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August 22, 2025

**Via Email and RESS**

Mr. Ritchie Murray  
Acting Registrar  
Ontario Energy Board  
Suite 2700, 2300 Yonge Street  
P.O. Box 2319  
Toronto, Ontario, M4P 1E4

Dear Mr. Murray:

**Re: Hydro One Networks Inc. (Hydro One)**  
**Application for Expropriation Near City of Port Colbourne**  
**Reply Submissions**  
**OEB File Number: EB-2024-0142**

In accordance with Procedural Order No. 2 to the above-noted matter, we are pleased to enclose Hydro One's Reply Submissions.

An electronic copy of these submissions has been submitted using the OEB's Regulatory Electronic Submission System.

Yours very truly,

A handwritten signature in blue ink, appearing to be 'SR' followed by a long horizontal stroke.

Sam Rogers  
Partner | Associé

Enclosure

**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;

**REPLY SUBMISSIONS OF  
HYDRO ONE NETWORKS INC.**

**August 22, 2025**

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## PART I - INTRODUCTION

1. Hydro One Networks Inc. (“**Hydro One**”) provides its reply to the written submissions of the intervenors, Nyon Oil Inc. and 1170367 Ontario Inc. (together, “**Nyon**”). Hydro One does not intend to repeat the submissions set out in its Written Argument-in-Chief (“**AIC**”). All capitalized terms in these Reply Submissions have the same meaning as set out in Hydro One’s AIC.

## PART II - REPLY TO NYON’S SUBMISSIONS

### A. The Board Has the Jurisdiction to Grant the Relief Sought

2. Hydro One’s detailed submission on the Board’s jurisdiction are found at paragraphs 107-121 of its AIC. In reply to Nyon, Hydro One makes the following additional submissions.

#### a. *The Leave to Construct Issue*

3. As explained in Hydro One’s AIC, prior to the enactment of the *OEB Act*, leave to construct was granted under Part III of the 1990 *OEB Act* and, prior to that, new transmission lines were approved by the Lieutenant Governor in Council pursuant to the *Power Commission Act* or the *Power Corporation Act*.<sup>1</sup> Contrary to Nyon’s assertion,<sup>2</sup> Hydro One has identified the relevant sections in predecessor legislation — at Nyon’s request — in its responses to interrogatories,<sup>3</sup> as well as in its AIC.<sup>4</sup>

4. Hydro One provided the Board with an analogous case in which the Board exercised its discretion and found that it was in the public interest to grant Enbridge the authority to expropriate

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<sup>1</sup> Written Argument-in-Chief of Hydro One Networks Inc. dated July 25, 2025 (“**Hydro One’s AIC**”), at paras. 109-111.

<sup>2</sup> Written Submissions of Nyon Oil Inc. and 1170367 Ontario Inc. dated August 8, 2025 (“**Nyon’s Written Submissions**”), at para. 156.

<sup>3</sup> Exhibit I-2-7.

<sup>4</sup> Hydro One’s AIC, at para. 111, footnote 137.

land for an existing natural gas distribution main that had been approved to be constructed long before the enactment of the 1990 *OEB Act*.<sup>5</sup> The Enbridge expropriation demonstrates that authority to expropriate may be granted even where the relevant infrastructure was approved for construction through legislative mechanisms that predate the 1990 *OEB Act*.

5. Nyon's submission is rooted in a restrictive reading of s. 99(1)1 of the *OEB Act* and, in particular, the meaning of "a predecessor of this Part". It argues that Hydro One has provided "no evidence" that leave was ever obtained under "a predecessor of this Part" and denies that an Order-in-Council is equivalent to leave under "a predecessor of this Part".<sup>6</sup> Such interpretations are inconsistent with the Board's decision in the Enbridge matter. Nyon made no effort to distinguish the *Enbridge* case, because the case is not distinguishable.

