands and premises of the Licensor" were the property of HONI.

29. At all times, HONI has complied with the April 1977 Licence Agreement.

30. On November 17, 2005, Her Majesty the Queen in the Right of Canada represented by the Minister of Transport and HONI entered into a Supplemental Licence Agreement, which granted HONI continued permission to "erect, maintain, operate and/or renew" certain Transmission Infrastructure (the "**November 2005 Licence Agreement**", together with the April 1977 Licence Agreement, the "**Licence Agreements**").

31. At all times, HONI has complied with the November 2005 Licence Agreement.

Nyon Did Not Acquire the Transmission Infrastructure

32. On May 10, 2005, the Canada Lands Company CLC Limited (the "**Canada Lands Company**") sold a portion of the Land to the Corporation of the City of Port Colborne (the "**City of Port Colborne**") pursuant to an agreement of purchase and sale (the "**May 2005 APS**").

33. Section 4 of the May 2005 APS provides that the City of Port Colborne agreed to accept title subject to, among other things, all registered or unregistered agreement with municipalities and publicly or privately regulated utilities. This included all agreements with HONI.

34. Section 6 of the May 2005 APS provides that the purchaser and vender agree that "no fixtures, building, or chattels are included in the Purchase Price." The Transmission Infrastructure, which was and still is owned by HONI, was not subject to the APS.

35. Schedule "C" to the May 2005 APS provided that the Master Services Agreement and the 1977 License were permitted encumbrances.

36. On December 13, 2005, the Canada Lands Company sold another portion of the Land to the City of Port Colborne pursuant to an agreement of purchase and sale (the "**December 2005 APS**").

37. Section 4 of the December 2005 APS provides that the City of Port Colborne agreed to accept title subject to, among other things, all registered or unregistered agreement with municipalities and publicly or privately regulated utilities. This included all agreements with HONI.

38. Section 6 of the December 2005 APS provides that the purchaser and vender agree that "no fixtures, building, or chattels are included in the Purchase Price." The Transmission Infrastructure, which was and still is owned by HONI, was not subject to the APS.

39. The City of Port Colborn did not acquire title to any of Transmission Infrastructure pursuant to the May 2005 APS or the December 2005 APS.

40. On January 27, 2006, the City of Port Colborn and Nyon Energy Corp. entered into an Agreement of Purchase and Sale for the sale of certain lands to Nyon. At that time, the City of Port Colborn did not own any of the Transmission Infrastructure and could not sell any of the Transmission Infrastructure to Nyon.

Nyon's Purported Terminations of the Master Agreement, Supplemental Agreement, and Licences are Ineffective

41. Contrary to the allegation at paragraph 64 of the Statement of Claim, it was not an explicit or implied term of the Master Agreement or the Supplemental Agreement that they could be terminated for any reason on no notice, or in the alternative, on notice. The terms and purpose of both agreements indicate that they were intended to be, and are, agreements that cannot be terminated. Nyon's purported terminations of the Master Agreement and Supplemental Agreement are of no force or effect.

42. Nyon is not permitted to cancel or terminate the Licence Agreements.

No Rent Arrears or Obligation to Pay Rent

43. On September 22, 2015, Nyon wrote letters to HONI claiming ownership of the Transmission Infrastructure, purporting to terminate certain agreements, and enclosing certain notices.

44. On October 2, 2015, counsel for HONI and counsel for Nyon agreed to hold Nyon's letters of September 22, 2015 "in abeyance" pending efforts to resolve the disputes or agree on a process for resolving the disputes.

45. Further correspondence was exchanged between counsel for HONI and counsel for Nyon in October, November, and December 2015.

46. On December 9, 2015, HONI's counsel wrote a without prejudice letter to Nyon's counsel. Neither Nyon nor their counsel responded in any way until December 2023, and did not respond substantively until February 22, 2024 when Nyon's new counsel wrote and demanded payment of over $55 million for past rent.

47. HONI denies that the Master Agreement, Supplemental Agreement, or Licence Agreements were validly terminated at any time. In the alternative, any purported termination by Nyon was held in abeyance until February 22, 2024.

48. Contrary to paragraphs 1(a), 56, 76, and 79 of the Statement of Claim, HONI denies that there are any amounts owing for rent under any agreement or at common law.

49. Contrary to paragraphs 59 and 80 of the Statement of Claim, HONI is not an overholding tenant pursuant to the *Commercial Tenancies Act*, R.S.O. 1990, c. L.7, and there exist no other circumstances that would justify the Plaintiffs' imposition of double rent.

No Liability for Environmental Contamination

50. The Plaintiffs have set out no material facts to substantiate their bald assertion that there was any contamination on the Land at issue or on adjacent lands. The Plaintiffs have provided no particulars for HONI's alleged conduct giving rise to such contamination, which is denied. Such particulars are within the knowledge of the Plaintiffs.

51. In any event, HONI denies that the Plaintiffs have a statutory cause of action under the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended.

52. HONI denies that it is liable to compensate the Plaintiffs for environmental contamination, which contamination is denied, to conduct any environmental assessments or studies, or to remediate the Land at issue in the manner described in the Statement of Claim or in any other manner.

53. Furthermore, HONI denies that it breached the Master Agreement and the Supplemental Agreement in the manner described in paragraph 70 of the Statement of Claim, or in any other manner whatsoever.

Damages and Mitigation

54. HONI denies that the Plaintiffs suffered any damages or loss, consequential or otherwise, for which they would be entitled to compensation. HONI denies the amounts

claimed in paragraphs 1(a) and 1(b) of the Statement of Claim and puts the Plaintiffs to strict proof thereof.

55. HONI denies that any actionable act or omission on its part caused or contributed to any damages suffered by the Plaintiffs, which are denied.

56. Furthermore, the amounts claimed by the Plaintiffs in the Statement of Claim are excessive, too remote, not recoverable in law, and not legally compensable.

57. To the extent that the Plaintiffs suffered any damages as a result of HONI's conduct, which is denied, the Plaintiffs failed to make commercially reasonable efforts to mitigate their damages.

No Declarations

58. HONI denies that the Plaintiffs have any entitlement to the declarations sought in paragraph 1 of the Statement of Claim.

59. The Plaintiffs are not the owners of the Transmission Infrastructure on the Land at issue. Rather, HONI is the owner of all Transmission Infrastructure.

60. The Transmission Infrastructure was not expropriated by the Seaway Authority.

61. The Transmission Infrastructure was erected after the Land was expropriated by the Seaway Authority.

62. Under section 44 of the *Electricity Act,* 1998, S.O. 1998, c. 15, Sched. A, and at common law, if property of an electricity transmitter is affixed to realty, the property remains subject to the rights of the transmitter and does not become part of the realty.

63. HONI denies that its use, maintenance and operation of the Transmission Infrastructure constitutes a trespass. In the alternative, HONI pleads that it reasonably believed it had an interest that entitled it to do the act(s) complained of.

64. In the event that Nyon is the owner of the Transmission Infrastructure, which is not admitted but is denied, it is a transmitter under the *Ontario Energy Board Act* and the

Electricity Act, *1998*. Nyon will be required to be a licenced transmitter and will be responsible for operating and maintaining the Transmission Infrastructure in accordance with the provisions of those acts and all other applicable legislation or regulations, including the Ontario Energy Board's Transmission System Code.

65. In the event that Nyon is the owner of the Transmission Infrastructure, which is not admitted but is denied, Nyon will be required to become a licenced transmitter.

No Injunctions

66. The Plaintiffs have set out no material facts and provided no particulars to substantiate their bald assertion that they are entitled to various permanent injunctions in respect of HONI's use of the infrastructure or any of HONI's other conduct.

67. In any event, HONI denies that the Plaintiffs have any entitlement to the injunctions sought in paragraph 1 of the Statement of Claim, whether permanent or temporary.

Nyon's Claims are Statute Barred

68. Nyon's claims are statute barred by the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B section 4, or the *Real Property Limitations Act*, R.S.O. 1990, c. L.15, section 17. In the alternative, Nyon's claims are barred by the doctrine of laches.

Conclusion

69. HONI denies that the Plaintiffs are entitled to pre- and post-judgment interest at the excessive rates claimed in paragraphs 1(p) and 1(q) of the Statement of Claim.

70. HONI pleads and relies on the provisions of the *Commercial Tenancies Act*; the *Real Property Limitations Act*; the *Limitations Act, 2002*; the *Environmental Protection Act*, as amended; the *Ontario Energy Board Act, 1998*; the *Electricity Act*; the *Trespass to Property Act*, R.S.O. 1990, c. T.21; and the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended.

71. HONI asks that this action be dismissed with its costs paid on a substantial indemnity basis.

May 17, 2024

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NYON OIL INC. et al. Plaintiffs	and	HYDRO ONE NETWORKS INC. Defendant	Court File No. CV-24-00014768-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at WELLAND

STATEMENT OF DEFENCE

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Appendix 8 – Hydro One's Amended Statement of Defence (CV-24-00014768-0000), dated February 24, 2025

Court File No. CV-24-00014768-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N

NYON OIL INC. and 1170367 ONTARIO INC.

Plaintiffs

and

HYDRO ONE NETWORKS INC.