6. The text, context and purpose of the *OEB Act* support the Board's jurisdiction to grant the relief sought in this application. Section 99(1) of the *OEB Act* sets out who may apply to the Board for authority to expropriate. In drafting this provision, the Legislature was concerned with ensuring that only persons with standing could seek authority to expropriate lands. This is why the subsections of s. 99(1) refer to "any person who has leave" or "any person who intends to construct... and who is exempted ... from the requirement to obtain leave."<sup>7</sup> There is no suggestion that Hydro One (or its predecessors) are not the "person who [had] leave" to construct the Existing Transmission Lines.

7. The Legislature chooses its words carefully. It did not restrict s. 99(1)1 to "predecessors **of this Act**" but, instead, chose the words "a predecessor **of this Part**". The "predecessor of this

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<sup>5</sup> Hydro One's AIC, at paras. 116-117, citing *Re Enbridge Gas Distribution Inc.*, 2012 CarswellOnt 11005 (OEB, EB-2011-0391), Appendix 5 to Exhibit A-1-1.

<sup>6</sup> Nyon's Written Submissions, at paras. 141-142.

<sup>7</sup> *Ontario Energy Board Act, 1998*, S.C. 1998, c. 15, Sched. B (the "**OEB Act**"), s. [99\(1\)](#).

Part” could be in a predecessor Act, or — as it is here — it could be the predecessor scheme under which leave to construct was granted, prior to the enactment of the Act. Had the Legislature intended to exclude persons who were authorized to construct before the enactment of the 1990 *OEB Act*, as Hydro One was in this case, it would have so specified. The Legislature’s goal was to ensure that the person who applies to the Board for authority to expropriate is the person who rightfully constructed the electricity transmission or distribution line. That is Hydro One (and its predecessors).

8. Nyon’s submission is blind to the objectives of the *OEB Act*. Interpreting “a predecessor of this Part” as excluding the Legislature’s pre-*OEB Act* mechanisms for approving the construction of transmission infrastructure undermines these purposes. Nyon’s strained interpretation invites a perverse result: on Nyon’s argument, where leave to construct transmission infrastructure was granted prior to the enactment of the 1990 *OEB Act*, and the transmission infrastructure has since been operated in the public interest, the Board cannot intervene to protect the public interest into the future by granting authority to expropriate. But for transmission infrastructure constructed after 1990, it can. There is no reason for this strained and unreasonable interpretation. It would undermine the *OEB Act*’s purpose of protecting the public interest with respect to “prices and the adequacy, reliability and quality of electricity services”.<sup>8</sup>

***b. The Ownership Issue***

9. Throughout its submissions, Nyon argues that this Board lacks jurisdiction to decide who owns the Existing Transmission Lines. This submission is without merit for four reasons.

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<sup>8</sup> *OEB Act*, s. [1\(1\)](#).

10. **First**, the Board has authority to hear and determine all questions of law and of fact in all matters within its jurisdiction.<sup>9</sup> The Board can therefore decide any question of fact or of law arising in the course of an application for authority to expropriate under s. 99 of the *OEB Act*. The issue of ownership is such a question, and it is open to the Board to decide it. In addition, the Board clearly has the jurisdiction to make orders affecting, and impose conditions on, owners of transmission lines; for example, section 57 of the *OEB Act* bestows on the Board the authority to license persons who own transmission infrastructure in Ontario.<sup>10</sup> Inherent in this jurisdiction is the ability to make a determination that a person requires to be licensed **because** they own infrastructure; it is therefore entirely within the Board's discretion to assess who owns and operates such infrastructure.

11. **Second**, Nyon baldly asserts that only the Superior Court of Justice is the sole arbiter of "competing property rights claims".<sup>11</sup> Nyon cites no authority for this proposition. Its position is clearly contrary to s. 19(1) of the *OEB Act*, which, as described above, empowers the Board to decide all questions of law and of fact arising before it. In *Snopko*, the Court of Appeal for Ontario confirmed that the Board is empowered "to rule on the validity of relevant contracts and to deal with other substantive legal issues."<sup>12</sup>

12. **Third**, having put the question of ownership before the Board, it does not now lie in Nyon's mouth to assert that the Board lacks jurisdiction to answer that question. In its application, Hydro One stated that it "has been advised by Nyon that Nyon asserts an ownership right in the Existing Transmission Lines."<sup>13</sup> Hydro one wrote:

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<sup>9</sup> *OEB Act*, s. [19\(1\)](#).

<sup>10</sup> *OEB Act*, s. [57](#).

<sup>11</sup> Nyon's Written Submissions, at paras. 60, 200.

<sup>12</sup> *Snopko v. Union Gas Ltd.*, [2010 ONCA 248](#), at para. [27](#).

<sup>13</sup> Exhibit A-1-1, para. 9.

***If Nyon alleges an ownership interest in the Existing Transmission Lines in response to this Application***, the OEB should determine, as a matter of fact and law, that Hydro One owns the Existing Transmission Lines and then proceed and grant the relief requested in this Application.<sup>14</sup>

13. Nyon did just that. It put the question of ownership in issue in its letter to the Board dated February 5, 2025,<sup>15</sup> in which it wrote:

***Hydro One does not own some of the transmission infrastructure on the Lands. This is a unique circumstance***, in that, normally, Hydro One would be the owner of transmission infrastructure affixed by it, or its predecessors, to the land of another, by virtue of s. 44 of the *Electricity Act*, 1998, SO 1998, c 15, Sch A. However, here, that is not the case.<sup>16</sup>

14. In Nyon's letter to the Board dated February 13, 2025,<sup>17</sup> it again asserted that Hydro One does not own the Existing Transmission Lines, and that Nyon's "ownership of [the Existing Transmission Lines] and the chain of title is clear."<sup>18</sup> Nyon then expressed its understanding that "Hydro One's application does not include a request to expropriate the transmission infrastructure ***should the OEB determine that our clients own it.***"<sup>19</sup>

15. Nyon's February 13, 2025, letter took the position that the ownership issue "requires an examination of affidavit and documentary evidence regarding the historical expropriations by the Seaway ... and an analysis of constitutional law principles by a judge of the Superior Court of Justice."<sup>20</sup> Nyon went on to say that "[t]here is no clear jurisdiction for the OEB to determine the

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<sup>14</sup> Exhibit A-1-1, para. 13 (emphasis added).

<sup>15</sup> Letter from Nyon to Board dated February 5, 2025 ([online](#)).

<sup>16</sup> Letter from Nyon to Board dated February 5, 2025 ([online](#)), at p. 1 (emphasis added).

<sup>17</sup> Letter from Nyon to Board dated February 13, 2025 ([online](#)).

<sup>18</sup> Letter from Nyon to Board dated February 13, 2025 ([online](#)), at pp. 1, 2.

<sup>19</sup> Letter from Nyon to Board dated February 13, 2025 ([online](#)), at p. 3 (emphasis added).

<sup>20</sup> Letter from Nyon to Board dated February 13, 2025 ([online](#)), at p. 3.

application of historical federal expropriation legislation and the conflicts of law resulting therefrom.”<sup>21</sup>

16. Despite that position, Nyon proceeded to issue a Notice of Constitutional Question in the Board’s proceedings,<sup>22</sup> and wrote a letter to the Attorney General of Canada to urge its participation in this proceeding.<sup>23</sup> The only relevance of the constitutional issue in this proceeding is that Nyon’s assertion of ownership is contingent on Nyon’s success in making a novel constitutional argument. Having raised the ownership issue in response to Hydro One’s application and filed a Notice of Constitutional Question, which bears directly on the ownership issue, it is now not open to Nyon to now argue that the Board lacks jurisdiction to adjudicate the issues that Nyon put before it.