Defendant

AMENDED STATEMENT OF DEFENCE

1. Except as is admitted herein, the Defendant, Hydro One Networks Inc. ("**HONI**") denies each and every allegation in the Statement of Claim.

Overview

2. In 2006, Nyon Energy Corp. purchased certain land near the Welland Canal from the City of Port Colborne for $1 for the purpose of developing an "energy park" for the storage and transportation of petroleum products, as described in the Statement of Claim (the "**Land**"). The Land is now owned by the Plaintiffs Nyon Oil Inc. and 1170367 Ontario Inc. (the "**Plaintiffs**" or "**Nyon**"). Certain portions of the Provincial electricity transmission grid are located on the Land (the "**Transmission Infrastructure**") and are owned and operated by HONI.

3. In 2015, Nyon sent a letter to HONI claiming ownership of the Transmission Infrastructure and purporting to terminate certain agreements that permit the operation and maintenance of the Transmission Infrastructure on the Land. That letter was held in abeyance by the parties while they attempted to determine a method for resolving their disputes. HONI's counsel wrote to Nyon in December 2015 with a without prejudice proposal. Nyon did not substantively respond until February 22, 2024, when it delivered a letter to HONI enclosing a Notice of Action.

4. The Statement of Claim in this action was served by Nyon on April 9. In this action, Nyon seeks more than $55M in damages for "rent", advances claims of ownership of the Transmission Infrastructure, and makes allegations based on unspecific environmental contamination on the Land.

5. On April 17, 2024, HONI advised Nyon of its intention to bring an expropriation application before the Ontario Energy Board to expropriate land rights sufficient to operate and maintain the Transmission Infrastructure on the Land in light of the relief requested in Nyon's Statement of Claim, including Nyon's request for a permanent injunction to shut down a portion of the Provincial electricity transmission grid. The Ontario Energy Board has exclusive jurisdiction to consider and decide such an application in the public interest. HONI has since filed its application before the Ontario Energy Board.

6. HONI requested that Nyon consent to a temporary stay of this action while the expropriation application is decided. If successful, the expropriation application will moot many, if not all, of Nyon's claims. This action should be stayed while the Ontario Energy Board exercises its exclusive jurisdiction.

7. Nyon refused to consent to a temporary stay and threatened to note HONI in default if HONI did not file a Statement of Defence, despite HONI's stated intention to move for a stay.

~~8. HONI files this defence to respond in summary fashion to the allegations in the Statement of Claim and to avoid a precipitous noting in default. In the event that this action proceeds, HONI intends to amend its Statement of Defence to more particularly respond to the allegations in the Statement of Claim.~~

The Parties

9. The Plaintiffs are corporations incorporated pursuant to the laws of Ontario. The Plaintiffs purport to own the Land.

10. Details of the relationship between Nyon and 117 Ontario are within the knowledge of the Plaintiffs, or either of them, but are unknown to HONI.

11. HONI is a company incorporated pursuant to the laws of Ontario. HONI's principal business is the transmission and distribution of electricity to customers in Ontario. HONI owns, maintains and operates electricity transmission and distribution infrastructure throughout Ontario, including certain infrastructure on Land owned by the Plaintiff(s). Throughout this Statement of Defence, HONI refers to the entity "Hydro One Networks Inc." as well as all predecessor corporations.

12. HONI is principally regulated by the Ontario Energy Board, which has exclusive jurisdiction in respect of all matters in which jurisdiction is conferred on it by the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched. B, or otherwise.

The Transmission Infrastructure Was Not Expropriated by the Seaway Authority

13. HONI has owned and operated a transmission system on the Land since about 1930. Originally HONI was the beneficiary of easements permitting the operation and maintenance of the transmission system.

14. In the 1960s, the St. Lawrence Seaway Authority (the "**Seaway Authority**") expropriated certain lands in the area of the Welland Canal as part of a re-alignment expansion project.

15. HONI's original transmission line had to be relocated to accommodate the expansion. The Seaway Authority and HONI entered into an October 1969 agreement (the "**Master Agreement**") and a June 1976 Supplemental Agreement (the "**Supplemental Agreement**") in order to facilitate that relocation.

16. Pursuant to those agreements, at the Seaway Authority's request, HONI removed existing transmission infrastructure and constructed new transmission infrastructure in a new location.

17. The intention of the parties was to accommodate the Seaway Authority's Canal project of relocating its channel between Port Robinson and Port Colborne while allowing

HONI's rights to operate a transmission line for the public benefit to continue in perpetuity.

18. The Seaway Authority did not intend to, and in fact did not, expropriate the Transmission Infrastructure.

The Master Agreement Confirms that HONI Owns the Transmission Infrastructure

19. Contrary to the allegation at paragraph 26 of the Statement of Claim, nothing in the Master Agreement provides that HONI no longer had title to the Transmission Infrastructure. Rather, the Master Agreement confirmed that "the power lines and electrical supply facilities" continued to be owned by HONI. For example, Section 1.1 provides that HONI would be required to prepare an estimate of the cost of relocating "its" power lines and electrical supply facilities.

20. Section 2.4 provides that in the event that HONI's power lines and electrical supply facilities were relocated, HONI was only responsible for paying the cost of betterments or improvements to "its" power lines or electrical supply facilities.

21. Section 5, confirms that HONI has the right to operate "its" power lines and electricity facilities rent free and in perpetuity:

> In lieu of all rights and privileges hitherto enjoyed by the Commission within the expropriated area the Authority **shall grant free of rental to [HONI] the right and privilege to maintain and operate its power lines and electricity supply facilities** across the relocated channel and equivalent lands more particularly set out in an agreement supplemental hereto.
>
> [Emphasis added.]

22. Schedule "A" to the Master Agreement similarly grants HONI the "right and privilege to erect, maintain, operate and/or renew" certain specified power transmission lines and/or electricity supply facilities.

23. Since the signing of the Master Agreement, HONI and its predecessors have undertaken erection, maintenance, operation and renewal of the Transmission Infrastructure in accordance with the rights granted under the Master Agreement.

Subsequent Agreements Confirm that HONI Owns the Transmission Infrastructure

24. On June 1, 1976, the Seaway Authority entered into the Supplemental Agreement, to permit HONI to "maintain, operate and/or renew" certain Transmission Infrastructure.

25. The Supplemental Agreement confirms that the Transmission Infrastructure was understood by the parties, and was in fact, the property of HONI:

> … in lieu of all rights and privileges hereto enjoyed by [HONI] within the expropriated area the Authority did agree to grant free of rental to HONI the right and privilege to maintain and operate **its existing power transmission lines and electricity supply facilities**…
>
> [Emphasis added.]

26. As admitted by the Plaintiffs at paragraph 35 of the Statement of Claim, the Supplemental Agreement granted the right to maintain, operate and/or renew the Transmission Infrastructure in perpetuity and free of charge.

27. On April 4, 1977, the Seaway Authority and HONI entered into a licence agreement to permit HONI to "erect, maintain, operate and / or renew" certain Transmission Infrastructure (the "**April 1977 Licence Agreement**").

28. Section 7 of the April 1977 Licence Agreement provides that all "buildings, structures, materials, supplies, effects, and things… constructed, erected, brought, placed or made upon the lands and premises of the Licensor" were the property of HONI.

29. At all times, HONI has complied with the April 1977 Licence Agreement.

30. On November 17, 2005, Her Majesty the Queen in the Right of Canada represented by the Minister of Transport and HONI entered into a Supplemental Licence Agreement, which granted HONI continued permission to "erect, maintain, operate and/or

renew" certain Transmission Infrastructure (the "**November 2005 Licence Agreement**", together with the April 1977 Licence Agreement, the "**Licence Agreements**").

31. At all times, HONI has complied with the November 2005 Licence Agreement.

Nyon Did Not Acquire the Transmission Infrastructure

32. On May 10, 2005, the Canada Lands Company CLC Limited (the "**Canada Lands Company**") sold a portion of the Land to the Corporation of the City of Port Colborne (the "**City of Port Colborne**") pursuant to an agreement of purchase and sale (the "**May 2005 APS**").

33. Section 4 of the May 2005 APS provides that the City of Port Colborne agreed to accept title subject to, among other things, all registered or unregistered agreement with municipalities and publicly or privately regulated utilities. This included all agreements with HONI.

34. Section 6 of the May 2005 APS provides that the purchaser and vender agree that "no fixtures, building, or chattels are included in the Purchase Price." The Transmission Infrastructure, which was and still is owned by HONI, was not subject to the APS.

35. Schedule "C" to the May 2005 APS provided that the Master Services Agreement and the 1977 License were permitted encumbrances.

36. On December 13, 2005, the Canada Lands Company sold another portion of the Land to the City of Port Colborne pursuant to an agreement of purchase and sale (the "**December 2005 APS**").

37. Section 4 of the December 2005 APS provides that the City of Port Colborne agreed to accept title subject to, among other things, all registered or unregistered agreement with municipalities and publicly or privately regulated utilities. This included all agreements with HONI.

38. Section 6 of the December 2005 APS provides that the purchaser and vender agree that "no fixtures, building, or chattels are included in the Purchase Price." The

Transmission Infrastructure, which was and still is owned by HONI, was not subject to the APS.