17. **Fourth**, Nyon’s submission that the Board lacks jurisdiction to decide the ownership issue is a collateral attack on the Superior Court of Justice’s determination to the contrary. Nyon’s February 2025 letters to the Board espoused the view that its civil action should proceed before the application that is now before this Board. That view was squarely rejected by the Court, which stayed Nyon’s civil action for one year expressly for the purpose of allowing this Board’s proceeding to unfold first.<sup>24</sup> In its decision, the Court wrote:

[8] The two cases [i.e., Nyon’s court action and Hydro One’s Board application] have the same factual background. There is not a complete overlap in the issues. The issues within the Board’s jurisdiction essentially look forward. It has exclusive jurisdiction to decide whether expropriation is in the public interest. If so, there is a mechanism for determining compensation. It has no jurisdiction to decide whether Hydro One’s past operation of the transmission equipment was unlawful. This court’s jurisdiction essentially looks backward. Under what terms did the plaintiff acquire the property? What exactly does it own? How much rent is due, if any? However, **the Board will have to consider the ownership of the**

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<sup>21</sup> Letter from Nyon to Board dated February 13, 2025 ([online](#)), at p. 3.

<sup>22</sup> Nyon’s Notice of Constitutional Question dated June 4, 2025 ([online](#)).

<sup>23</sup> Letter from Nyon to the Attorney General of Canada dated July 24, 2025 (enclosed at **Tab 1**).

<sup>24</sup> *Nyon Oil Inc. v. Hydro One Networks Inc.*, [2025 ONSC 1921](#).

**land and the transmission equipment**, and the court's decision could have an impact on future use of the land. This factor seems to weigh equally in the balance between a stay and refusal of a stay.<sup>25</sup>

18. Nyon did not appeal the Court's decision. It now mounts a collateral attack on the decision by arguing that this Board does not have jurisdiction "to consider the ownership of the land **and the transmission equipment**" (emphasis added), despite the Court concluding that the "Board will have to" do so.<sup>26</sup> Such collateral attacks are an impermissible form of abuse of process that must not be condoned.<sup>27</sup>

## **B. The Seaway Authority Did Not Own the Existing Transmission Lines**

19. Nyon attempts to trace its claim of ownership of the Existing Transmission Lines to the Seaway Authority's expropriation of certain lands on which transmission lines were located. The evidence is clear that Seaway Authority did not come to own the Existing Transmission Lines at the time of its expropriation.

20. **First**, Nyon assumes that when the Seaway Authority acted on its authority to expropriate certain lands in the 1960s, it must have expropriated those lands together with any fixtures attached thereto.<sup>28</sup> Even if the Seaway Authority **could** have expropriated the transmission infrastructure owned by the Commission (a point that Hydro One does not concede), the evidence demonstrates that the Seaway Authority **did not** in fact do so. Whether one has the authority to do something and whether one actually does it are different questions. The Master Agreement, the Supplemental Agreement, and the conduct of the parties at the time of the expropriation and

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<sup>25</sup> *Nyon Oil Inc. v. Hydro One Networks Inc.*, [2025 ONSC 1921](#) at para. [8](#).

<sup>26</sup> *Nyon Oil Inc. v. Hydro One Networks Inc.*, [2025 ONSC 1921](#) at para. [8](#). Nyon also gratuitously enclosed Hydro One's factum filed on the motion for a stay of proceeding as an appendix to its Written Argument, never citing to it in the course of its submissions.

<sup>27</sup> *Toronto (City) v. C.U.P.E., Local 79*, [2003 SCC 63](#) at para. [22](#).

<sup>28</sup> Nyon's Written Submissions, at paras. 13, 15, 19, 76.

thereafter reflects that they had a shared understanding that the Seaway Authority did not, in fact, expropriate the transmission lines.

21. **Second**, Nyon notes that the Master Agreement and Supplemental Agreement make reference to the “maintenance and operation” of the power lines, and states that each party to those agreements — the Seaway Authority and the Commission, *i.e.*, Hydro One’s predecessor — were “sophisticated and would have been presumed to understand the impact of the expropriation upon [their] property rights.”<sup>29</sup> It is telling that the Master Agreement and the Supplemental Agreement are both silent on the Seaway Authority’s interests and responsibilities vis-à-vis ownership or operation of the transmission infrastructure. There is no discussion in these agreements, or anywhere else, of costs and revenues for the operation of the power facilities. The Seaway Authority did not become involved in Hydro One’s operations of the Existing Transmission Lines nor in its regulatory affairs. The Seaway Authority had no interest in being an owner or operator of transmission or distribution assets, and did not become one in the expropriation process.

22. **Third**, Nyon asserts that because the Seaway Authority paid for the reconstruction of the Existing Transmission Lines, it must own them. In support of this proposition, Nyon asserts that there is a “universal presumption” that “[w]hen one party pays for or purchases property, it is presumed to own it.”<sup>30</sup> Not only does Nyon fail to cite **any** authority in support of this bald assertion, but the assertion is of no assistance in this case. The Seaway Authority did not “purchase” the Existing Transmission Lines. It entered a contractual agreement with the Commission whereby

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<sup>29</sup> Nyon’s Written Submissions, para. 121.

<sup>30</sup> Nyon’s Written Submissions, para. 106.

the Commission was required to relocate its lines, and the Seaway Authority was required to pay for that relocation:

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

2.2 If the Commission is required to effect a temporary relocation of any of its power lines or electricity supply facilities by reason of the urgency of the Authority's construction programme, ***the entire cost of such temporary relocation and its removal shall be paid for by the Authority*** in the manner as hereinafter set out.

...

2.4 ***The relocation and restoration of existing power lines or electricity supply facilities shall be entirely at the expense of the Authority. The Commission shall pay only for those betterments*** or improvements to its power lines or electricity supply facilities installed at its request at the time of relocation.<sup>31</sup>

23. The only reasonable explanation for the Seaway Authority's decision to pay for the cost of relocating the Existing Transmission Lines is that it needed them relocated in order to undertake its canal realignment work, and it entered into a contractual agreement requiring it to cover the cost of doing so. Similar cost responsibility for relocation provisions exists today in the Board's Transmission System Code, e.g., section 6.7.3:

Where a customer requests the relocation of a transmitter's connection or network facility, the transmitter shall recover from that customer the cost of relocating that connection or network facility.<sup>32</sup>

24. The betterment of the line — that is, anything greater than a like-for-like replacement — was paid for by the Commission.<sup>33</sup> It would have been unfair to charge the Seaway Authority for

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<sup>31</sup> Appendix 2D to Exhibit A-1-1 (Master Agreement dated October 6, 1969, sections 2.1, 2.2, 2.4) (emphasis added).

<sup>32</sup> Transmission System Code, [section 6.7.3](#).

<sup>33</sup> Appendix 2D to Exhibit A-1-1 (Master Agreement dated October 7, 1969), section 2.4; Exhibit I-1-4(a) (Hydro One response to interrogatory OEB – 04); Exhibit I-1-4-1 (attachment to Hydro One's

improvement of works beyond what already existed; the cost of any betterment was rightly borne by the owner of the works.

### C. The Doctrine of Federal Paramountcy Does Not Apply

25. Nyon appears to agree with Hydro One's statement of the law of federal paramountcy.<sup>34</sup> However, it advances an erroneous analysis of the application of well-settled federalism principles to this case. The doctrine of federal paramountcy does not apply here.

#### a. No Operational Conflict

26. Nyon asserts that there is an operational conflict between the federal statutes and the provincial one, on the basis that "the federal statutes aim to expropriate property, without exception, and the provincial statute purportedly prevents certain property affixed to those lands from being expropriated".<sup>35</sup> This submission is erroneous and contains two critical flaws.

27. **First**, the federal statutes (the *Expropriation Act* and the *St. Lawrence Seaway Authority Act*) do not aim to expropriate property "without exception". Nyon has read the words "without exception" into the statutes where those words are not present. As described above, even if the Seaway Authority **could** have expropriated property, it was not **required** to do so and, therefore, whether it **actually did** so is an entirely different question.