39. The City of Port Colborn did not acquire title to any of Transmission Infrastructure pursuant to the May 2005 APS or the December 2005 APS.

40. On January 27, 2006, the City of Port Colborn and Nyon Energy Corp. entered into an Agreement of Purchase and Sale for the sale of certain lands to Nyon. At that time, the City of Port Colborn did not own any of the Transmission Infrastructure and could not sell any of the Transmission Infrastructure to Nyon.

Nyon's Purported Terminations of the Master Agreement, Supplemental Agreement, and Licences are Ineffective

41. Contrary to the allegation at paragraph 64 of the Statement of Claim, it was not an explicit or implied term of the Master Agreement or the Supplemental Agreement that they could be terminated for any reason on no notice, or in the alternative, on notice. The terms and purpose of both agreements indicate that they were intended to be, and are, agreements that cannot be terminated. Nyon's purported terminations of the Master Agreement and Supplemental Agreement are of no force or effect.

42. Nyon is not permitted to cancel or terminate the Licence Agreements.

No Rent Arrears or Obligation to Pay Rent

43. On September 22, 2015, Nyon wrote letters to HONI claiming ownership of the Transmission Infrastructure, purporting to terminate certain agreements, and enclosing certain notices.

44. On October 2, 2015, counsel for HONI and counsel for Nyon agreed to hold Nyon's letters of September 22, 2015 "in abeyance" pending efforts to resolve the disputes or agree on a process for resolving the disputes.

45. Further correspondence was exchanged between counsel for HONI and counsel for Nyon in October, November, and December 2015.

46. On December 9, 2015, HONI's counsel wrote a without prejudice letter to Nyon's counsel. Neither Nyon nor their counsel responded in any way until December 2023, and did not respond substantively until February 22, 2024 when Nyon's new counsel wrote and demanded payment of over $55 million for past rent.

47. HONI denies that the Master Agreement, Supplemental Agreement, or Licence Agreements were validly terminated at any time. In the alternative, any purported termination by Nyon was held in abeyance until February 22, 2024.

48. Contrary to paragraphs 1(a), 56, 76, and 79 of the Statement of Claim, HONI denies that there are any amounts owing for rent under any agreement or at common law.

49. Contrary to paragraphs 59 and 80 of the Statement of Claim, HONI is not an overholding tenant pursuant to the *Commercial Tenancies Act*, R.S.O. 1990, c. L.7, and there exist no other circumstances that would justify the Plaintiffs' imposition of double rent.

49.1. Nyon had no, and has no, use for the Land. Nyon was unable to develop its proposed Energy Park for reasons unrelated to HONI's conduct. Nyon has had no other economically viable use for the Land. Nyon has suffered no loss due to the presence of the Transmission Infrastructure on the Land.

No Liability for Environmental Contamination

50. The Plaintiffs have set out no material facts to substantiate their bald assertion that there was any contamination on the Land at issue or on adjacent lands. The Plaintiffs have provided no particulars for HONI's alleged conduct giving rise to such contamination, which is denied. Such particulars are within the knowledge of the Plaintiffs.

51. In any event, HONI denies that the Plaintiffs have a statutory cause of action under the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended.

52. HONI denies that it is liable to compensate the Plaintiffs for environmental contamination, which contamination is denied, to conduct any environmental assessments

or studies, or to remediate the Land at issue in the manner described in the Statement of Claim or in any other manner.

53. Furthermore, HONI denies that it breached the Master Agreement and the Supplemental Agreement in the manner described in paragraph 70 of the Statement of Claim, or in any other manner whatsoever.

Damages and Mitigation

54. HONI denies that the Plaintiffs suffered any damages or loss, consequential or otherwise, for which they would be entitled to compensation. HONI denies the amounts claimed in paragraphs 1(a) and 1(b) of the Statement of Claim and puts the Plaintiffs to strict proof thereof.

55. HONI denies that any actionable act or omission on its part caused or contributed to any damages suffered by the Plaintiffs, which are denied.

56. Furthermore, the amounts claimed by the Plaintiffs in the Statement of Claim are excessive, too remote, not recoverable in law, and not legally compensable.

57. To the extent that the Plaintiffs suffered any damages as a result of HONI's conduct, which is denied, the Plaintiffs failed to make commercially reasonable efforts to mitigate their damages.

No Declarations

58. HONI denies that the Plaintiffs have any entitlement to the declarations sought in paragraph 1 of the Statement of Claim.

59. The Plaintiffs are not the owners of the Transmission Infrastructure on the Land at issue. Rather, HONI is the owner of all Transmission Infrastructure.

60. The Transmission Infrastructure was not expropriated by the Seaway Authority.

61. The Transmission Infrastructure was erected after the Land was expropriated by the Seaway Authority.

62. Under section 44 of the *Electricity Act, 1998*, S.O. 1998, c. 15, Sched. A as amended (including its predecessor legislation), and at common law, if property of an electricity transmitter is affixed to realty, the property remains subject to the rights of the transmitter and does not become part of the realty. The language of section 44 of the *Electricity Act, 1998* can be traced through that Act's predecessor and amending legislation, including *An Act to Amend the Power Commission Act*, 1939, c. 35, s. 2; *An Act to amend the Power Commission Act*, 1944, c. 46, s. 4; *Power Commission Act*, R.S.O. 1950, c. 281, s. 44(1); *Power Commission Act*, R.S.O. 1960, c. 300, s. 45; *Power Commission Act*, R.S.O. 1970, c. 354, s. 44; *An Act to amend the Power Commission Act*, 1973, c. 57, ss. 1-2; *Power Corporation Act*, R.S.O. 1980, c. 384, s. 43; and *Energy Competition Act, 1998*, S.O. 1998, c. 15, ss. 1(1), 44.

62.1. Those provisions are a complete answer to Nyon's claims of ownership of the Transmission Infrastructure. The Transmission Infrastructure was not part of the Land when it was expropriated by the Seaway Authority.

63. HONI denies that its use, maintenance and operation of the Transmission Infrastructure constitutes a trespass. In the alternative, HONI pleads that it reasonably believed it had an interest that entitled it to do the act(s) complained of.

64. In the event that Nyon is the owner of the Transmission Infrastructure, which is not admitted but is denied, it is a transmitter under the *Ontario Energy Board Act* and the *Electricity Act*, *1998*. Nyon will be required to be a licenced transmitter and will be responsible for operating and maintaining the Transmission Infrastructure in accordance with the provisions of those acts and all other applicable legislation or regulations, including the Ontario Energy Board's Transmission System Code.

65. In the event that Nyon is the owner of the Transmission Infrastructure, which is not admitted but is denied, Nyon will be required to become a licenced transmitter.

No Injunctions

66. The Plaintiffs have set out no material facts and provided no particulars to substantiate their bald assertion that they are entitled to various permanent injunctions in respect of HONI's use of the infrastructure or any of HONI's other conduct.

67. In any event, HONI denies that the Plaintiffs have any entitlement to the injunctions sought in paragraph 1 of the Statement of Claim, whether permanent or temporary.

Nyon's Claims are Statute Barred

68. Nyon's claims are statute barred by the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B section 4, or the *Real Property Limitations Act*, R.S.O. 1990, c. L.15, section 17. In the alternative, Nyon's claims are barred by the doctrine of laches.

Conclusion

69. HONI denies that the Plaintiffs are entitled to pre- and post-judgment interest at the excessive rates claimed in paragraphs 1(p) and 1(q) of the Statement of Claim.

70. HONI pleads and relies on the provisions of the *Commercial Tenancies Act*; the *Real Property Limitations Act*; the *Limitations Act, 2002*; the *Environmental Protection Act*, as amended; the *Ontario Energy Board Act, 1998*; the *Electricity Act* (together with its predecessor and amending legislation, examples of which are provided at paragraph 62, above); the *Trespass to Property Act*, R.S.O. 1990, c. T.21; and the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended.

71. HONI asks that this action be dismissed with its costs paid on a substantial indemnity basis.

~~May 17, 2024~~
February 24, 2025

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NYON OIL INC. et al. Plaintiffs	and	HYDRO ONE NETWORKS INC. Defendant	Court File No. CV-24-00014768-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at WELLAND

AMENDED STATEMENT OF DEFENCE

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Appendix 9 – Hydro One's Factum in Motion for Stay of Proceedings, dated March 13, 2025

Court File No. CV-24-00014768-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N

NYON OIL INC. and 1170367 ONTARIO INC.

Plaintiffs/Responding Parties

and

HYDRO ONE NETWORKS INC.

Defendant/Moving Party

FACTUM OF THE DEFENDANT / MOVING PARTY, HYDRO ONE NETWORKS INC.

Motion for a Temporary Stay of Proceedings (returnable March 24, 2025)

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Court File No. CV-24-00014768-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N

NYON OIL INC. and 1170367 ONTARIO INC.

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and

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Defendant/Moving Party

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PART I - OVERVIEW

1. This action concerns portions of the Provincial electricity transmission grid near the Welland Canal (the "**Transmission Infrastructure**"). The defendant, Hydro One Networks Inc. ("**HONI**"), has owned and operated a transmission system on the land for over 80 years.[1]

2. Nyon Oil Inc. and 1170367 Ontario Inc. (together, "**Nyon**") commenced this action seeking, among other things, a declaration that it owns the Transmission Infrastructure; that HONI owes it back-rent of $55 million and substantial go-forward rent; and an injunction preventing HONI's continued operation of the Transmission Infrastructure.[2]

3. After this action was commenced, HONI commenced an application before the Ontario Energy Board (the "**OEB**") seeking authority to expropriate land rights sufficient to operate and maintain the Transmission Infrastructure (the "**OEB Application**").[3] The OEB is the independent regulator of the electricity system in Ontario, including the provincial electricity transmission grid. It has jurisdiction over entities operating as licensed electricity transmitters, distributors and/or generators in Ontario, such as HONI (and Nyon if, as it claims, it owns the Transmission Infrastructure). The OEB's governing statute, the *Ontario Energy Board Act, 1998* (the "***OEB Act***"),[4] confers exclusive jurisdiction on the OEB in respect of all matters falling within its mandate.[5]

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[1] Statement of Defence dated May 17, 2024 ("**SOD**"), at para. 13, Exhibit G to the Teape Affidavit, MR, Vol. 3, Tab 2-G, p. 377. See also Statement of Claim dated April 9, 2024 ("**SOC**"), at para. 5, Exhibit F to the Teape Affidavit, MR, Vol. 3, Tab 2-F, p. 353 ("HONI operates hydroelectric fixtures and infrastructure on lands owned by the Plaintiffs and has done so since approximately 1929").

[2] SOC, at para. 1, Exhibit F to the Teape Affidavit, MR, Vol. 3, Tab 2-F, pp. 350-353.

[3] OEB Application, Exhibit I to the Teape Affidavit, MR, Vol. 3, Tab 2-I, pp. 402-498.

[4] *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched. B ("***OEB Act***").

[5] *OEB Act*, s. 19(6).

4. HONI respectfully requests a temporary stay of this action pending a final determination of its application before the OEB. A temporary stay is appropriate in these circumstances because there is a substantial overlap in the factual background and the legal issues in the two proceedings; the determination of the issues in the OEB Application will have a substantive effect on the determination of the issues in the action; issuing a temporary stay will avoid unnecessary and costly duplication of judicial resources, as well as the risk of inconsistent judgments; there will be no prejudice to Nyon if the temporary stay is granted; and there will be substantial prejudice to HONI if the temporary stay is refused.[6] Furthermore, a temporary stay would respect the exclusivity conferred on the OEB by its enacting statute in respect of all matters falling within the OEB's jurisdiction, thereby showing deference to the Legislature's intent to have a specialized body adjudicate disputes arising from the complex regulatory scheme at issue in these proceedings.

PART II - SUMMARY OF FACTS

A. The Transmission Infrastructure

5. In 2006, Nyon Energy Corp. entered into an agreement to acquire certain lands, including lands on which the Transmission Infrastructure is located, from the City of Port Colborne.[7] The transfer of the land to Nyon was completed in approximately 2015.[8] Nyon acquired the land for the purpose of developing an "energy park" for the storage and transportation of petroleum

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[6] *Canadian Standards Association v. P.S. Knight Co. Ltd.*, 2015 ONSC 7980, at paras. 24-25, citing *Hollinger International Inc. v. Hollinger Inc.*, 2004 CanLII 7352 (ON SC) and *Bank of Montreal v. Ken Kat Corporation*, 2010 ONSC 1990.

[7] Letter from Nyon dated February 22, 2024, at Appendix Z (By-Law No. 4795/20/06 of the Corporation of the City of Port Colborne and attached APS), Exhibit D to the Teape Affidavit, MR, Vol. 2, Tab 2-D, pp. 257-274.

[8] Letter from Nyon to Mr. Mayo Schmidt dated September 22, 2015, at p. 1, Exhibit B to the Teape Affidavit, MR, Vol. 1, Tab 2-B, p. 28.

products,[9] although the energy park was never developed. Much of the land Nyon originally acquired from the City of Port Colborne is now owned by other entities,[10] although Nyon asserts that it continues to own the lands on which the Transmission Infrastructure is located.[11]

B. Nyon's Action

6. This action was commenced by a Notice of Action in February 2024, but that was not the first time that Nyon asserted its position vis-à-vis the Transmission Infrastructure. In 2015, shortly after coming into possession of the land sold to it by the City of Port Colborne, Nyon sent a letter to HONI claiming ownership of the Transmission Infrastructure and purporting to terminate certain agreements that permit the operation and maintenance of the Transmission Infrastructure on the land.[12] Pursuant to the agreement of counsel, Nyon's 2015 letter was held in abeyance while the parties attempted to determine a method for resolving their disputes.[13] HONI wrote a letter to Nyon in December 2015 but never received a response; Nyon's next substantive step, more than 8 years later, was the issuance of its Notice of Action and, subsequently, its Statement of Claim.

7. In this action, Nyon claims, among other things, to have terminated the license agreements that permit the operation of the Transmission Infrastructure on their property; requests more than $55 million in damages for "rent" of its lands; seeks an injunction prohibiting the operation of the Transmission Infrastructure on its land; claims that it owns the Transmission Infrastructure; seeks

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[9] Letter from Nyon dated February 22, 2024, at Appendix V (By-Law No. 4781/06/06 of the Corporation of the City of Port Colborne and appended APS), Exhibit D to the Teape Affidavit, MR, Vol. 2, Tab 2-D, pp. 231-241.

[10] OEB Application, at Appendix 3 (Map entitled "Divested Lands"), Exhibit I to the Teape Affidavit, MR, Vol. 3, Tab 2-I, pp. 457-458.

[11] See, e.g., Letter from Nyon dated February 22, 2024, at p. 1, Exhibit D to the Teape Affidavit, MR, Vol. 1, Tab 2-D, p. 37.

[12] See, e.g., OEB Application, Appendices 2D and 2E (Hydro One / St. Lawrence Seaway Authority Licenses), Exhibit I to the Teape Affidavit, MR, Vol. 3, Tab 2-I, pp. 428-440 and 441-446.

[13] Email dated October 2, 2015, Exhibit C to the Teape Affidavit, MR, Vol. 1, Tab 2-C, p. 34.

a declaration that HONI's use, maintenance and operation of the Transmission Infrastructure is a trespass; and makes allegations based on unspecified environmental contamination on its land.

8. The relief sought by Nyon in this action would put in jeopardy HONI's statutory obligation to operate and maintain the Transmission Infrastructure,[14] contrary to the public interest. For example, Nyon seeks a permanent injunction restraining HONI from "trespassing" on the Lands for the purpose of constructing, operating, maintaining or renewing the Transmission Infrastructure (which would shut down part of the provincial transmission grid and cut off power to thousands of local residents and businesses).

9. Although the matters raised in Nyon's Statement of Claim had first been raised more than 8 years prior to the issuance of the Claim, and despite HONI's stated intention to move for a stay of the action pending an OEB expropriation application, Nyon insisted that HONI deliver a Statement of Defence in short order.[15] HONI did so.[16]

10. On July 22, 2024, Nyon provided HONI with a draft Discovery Plan and requested comments within two days.[17] HONI advised that it would provide comments in due course, and provided its revisions to the draft Discovery Plan on August 1, 2024.[18] Nyon did not respond for nearly three months, until October 21, 2024, when it provided its further comments as well as its

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[14] *OEB Act*, s. 70(1), referring to s. 1 and *Electricity Act, 1998*, S.O. 1998, c. 15, Sch. A, s. 1.

[15] Email from Scott Lemke dated April 17, 2024, Exhibit B to the Affidavit of Emma Chapple affirmed March 11, 2025 ("**Chapple Affidavit**"), Nyon's Responding Motion Record ("**RMR**"), Tab 1-B, p. 22.

[16] SOD, Exhibit G to the Teape Affidavit, MR, Vol. 3, Tab 2-G, pp. 375-386. See also Amended Statement of Defence dated February 24, 2025, Exhibit H to the Teape Affidavit, MR, Vol. 3, Tab 2-H, pp. 388-400. Although Nyon insisted that HONI amend its Statement of Defence, it has not yet provided its consent to the filing of this amended pleading. See: Plaintiffs' Case Conference Brief at para. 24, RMR, Tab 2; Teape Affidavit, at para. 7, MR, Vol. 1, Tab 2, p. 19; Affidavit of Virginia Fletcher affirmed March 13, 2015 ("**Fletcher Affidavit**"), at para. 9, Hydro One Networks Inc.'s Reply Motion Record ("**Reply MR**"), Tab 1, p. 3.

[17] Email from Alexa Cheung dated July 22, 2024, Exhibit A to the Fletcher Affidavit, Reply MR, Tab 1-A, pp. 9-10.

[18] Email from Sam Rogers dated August 1, 2024, Exhibit A to the Fletcher Affidavit, Reply MR, Tab 1-A, p. 9.