28. **Second**, the provincial statute (the *Power Commission Act*) is not aimed at "prevent[ing] property affixed to those lands from being expropriated". The *Power Commission Act* provides that where works of the Commission (*i.e.*, Hydro One's predecessor) are affixed to realty, they

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response to Interrogatory OEB – 04: HON000167 (Work Order dated June 10, 1971) and HON000168 (Field Report dated May 14, 1971).

<sup>34</sup> Nyon's Written Submissions, at paras. 81-83, 90-91.

<sup>35</sup> Nyon's Written Submissions, at para. 93.

remain subject to the rights of the Commission as fully as they were before being affixed, and “do not become part of the realty unless otherwise agreed to by the Commission in writing.”<sup>36</sup> The aim of this legislative provision, as Hydro One explained in its AIC, is to ensure that ownership of works is retained by the transmitter or distributor despite the affixing of its property to land, in order to protect the significant public interest in the safe and reliable supply of electricity.<sup>37</sup>

29. Nyon misreads the relevant statutes to manufacture an operational conflict where none exists. The federal statutes do not **mandate** expropriation “without exception”; they permit expropriation of lands. The provincial statute does not **prohibit** expropriation; it provides that a transmitter or distributor retains ownership over its property despite that property being affixed to lands. Both schemes can be easily complied with, as they were in this case, and no operational conflict arises.

***b. No Frustration of Federal Purpose***

30. Similarly, Nyon baldly asserts that the purposes of the federal statutes are frustrated by the provincial statute, without explaining why.<sup>38</sup> The purposes of the federal statutes, even as Nyon describes them, are not frustrated by permitting a provincial transmitter or distributor to retain ownership of its property when that property is affixed to realty.

31. An overarching problem with Nyon’s submissions is that it has focused on the wrong question. Nyon’s submissions focus on whether the transmission lines themselves interfered with the federal purpose behind the Seaway Authority. But the real question at the heart of this constitutional analysis is different. The provincial law provides that the Commission retains

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<sup>36</sup> *Power Commission Act*, R.S.O. 1960, c. 300, s. 45 ([online](#)), enclosed as Appendix 7 to Hydro One’s AIC. For citations to predecessor and subsequent legislation containing substantially similar language, see Hydro One’s AIC at para. 54, footnote 68.

<sup>37</sup> Hydro One’s AIC, at para. 80.

<sup>38</sup> Nyon’s Written Submissions, at para. 98.

ownership of its transmission infrastructure even if it is affixed to land. Therefore, the real question is: Does ***the Commission's ownership*** of the transmission lines pose an operative concern or undermine a federal purpose? Nyon's submissions are silent on how the Commission's ownership creates an operational conflict or undermined the federal purpose of the statutes in this case.

32. In fact, as the historical record demonstrated, the Commission's ownership posed no issue at all. The Commission and the Seaway Authority worked collaboratively to identify an appropriate location for the Commission's transmission lines that would permit the Seaway Authority to undertake its federally mandated canal work. If the Seaway Authority was of the view that the Commission's ownership of the lines frustrated its federal purpose, it would not have contributed financially to the relocation and reconstruction of the lines. The Commission's ownership of the infrastructure, which has been preserved despite their affixture to the lands by virtue of s. 45 of the *Power Commission Act*, did not get in the way of any federal purpose.

***c. Proposed Federal Legislation Is Irrelevant***

33. Finally, Nyon adverts to proposed federal legislation, Bill C-5, which, if enacted, would streamline processes for approving projects that are federally designated as "national interest projects".<sup>39</sup> Nyon's apparent concern with the bill is purely speculative and irrelevant to the matters before the Board. In any event, by definition, this proposed federal statute would apply only to federal works and undertakings; Parliament cannot constitutionally regulate local works and undertakings, such as provincial electricity transmission infrastructure regulated by the Board.

34. To the extent the Board finds that proposed legislation is relevant at all (in Hydro One's submission, it is not), it should consider Ontario's proposed Bill 40, the *Protect Ontario by*

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<sup>39</sup> Nyon's Written Submissions, at paras. 99-100.