Affidavit of Documents.[19] The parties continued to exchange comments on the draft Discovery Plan until early December 2024.[20]

11. The parties attended a case conference on January 23, 2025. One of the issues raised by HONI was the outstanding disagreement on the draft Discovery Plan and, in particular, Nyon's refusal to produce relevant documents pertaining to the land's potential uses over the historic period for which Nyon seeks rent.[21] Following the case conference, HONI delivered a Notice of Motion seeking a further and better Affidavit of Documents from Nyon.[22] Although Nyon agreed to produce the documents sought by HONI, it has not yet delivered any further Affidavit of Documents or productions.[23]

C. HONI's OEB Application for Authority to Expropriate Land Rights

12. While the dispute regarding discovery obligations in the action was unfolding, HONI proceeded to have a survey conducted, which is a required component of the OEB Application.[24]

13. In February 2025, HONI filed its final OEB Application,[25] seeking authority to expropriate land rights sufficient to operate and maintain the Transmission Infrastructure pursuant to s. 99(1) of the *OEB Act*. As explained below, the OEB has exclusive jurisdiction to consider and decide such an application in the public interest.

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[19] Email from Scott Lembke dated October 21, 2024, Exhibit B to the Fletcher Affidavit, Reply MR, Tab 1-B, p. 12.
[20] Email exchange dated October 28 to December 6, 2024, Exhibit C to the Fletcher Affidavit, Reply MR, Tab 1-C, pp. 17-28.
[21] Case Conference Brief of HONI, Exhibit D to the Fletcher Affidavit, Reply MR, Tab 1-D, pp. 30-38.
[22] Notice of Motion dated February 5, 2025, Exhibit E to the Fletcher Affidavit, Reply MR, Tab 1-E, pp. 40-47.
[23] Fletcher Affidavit, at para. 7, Reply MR, Tab 1, p. 6.
[24] Email from Sam Rogers dated June 14, 2024, Exhibit G to the Chapple Affidavit, RMR, Tab 1-G, p. 38.
[25] OEB Application, Exhibit I to the Teape Affidavit, MR, Vol. 3, Tab 2-I, pp. 402-498.

14. Section 99(5) of the *OEB Act* provides that if, after the hearing, the OEB is of the opinion that expropriation of the land is in the public interest, it may make an order authorizing the applicant to expropriate the land.[26] The public interest is paramount in the OEB's analysis. More particularly, the OEB is tasked with balancing the broad public interest in securing a reliable supply of electricity against the private interests of any landowners affected by the easements requested by the expropriation applicant. If the OEB is of the opinion that expropriation is in the public interest and makes an order authorizing such expropriation, appropriate compensation will then be determined by the Ontario Land Tribunal pursuant to the *Expropriations Act*.[27]

15. HONI advised Nyon of its intention to bring an expropriation application before the OEB, and sought Nyon's consent to the expropriation application and to a temporary stay of this action while the OEB Application is resolved.[28] Initially, Nyon's counsel acknowledged that "an expropriation would resolve the land and infrastructure ownership issues set out in the claim", while leaving certain other issues, such as alleged environmental contamination and liability for rent, to be litigated.[29] Ultimately, Nyon refused to consent to an expropriation or to a temporary stay, requiring HONI to bring a contested OEB Application as well as this motion.

16. As soon as practicable after the OEB Application was filed, HONI served its Notice of Motion seeking a stay of the action.[30]

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[26] *OEB Act*, s. 99(5).

[27] *OEB Act*, s. 100.

[28] See, e.g., Email from Sam Rogers dated April 18, 2024, Exhibit B to the Chapple Affidavit, RMR, Tab 1-B, p. 22; Email from Scott Lemke dated April 18, 2024, Exhibit C to the Chapple Affidavit, RMR, Tab 1-C, p. 25.

[29] Email from Scott Lemke dated April 18, 2024, Exhibit C to the Chapple Affidavit, RMR, Tab 1-C, p. 25.

[30] Application initially filed in December 2024 and Notice of Motion served on January 22, 2025. The final Application was filed on February 6, 2025. See Cover Letter to OEB Application, Exhibit I to the Teape Affidavit, MR, Vol. 3, Tab 2-I, p. 402.

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

A. The Governing Principles

17. This Court has an inherent jurisdiction to "stay any proceeding in the court on such terms that are considered just".[31] Case law has developed around the exercise of this discretionary authority to grant a stay in favour of a broad range of other proceedings. The decision to allow one proceeding to go before the other "is a discretionary decision, which is fact-specific, and must be made taking into consideration all of the circumstances of a particular case."[32]

18. The leading case on the test governing a temporary stay pending resolution of another proceeding is *Hollinger International Inc. v. Hollinger Inc.*[33] That case dealt with a temporary stay pending resolution of a foreign proceeding, but it has since been applied to requests for temporary stays pending a variety of other proceedings, such as arbitration,[34] administrative proceedings,[35] and environmental assessments.[36]

19. The jurisprudence that has developed under s. 106 of the *Courts of Justice Act* — including *Hollinger* and the case law that has developed since — holds that in considering whether to grant a temporary stay of a proceeding, the Court should have regard to the following factors:

- whether there is substantial overlap of the issues in the two proceedings;

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[31] *Courts of Justice Act*, R.R.O. 1990, c. C.43, s. 106.
[32] *Halton v. CNR*, 2018 ONSC 6095, at para. 28.
[33] *Hollinger International Inc. v. Hollinger Inc.*, 2004 CanLII 7352 (ON SC).
[34] *Dadfouch v. Bielak*, 2011 ONSC 1583.
[35] *Kuchar v. Midland (Town – Chief Building Official)*, 2016 ONSC 6777 (License Appeal Tribunal appeal); *National Steel Car Limited v. Independent Electricity System Operator*, 2019 ONCA 929, at para. 79, leave to appeal to SCC ref'd (39058) (Court of Appeal accepted in principle that a party could request a stay in the Superior Court pending a hearing by the Ontario Energy Board under the *Electricity Act, 1998*).
[36] *Halton v. CNR*, 2018 ONSC 6095.

- whether the two proceedings share the same factual background;
- differences in the substantive scope and remedial jurisdiction as between the two proceedings;
- the comparative progress of the two proceedings;
- whether issuing a temporary stay will prevent unnecessary and costly duplication of judicial and legal resources, and concern to avoid a multiplicity of proceedings;
- the balance of convenience as between the parties if the stay is granted or denied.[37]

20. Not all of these factors will be relevant in every case, and this list is not exhaustive.[38]

21. The test for a stay of proceedings articulated in *RJR-MacDonald Inc. v. Canada (Attorney General)* is inapplicable in these circumstances for two reasons.[39] First, where a party seeks a temporary stay rather than a permanent stay, as HONI does on this motion, a lower threshold applies.[40] Second, a request that the Court decline to exercise its own jurisdiction engages more attenuated public interest considerations than does a request that the Court enjoin another body from exercising its jurisdiction.[41] This distinction was clearly explained by Justice Stratas of the Federal Court of Appeal:

> *This Court enjoining another body from exercising its jurisdiction*. When we do this, we are forbidding another body from going ahead and exercising the powers granted by Parliament that it normally exercises. In short, we are forbidding that body from doing what Parliament says it can do. As the Supreme Court recognized in *RJR-*

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[37] *Halton v. CNR*, 2018 ONSC 6095, at para. 24. See also *Hollinger International Inc. v. Hollinger Inc.*, 2004 CanLII 7352 (ON SC) at para. 5; *Canadian Standards Association v. P.S. Knight Co. Ltd.*, 2015 ONSC 7980 at paras. 25-26; and *Hathro Management Partnership v. Adler*, 2018 ONSC 1560 at paras. 7-13.

[38] *Halton v. CNR*, 2018 ONSC 6095, at para. 25.

[39] *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, at pp. 322-33 (the *RJR-MacDonald* test is: (a) there must be a serious issue to be determined; (b) the moving party will suffer irreparable harm if the stay is not granted; and (c) the balance of convenience favours granting a stay).

[40] *Bank of Montreal v. Ken Kat Corporation*, 2010 ONSC 1990, at para. 68; *Canadian Standards Association v. P.S. Knight Co. Ltd.*, 2015 ONSC 7980, at para. 25.

[41] *Mylan Pharmaceuticals ULC v. AstraZeneca Canada, Inc.*, 2011 FCA 312, at para. 5.

> *MacDonald Inc.*, this is unusual relief that requires satisfaction of a demanding test…
>
> *This Court deciding not to exercise its jurisdiction until some time later*. **When we do this, we are exercising a jurisdiction that is not unlike scheduling or adjourning a matter. Broad discretionary considerations come to bear in decisions such as these.** There is a public interest consideration – the need for proceedings to move fairly and with due dispatch – but this is qualitatively different from the public interest considerations that apply when we forbid another body from doing what Parliament says it can do. As a result, the demanding tests prescribed in *RJR-MacDonald* do not apply here…[42]

22. In considering HONI's request for a temporary stay of proceedings of this action, the Court should apply the discretionary *Hollinger* framework and consider the factors relevant to the circumstances of this case. These factors are elaborated below.