*Securing Affordable Energy for Generations Act*, which recently passed first reading.<sup>40</sup> If Bill 40 is passed, it would expand the Board's mandate to include consideration of economic growth. Through that additional lens, the public interest in having Hydro One continue to own, operate and maintain the Existing Transmission Lines is even more clear. As demonstrated by the letters of comment received in this proceeding<sup>41</sup> and Hydro One's evidence that the Existing Transmission Lines serve all of Port Colborne,<sup>42</sup> Hydro One's continued ownership, operation and maintenance clearly enables economic growth in the area and is in the public interest.

**D. Nyon Cannot Refute Hydro One's Ownership of the Existing Transmission Lines**

35. Nyon's written submissions are notably silent on a number of issues raised in Hydro One's application.

36. For example, Hydro One detailed that Nyon's conduct is wholly inconsistent with ownership of the Existing Transmission Lines and that, by contrast, Hydro One's conduct is entirely consistent with ownership of the Existing Transmission Lines.<sup>43</sup> In response, Nyon asserts that it "took every step that it could consistent with ownership",<sup>44</sup> and goes on to list steps that are consistent with ownership of the Lands but have **nothing** to do with the Existing Transmission Lines. Nyon says that its conduct "consistent with ownership" is demonstrated by:

- (a) Cancelling the agreement and licenses with Hydro One;

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<sup>40</sup> Bill 40, *Protect Ontario by Securing Affordable Energy for Generations Act*, 2025, [Status](#), Legislative Assembly of Ontario.

<sup>41</sup> Letter from Asahi Kasei dated May 15, 2025 ([online](#)); Letter from City of Port Colborne dated May 16, 2025 ([online](#)).

<sup>42</sup> Exhibit I-1-7, response a); Exhibit I-2-11, response a).

<sup>43</sup> Hydro One's AIC, at paras. 85-93.

<sup>44</sup> Nyon's Written Submissions, at para. 123.

- (b) Advising Hydro One that it is “an overholding tenant”;
- (c) Demanding “rent”;
- (d) Retaining counsel;
- (e) Issuing a Notice of Trespass to Hydro One; and
- (f) Commencing a civil action against Hydro One for “back-rent owed”.<sup>45</sup>

37. Yet, these are actions consistent with **ownership of lands** and **not transmission infrastructure**. There is no dispute that Nyon owns Lands that are subject to this application. But Nyon’s conduct as an owner of the Lands has nothing to do with the Existing Transmission Lines. As detailed in Hydro One’s AIC, Nyon’s conduct is completely inconsistent with ownership of the Existing Transmission Lines.<sup>46</sup> Nyon has made no submissions and led no evidence to establish otherwise.

38. Nyon erroneously submits that the Master Agreement and Supplemental Agreement are the “only evidence” Hydro One has adduced to demonstrate that both Hydro One and the Seaway Authority understood that Hydro One owned the infrastructure.<sup>47</sup> This is untrue. Hydro One has adduced extensive evidence on this point, including the Seaway Authority paying Hydro One to move the infrastructure and Hydro One paying for any betterment.<sup>48</sup>

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<sup>45</sup> Nyon’s Written Submissions, at para. 123.

<sup>46</sup> Hydro One’s AIC, at paras. 85-93.

<sup>47</sup> Nyon’s Written Submissions, at para 115.

<sup>48</sup> Appendix 2D to Exhibit A-1-1 (Master Agreement dated October 7, 1969), section 2.4; Exhibit I-1-4(a) (Hydro One response to interrogatory OEB – 04); Exhibit I-1-4-1 (attachment to Hydro One’s response to Interrogatory OEB – 04: HON000167 (Work Order dated June 10, 1971) and HON000168 (Field Report dated May 14, 1971)).