B. Application

(i) The proceedings share the same factual background

23. The factual background of each proceeding is identical. The same Transmission Infrastructure is at the heart of each proceeding. HONI is a party to both proceedings, and Nyon will be involved in both proceedings (as Plaintiff in this action and as an interested party whose land is being expropriated in the OEB Application). The same underlying events and the same key documents are relevant to both proceedings, including the agreements pursuant to which the St. Lawrence Seaway Authority and HONI relocated the original transmission line to accommodate the expansion of the Welland Canal,[43] the 1977 license agreement permitting HONI to "erect,

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[42] *Mylan Pharmaceuticals ULC v. AstraZeneca Canada, Inc.*, 2011 FCA 312, at para. 5 (**emphasis added**).

[43] See SOD, at paras. 15-18, Exhibit G to the Teape Affidavit, MR, Vol. 3, Tab 2-G, pp. 377-378.

maintain, operate and / or renew" certain Transmission Infrastructure,[44] and the subsequent License Agreements entered into by HONI and the Minister of Transport.[45]

(ii) There is a substantial overlap of issues between the proceedings

24. The subject matter of this action involves a complex regulatory scheme. A specialized body has been created by statute for, among other things, the adjudication of disputes involving the interpretation of the provisions of that scheme. The Court should defer to that administrative body and allow it to adjudicate the issues within its statutory mandate before permitting this action to proceed.

25. If the OEB Application is successful, it will confirm HONI's right to lawfully maintain, operate and use its Transmission Infrastructure (despite the Transmission Infrastructure's location on lands currently belonging to Nyon) and transfer an interest in those lands to HONI. Such a finding would moot a substantial proportion of the relief sought by Nyon in this action, including Nyon's claim for go-forward "rent",[46] requests for declarations,[47] and requests for injunctions.[48]

26. Alternatively, in the event that Nyon is, in fact, the owner of the Transmission Infrastructure, then Nyon is a "transmitter" under the *OEB Act* and the *Electricity Act, 1998*, and is subject to the Board's regulation and all obligations imposed by legislation or otherwise on a transmitter. In other words, even if Nyon is correct in its claim for ownership (which HONI denies), its conduct as a "transmitter" falls within the jurisdiction of the Board.

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[44] See SOD, at para. 27, Exhibit G to the Teape Affidavit, MR, Vol. 3, Tab 2-G, p. 379.
[45] See SOD, at para. 30, Exhibit G to the Teape Affidavit, MR, Vol. 3, Tab 2-G, p. 379.
[46] SOC, at para. 1(b), Exhibit F to the Teape Affidavit, MR, Vol. 3, Tab 2-F, p. 350.
[47] SOC, at paras 1(e) and 1(f), Exhibit F to the Teape Affidavit, MR, Vol. 3, Tab 2-F, p. 351.
[48] SOC, at paras. 1(g) and 1(o), Exhibit F to the Teape Affidavit, MR, Vol. 3, Tab 2-F, pp. 351-352.

27. HONI anticipates that Nyon will argue that the OEB does not have jurisdiction to resolve the question of who owns the Transmission Infrastructure. That submission ignores the fact that the OEB regulates the transmission and distribution of electricity in Ontario, including by determining who may validly operate as an electricity transmitter and distributor (i.e., by regulating a licensing scheme) and regulating these entities' activities (e.g., the rates they may charge, conditions on their license, etc.). These matters are elaborated in the following section.

(iii) The issues in dispute fall within the OEB's scope of exclusive jurisdiction

28. The Court of Appeal has affirmed that this Court has jurisdiction "over every conceivable claim **unless** (i) the claim does not disclose a reasonable cause of action or (ii) **the jurisdiction has been removed by legislation** or by arbitral agreement."[49] In this instance, the jurisdiction of the Court has been limited by the *OEB Act*, which confers exclusive jurisdiction to the OEB in respect of matters falling within the OEB's jurisdiction.

29. As a general matter, courts have consistently held that where the subject matter of a dispute involves a complex regulatory scheme and there is a body created by statute for, amongst other matters, the adjudication of disputes involving the interpretation of the provisions of that scheme, the courts should defer to the administrative body.[50]

30. The OEB is "a specialized regulatory body" mandated to regulate the electricity sector in Ontario.[51] Its jurisdiction is "very broad" and encompasses "the regulatory and quasi-judicial functions covering the entire field of energy within the Province of Ontario."[52] The OEB is

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[49] *Skof v. Bordeleau*, 2020 ONCA 729, at para. 8, leave to appeal to SCC ref'd (39534) (**emphasis added**).
[50] *Vista Waterloo Hotel Inc. v. 1426398 Ontario Inc., & Ontario Energy Board*, 2021 ONSC 2724, at para. 14.
[51] *Vista Waterloo Hotel Inc. v. 1426398 Ontario Inc., & Ontario Energy Board*, 2021 ONSC 2724, at para. 16.
[52] *Re Ontario Energy Board*, 1985 CanLII 2086 (ON SC), at p. 6.

statutorily mandated to protect the interests of consumers with respect to prices and "the **adequacy, reliability and quality of electricity service**."[53] The highly regulated nature of Ontario's electricity system reflects a recognition of the public interest in electricity.[54]

31. Pursuant to section 19(1) of the *OEB Act*, the OEB "has in all matters within its jurisdiction authority to hear and determine all questions of law and fact."[55] Its jurisdiction is exclusive:

> 19 (6) The Board has exclusive jurisdiction in all cases and in respect of all matters in which jurisdiction is conferred on it by this or any other Act.[56]

32. In *Snopko v. Union Gas Ltd.*, the Court of Appeal considered the extent of the OEB's exclusive jurisdiction to deal with legal and factual issues raised by a party claiming damages arising from the use of natural gas storage pools.[57] The Court of Appeal made the following observations regarding s. 19 of the *OEB Act*:

> This **generous and expansive conferral of jurisdiction** ensures that the Board has the requisite power to hear and decide all questions of fact and of law arising in connection with claims or other matters that are properly before it. **This includes, inter alia, the power to rule on the validity of relevant contracts and to deal with other substantive legal issues**.[58]

33. Here, Nyon seeks, among other things, to enjoin the operation of a portion of the Provincial electricity grid that provides electricity to over 37,000 customers including the entire City of Port

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[53] *OEB Act*, s. 1(1)1 (**emphasis added**); see also *Toronto Hydro-Electric System Limited v. Ontario Energy Board,* 2010 ONCA 284, at para. 5, leave to appeal to SCC ref'd (33752); *Bennett v. Hydro One Inc.,* 2017 ONSC 7065, at para. 20, aff'd 2018 ONSC 7741 (Div. Ct.).

[54] *Kehl Kitchener Properties Inc. v. Kitchener-Wilmot Hydro Inc.*, 2004 CanLII 34794 (ON SC), at para. 65.

[55] *OEB Act*, s. 19(1).

[56] *OEB Act*, s. 19(6).

[57] *Snopko v. Union Gas Ltd.*, 2010 ONCA 248.

[58] *Snopko v. Union Gas Ltd.*, 2010 ONCA 248, at para. 27 (**emphasis added**).

Colborne.[59] It is difficult to conceive of a matter that more squarely engages the OEB's exclusive jurisdiction over the electricity sector.

34. The Court of Appeal has accepted that given the exclusive jurisdiction conferred on the OEB, there is no issue of concurrent jurisdiction in the courts and the OEB.[60] In *Snopko*, the Court held that the Board maintained its exclusive jurisdiction even though there were properly pleaded, common law claims for breach of contract, negligence, unjust enrichment and nuisance that were otherwise within the jurisdiction of the court. The Court of Appeal held in *Snopko* that "[i]t is the substance, not the legal form of the claim, that should determine the issue of jurisdiction."[61]

35. Many matters raised, directly or indirectly, by Nyon's action and by HONI's OEB Application fall within the OEB's exclusive jurisdiction. For example:

(a) Nyon advances a claim of ownership of the Transmission Infrastructure. However, no person shall own or operate a transmission system unless licensed to do so under Part V of the *OEB Act*.[62] Nyon is not licensed.

(b) The OEB may issue an interim license if the OEB considers it necessary to do so to ensure the reliable supply of electricity to consumers. Moreover, the OEB may require an interim licensee to take possession and control of the business of a transmitter or distributor.[63]

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[59] OEB Application, at para. 35, Exhibit I to the Teape Affidavit, MR, Vol. 3, Tab 2-I, p. 414.
[60] *Garland v. Consumers' Gas Company Ltd.,* 2001 CanLII 8619 (ON CA), rev'd on other grounds 2004 SCC 25, cited in *Vista Waterloo Hotel Inc. v. 1426398 Ontario Inc., & Ontario Energy Board*, 2021 ONSC 2724, at para. 21.
[61] *Snopko v. Union Gas Ltd.*, 2010 ONCA 248, at para. 24.
[62] *OEB Act*, s. 57(b).
[63] *OEB Act*, s. 59(1) and (2).

(c) The OEB may impose broad conditions on licensees, having regard to the objectives of the OEB and the purposes of the *Electricity Act, 1998*.[64] These conditions may include provisions governing the conduct of the licensee; specifying performance standards, targets and criteria; and specifying information reporting requirements.[65] The licensee conditions can also incorporate certain codes, such as the Transmission System Code.[66]

(d) No transmitter shall charge for the transmission of electricity except for in accordance with an order of the OEB.[67]

(e) No transmitter or distributor shall sell, lease or otherwise dispose of its transmission or distribution system that is necessary in serving the public.[68] The Transmission Infrastructure at issue has 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.[69]

(f) No person shall construct, expand or reinforce an electricity transmission line (including relocating a transmission line) in a manner requiring the acquisition of additional land or authority to use additional land without first obtaining leave from the OEB.[70]

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[64] *OEB Act*, s. 70.
[65] *OEB Act*, s. 70(2).
[66] *OEB Act*, s. 70.1.
[67] *OEB Act*, s. 78(1).
[68] *OEB Act*, s. 86.
[69] OEB Application, at Appendix 2C (Ontario Order in Council O.C. 2393/76, issued on August 25, 1976), Exhibit I to the Teape Affidavit, MR, Vol. 3, Tab 2-I, pp. 424-427.
[70] *OEB Act*, s. 92.

(g) The OEB may make an order authorizing the expropriation of land for an electricity transmission line if it is of the opinion that expropriation is in the public interest.[71]

36. The issues raised in the OEB Application and in this action need not be identical, and the OEB need not have exclusive jurisdiction over all issues raised in this action, to justify allowing the OEB Application process to conclude before this action proceeds. Resolution of the issues raised in the OEB Application, which fall within the OEB's exclusive jurisdiction, will have a substantive effect on the determination of the issues in the action and may render certain issues raised in this action moot.

37. For example, if the OEB determines that expropriation is in the public interest and makes an order authorizing such expropriation, this will render moot Nyon's claims that HONI's use, maintenance and operation of the Transmission Infrastructure is a trespass, or that HONI is liable to pay to Nyon go-forward rent in the amount of over $157,000 per month (a figure Nyon baldly asserts is owing in its Statement of Claim, given that no lease agreement exists).[72]

(iv) A temporary stay will prevent unnecessary and costly duplication of judicial and legal resources, and will avoid a multiplicity of proceedings

38. A temporary stay of the action to allow the OEB to exercise its exclusive jurisdiction will prevent unnecessary and costly duplication of judicial and legal resources, and will respect the jurisdictional policy decisions made by the Ontario Legislature. This is not merely a dispute about ownership of assets or the validity of contracts. The substance of this action falls squarely within the OEB's mandate to protect the public interest and the adequacy, reliability and quality of

[71] *OEB Act*, s. 99(5).
[72] SOC, at para. 58, Exhibit F to the Teape Affidavit, MR, Vol. 3, Tab 2-F, p. 366.

electricity service in this Province. It is essential that this dispute, which falls within the OEB's jurisdiction, is decided in view of the public interest orientation that the Legislature has conferred on the OEB.

39. Permitting the OEB Application to conclude before the action proceeds will ensure that the public interest remains of paramount importance in the design, planning, operation, use and maintenance of the Provincial electrical transmission grid, as intended by the Legislature.

40. If this action is allowed to proceed in tandem with the OEB Application, it will result in this Court necessarily intruding on matters that have been designated by the Legislature to be within the exclusive jurisdiction of the OEB. For example, in the event that Nyon were to obtain an injunction preventing the use, maintenance and operation of the Transmission Infrastructure, it could disrupt the operation of the Provincial electricity transmission grid contrary to the public interest.

41. Moreover, if this action proceeds in tandem with the OEB Application, there will be a real risk of inconsistent judgments (e.g., if the OEB authorizes expropriation, but this Court issues an injunction preventing HONI from accessing the Transmission Infrastructure). The OEB should be permitted to exercise its exclusive jurisdiction first, and to do so in the public interest. To the extent that Nyon claims any further relief after the OEB Application has run its course, this action will permit Nyon to seek redress in this Court, with full visibility into the OEB's factual and legal determinations. This sequencing will avoid the risk of inconsistent judgments.

42. The same efficiency will not be achieved if the action is permitted to proceed first. This Court cannot make a final determination of the issues in this action without considering matters falling within the OEB's exclusive jurisdiction. It is for this reason that this Court has adopted a

deferential stance towards specialized administrative bodies created by statute to adjudicate disputes under a complex regulatory scheme,[73] allowing those bodies to conclude their proceedings first before the dispute enters the arena of the Superior Court.

(v) The balance of convenience as between the parties favours granting a temporary stay

43. In considering whether a temporary stay would result in an injustice to the party resisting the stay, the Court must consider "the realistic potential for injustice to each party, if the stay is granted, or if the stay is refused."[74] This is not a "one-sided assessment of only potential injustice to the party resisting the stay"[75] (i.e., Nyon) but must also consider the injustice to the party seeking the stay if its request is refused.

44. A temporary stay will cause no prejudice to Nyon. If the OEB Application is successful, Nyon will receive compensation for the use of its land pursuant to the complex regulatory scheme enacted by the Legislature to govern this situation. To the extent Nyon seeks additional redress, a temporary stay pending the conclusion of the OEB Application will not prevent Nyon from returning to this Court to assert any additional claims it wishes to make (e.g., with respect to the yet unparticularized environmental contamination claim asserted in its Statement of Claim).

45. The only possible harm that Nyon will suffer is a modest delay in the final resolution of this action. However, Nyon itself caused far more delay by delaying for 8 years after HONI's correspondence in December 2015. The delay occasioned by allowing the OEB Application to

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[73] *Vista Waterloo Hotel Inc. v. 1426398 Ontario Inc., & Ontario Energy Board*, 2021 ONSC 2724, at para. 14.
[74] *Hathro Management Partnership v. Adler*, 2018 ONSC 1560, at para. 10.
[75] *Hathro Management Partnership v. Adler*, 2018 ONSC 1560, at para. 10.

proceed is far shorter than the delay that Nyon itself occasioned by waiting, without explanation, more than 8 years to commence this claim.

46. By contrast, refusing a temporary stay in these circumstances will prejudice HONI, including by requiring HONI to engage in duplicative proceedings and creating a risk that inconsistent determinations will be made, contrary to the public interest. As a licensed electricity transmitter, HONI must comply with all the conditions of its licenses, including compliance with all applicable legislation, regulations, market rules, and codes.[76] The relief sought by Nyon in this action risks putting into jeopardy HONI's ability to comply with these conditions. By permitting this action to continue only after the OEB Application is fully resolved, this Court will ensure that HONI's compliance with regulatory conditions, as well as the continued reliable supply of electricity to Ontarians, are not disrupted.

PART IV - ORDER REQUESTED

47. HONI respectfully requests an Order temporarily staying this action pursuant to s. 106 of the *Courts of Justice Act* pending final resolution of HONI's OEB Application, with costs on a partial indemnity basis (plus applicable taxes). In the alternative, HONI seeks the same relief pursuant to r. 21.01(3)(a) of the *Rules of Civil Procedure*, on the basis that this Court has no jurisdiction over the subject matter of the action.

[76] See generally, *OEB Act*, s. 70(1) and (2).

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 13th day of March, 2025.

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Hydro One Networks Inc.

SCHEDULE "A"

LIST OF AUTHORITIES

1. *Bank of Montreal v. Ken Kat Corporation*, 2010 ONSC 1990
2. *Bennett v. Hydro One Inc.,* 2017 ONSC 7065, aff'd 2018 ONSC 7741 (Div. Ct.)
3. *Canadian Standards Association v. P.S. Knight Co. Ltd.*, 2015 ONSC 7980
4. *Dadfouch v. Bielak*, 2011 ONSC 1583
5. *Garland v. Consumers' Gas Company Ltd.,* 2001 CanLII 8619 (ON CA), rev'd on other grounds 2004 SCC 25
6. *Halton v. CNR*, 2018 ONSC 6095
7. *Hathro Management Partnership v. Adler*, 2018 ONSC 1560
8. *Hollinger International Inc. v. Hollinger Inc.*, 2004 CanLII 7352 (ON SC)
9. *Kehl Kitchener Properties Inc. v. Kitchener-Wilmot Hydro Inc.*, 2004 CanLII 34794 (ON SC)
10. *Kuchar v. Midland (Town – Chief Building Official)*, 2016 ONSC 6777
11. *Mylan Pharmaceuticals ULC v. AstraZeneca Canada, Inc.*, 2011 FCA 312
12. *National Steel Car Limited v. Independent Electricity System Operator*, 2019 ONCA 929, leave to appeal to SCC ref'd (39058)
13. *Re Ontario Energy Board*, 1985 CanLII 2086 (ON SC)
14. *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311
15. *Skof v. Bordeleau*, 2020 ONCA 729, leave to appeal to SCC ref'd (39534)
16. *Snopko v. Union Gas Ltd.*, 2010 ONCA 248
17. *Toronto Hydro-Electric System Limited v. Ontario Energy Board,* 2010 ONCA 284, leave to appeal to SCC ref'd (33752)
18. *Vista Waterloo Hotel Inc. v. 1426398 Ontario Inc., & Ontario Energy Board*, 2021 ONSC 2724

I certify that I am satisfied as to the authenticity of every authority.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

March 13, 2025
Date

Signature

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

1. ***Courts of Justice Act*****, R.R.O. 1990, c. C.43**

Section 106

Stay of proceedings

106 A court, on its own initiative or on motion by any person, whether or not a party, may stay any proceeding in the court on such terms as are considered just.

2. ***Electricity Act, 1998*****, S.O. 1998, c. 15, Sch. A**

Purposes

1 The purposes of this Act include the following:

(a) to ensure the adequacy, safety, sustainability and reliability of electricity supply in Ontario through responsible planning and management of electricity resources, supply and demand;

(a.1) to establish a mechanism for energy planning;

(a.2) to promote electrification and facilitate energy efficiency measures aimed at using electricity to reduce overall emissions in Ontario;

(b) to encourage electricity conservation and the efficient use of electricity in a manner consistent with the policies of the Government of Ontario;

(c) to facilitate load management in a manner consistent with the policies of the Government of Ontario;

(d) to promote the use of cleaner energy sources and technologies, including alternative energy sources and renewable energy sources, in a manner consistent with the policies of the Government of Ontario;

(e) to provide generators, retailers, market participants and consumers with non-discriminatory access to transmission and distribution systems in Ontario;

(f) to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service;

(g) to promote economic efficiency and sustainability in the generation, transmission, distribution and sale of electricity;

(g.1) to facilitate the alteration of ownership structures of publicly-owned corporations that transmit, distribute or retail electricity;

(g.2) to facilitate the disposition, in whole or in part, of the Crown's interest in corporations that transmit, distribute or retail electricity, and to make the proceeds of any such disposition available to be appropriated for any Government of Ontario purpose;

(h) to ensure that Ontario Hydro's debt is repaid in a prudent manner and that the burden of debt repayment is fairly distributed;

(i) to facilitate the maintenance of a financially viable electricity industry; and

(j) to protect corridor land so that it remains available for uses that benefit the public, while recognizing the primacy of transmission uses.

3. ***Ontario Energy Board Act, 1998*****, S.O. 1998, c. 15, Sched. B**

Section 1

Board objectives, electricity

1 (1) The Board, in carrying out its responsibilities under this or any other Act in relation to electricity, shall be guided by the following objectives:

1. To inform consumers and protect their interests with respect to prices and the adequacy, reliability and quality of electricity service.

1.1 Repealed: 2019, c. 6, Sched. 2, s. 1.

2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.

3. To promote electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances.

4. To facilitate innovation in the electricity sector.

Section 19

Board's powers, general

Power to determine law and fact

19 (1) The Board has in all matters within its jurisdiction authority to hear and determine all questions of law and of fact.

…

Jurisdiction exclusive

(6) The Board has exclusive jurisdiction in all cases and in respect of all matters in which jurisdiction is conferred on it by this or any other Act.

Section 57

Requirement to hold licence

57 Neither the IESO nor the Smart Metering Entity shall exercise their powers or perform their duties under the Electricity Act, 1998 unless licensed to do so under this Part and, except as otherwise provided under this Act, no other person shall, unless licensed to do so under this Part,

(a) own or operate a distribution system;

(b) own or operate a transmission system;

Section 59

Interim licences

Emergency

59 (1) Despite this Act, the Board may issue an interim licence authorizing a person to undertake any of the activities described in section 57 if the Board considers it necessary to do so to ensure the reliable supply of electricity to consumers.

…

Powers of Board

(2) The Board may,

(a) require the licensee, as a condition of an interim licence, to take possession and control of the business of the transmitter or distributor;

(b) order the transmitter or distributor to surrender possession and control of its business to the person licensed under subsection (1); and

(c) without a hearing, amend or suspend the licence of the transmitter or distributor.

Section 70

Licence conditions

70 (1) A licence under this Part may prescribe the conditions under which a person may engage in an activity set out in section 57 and a licence may also contain such other conditions as are appropriate having regard to the objectives of the Board and the purposes of the Electricity Act, 1998.

…

Examples of conditions

(2) The conditions of a licence may include provisions,

(a) specifying the period of time during which the licence will be in effect;

(b) requiring the licensee to provide, in the manner and form determined by the Board, such information as the Board may require;

(c) requiring the licensee to enter into agreements with other persons on specified terms (including terms for a specified duration) approved by the Board relating to its trading or operations or for the connection to or use of any lines or plant owned or operated by the licensee or the other party to the agreement;

(d) governing the conduct of the licensee, including the conduct of,

(i) a transmitter or distributor as that conduct relates to its affiliates,

(ii) a distributor as that conduct relates to a retailer,

(ii.1) a distributor or suite meter provider as such conduct relates to,

(A) the disconnection of the supply of electricity to a consumer, including the manner in which and the time within which the disconnection takes place or is to take place, and with respect to a low-volume consumer, periods during which the disconnection may not take place,

(B) the manner, timing and form in which the notice under subsection 31 (2) of the Electricity Act, 1998 is to be provided to the consumer, and

(C) subject to the regulations, the manner and circumstances in which security is to be provided or not to be provided by a consumer to a distributor or suite meter provider, including,

(1) the interest rate to be applied to amounts held on deposit and payable by the distributor or suite meter provider to the consumer for the amounts,

(2) the manner and time or times by which the amounts held on deposit may or must be paid or set-off against amounts otherwise due or payable by the consumer,

(3) the circumstances in which security need not be provided or in which specific arrangements in respect of security may or must be provided by the distributor or suite meter provider to the consumer, and

(4) such other matters as the Board may determine in respect of security deposits,

(iii) a retailer, and

(iv) a generator, retailer or person licensed to engage in an activity described in clause 57 (f) or an affiliate of that person as that conduct relates to the abuse or possible abuse of market power;

(d.1) governing conditions relating to any matter prescribed by regulation in respect of retailers of electricity in relation to the retailing of electricity, subject to any regulations made under this Act;

(e) specifying methods or techniques to be applied in determining the licensee's rates;

(f) requiring the licensee to maintain specified accounting records, prepare accounts according to specified principles and maintain organizational units or separate accounts for separate businesses in order to prohibit subsidies between separate businesses;

(g) specifying performance standards, targets and criteria;

(h) specifying connection or retailing obligations to enable reasonable demands for electricity to be met;

(i) specifying information reporting requirements relating to the source of electricity and emissions caused by the generation of electricity;

(j) requiring the licensee to expand or reinforce its transmission or distribution system in accordance with market rules in such a manner as the IESO or the Board may determine;

(k) requiring the licensee to enter into an agreement with the IESO that gives the IESO the authority to direct operations of the licensee's transmission system;

(l) Repealed: 2016, c. 10, Sched. 2, s. 15.

(m) requiring licensees, where a directive has been issued under section 28.2, to implement such steps or such processes as the Board or the directive requires in order to address risks or liabilities associated with customer billing and payment cycles in respect of the cost of electricity at the retail and at the wholesale levels and risks or liabilities associated with non-payment or default by a consumer or retailer.

Section 70.1

Codes that may be incorporated as licence conditions

70.1 (1) The chief executive officer may issue codes that, with such modifications or exemptions as may be specified by the Board under section 70, may be incorporated by reference as conditions of a licence under that section.

Section 78

Order re: transmission of electricity

78 (1) No transmitter shall charge for the transmission of electricity except in accordance with an order of the Board, which is not bound by the terms of any contract.

Section 86

Change in ownership or control of systems

86 (1) No transmitter or distributor, without first obtaining from the Board an order granting leave, shall,

(a) sell, lease or otherwise dispose of its transmission or distribution system as an entirety or substantially as an entirety;

(b) sell, lease or otherwise dispose of that part of its transmission or distribution system that is necessary in serving the public; or

(c) amalgamate with any other corporation.

Section 92

Leave to construct, etc., electricity transmission or distribution line

92 (1) No person shall construct, expand or reinforce an electricity transmission line or an electricity distribution line or make an interconnection without first obtaining from the Board an order granting leave to construct, expand or reinforce such line or interconnection.

Section 99

Expropriation

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.

2. Any person who intends to construct, expand or reinforce an electricity transmission line or an electricity distribution line or make an interconnection and who is exempted under this Act from the requirement to obtain leave. 1998, c. 15, Sched. B, s. 99 (1); 2023, c. 2, Sched. 6, s. 1

Hearing

(2) The Board shall set a date for the hearing of the application, but the date shall not be earlier than 14 days after the date of the application. 1998, c. 15, Sched. B, s. 99 (2).

Information to be filed

(3) The applicant shall file with the Board a plan and description of the land required, together with the names of all persons having an apparent interest in the land. 1998, c. 15, Sched. B, s. 99 (3).

…

Power to make order

(5) If after the hearing the Board is of the opinion that the expropriation of the land is in the public interest, it may make an order authorizing the applicant to expropriate the land.

Section 100

Determination of compensation

100 If compensation for damages is provided for in this Part and is not agreed on, the compensation shall be determined by the Ontario Land Tribunal under the Expropriations Act and, for the purpose, sections 26 and 29 of that Act apply with necessary modifications.

NYON OIL INC. ET AL. Plaintiffs	and	HYDRO ONE NETWORKS INC. Defendant	Court File No. CV-24-00014768-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at WELLAND

FACTUM OF THE DEFENDANT / MOVING PARTY, HYDRO ONE NETWORKS INC.

MOTION FOR A TEMPORARY STAY OF PROCEEDINGS (RETURNABLE MARCH 24, 2025)

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