39. Finally, in its written argument, Nyon advances a new theory for the first time: it argues that by virtue of terminating the April 1977 license agreement with Hydro One, Nyon became vested with Hydro One's property.<sup>49</sup> As explained in Hydro One's AIC,<sup>50</sup> the language of the licence agreement makes clear that the parties to it intended that electricity transmission infrastructure located on the lands would be Hydro One's property and would only "vest" in the Licensor, the Seaway Authority, if certain conditions are met.

40. Nyon cannot have it both ways. It can't argue that it owns the Existing Transmission Lines because it purchased it from the City of Port Colborne (although, as Nyon now admits,<sup>51</sup> it was expressly excluded from the Purchase Price) **and** that it came to own the Existing Transmission Lines only when it terminated the license agreement. The reality is that Nyon has no coherent theory as to why it owns the Existing Transmission Lines, and no response to Hydro One's submission that Nyon's conduct is wholly inconsistent with ownership, because Nyon **does not** own the infrastructure. Hydro One does.

#### **E. No Abuse of Process and No Basis to Stay the Proceedings**

41. Nyon renews the request it made in an unsolicited letter to the Board for a stay of proceedings on the basis of an alleged abuse of process. It does not engage with or respond to the detailed submissions made by Hydro One to the contrary.<sup>52</sup> There has been no abuse of process in these proceedings, and there is no basis to order a stay.

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<sup>49</sup> Nyon's Written Submissions, at paras. 111-114.

<sup>50</sup> Hydro One's AIC, at para. 14.

<sup>51</sup> Nyon's Written Submissions, at para. 35.

<sup>52</sup> Hydro One's AIC, at paras. 122-133.

42. Nyon submits that it had no “real opportunity” to address Hydro One’s submissions, which renders it vulnerable.<sup>53</sup> Its submission is without merit. Nyon has had ample opportunity to participate in these proceedings:

- (a) In Procedural Order No. 1, the Board granted Nyon intervener status and permitted it to file evidence.<sup>54</sup> Nyon did so, delivering evidence that spanned nearly 250 pages.<sup>55</sup>
- (b) Nyon filed a Notice of Constitutional Question, putting the relevant parties on notice of its intention to raise a constitutional issue in these proceedings.<sup>56</sup>
- (c) Nyon actively participated in the interrogatories process, including by posing substantial interrogatories to Hydro One and having the opportunity to respond to interrogatories from Board Staff and from Hydro One.<sup>57</sup>
- (d) In Procedural Order No. 2, the Board expressly invited Nyon to make written submissions, and Nyon did so.<sup>58</sup>
- (e) Outside of the Board’s formal process, Nyon also sent several pieces of correspondence to the Board, setting out its position in detail and providing accompanying documents and appendices.<sup>59</sup>

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<sup>53</sup> Nyon’s Written Submissions, at paras. 187, 191.

<sup>54</sup> Procedural Order No. 1 dated May 28, 2025

<sup>55</sup> Nyon’s Evidence dated June 4, 2025.

<sup>56</sup> Nyon’s Notice of Constitutional Question dated June 4, 2025.

<sup>57</sup> Nyon’s Interrogatories to Hydro One dated June 11, 2025; Nyon’s Responses to Interrogatories dated July 4, 2025.

<sup>58</sup> Procedural Order No. 2 dated July 16, 2025; Nyon’s Written Submissions.

<sup>59</sup> See, e.g., Letter from Nyon to Board dated February 5, 2025 ([online](#)); Letter from Nyon to Board dated February 13, 2025 ([online](#)).

43. Nyon has fully participated in these proceedings at every turn and has had ample opportunity to respond to Hydro One's submissions and evidence throughout.

44. In any event, the assumption underlying Nyon's allegation of abuse is unfounded. Nyon assumes that Hydro One's statements to the Board, including that Hydro One engaged in good faith negotiations and that the Hydro One and Nyon exchanged draft MOUs, is inaccurate. As set out in detail in Hydro One's AIC, between 2013 and 2015, Hydro One and Nyon engaged in reciprocal negotiations and discussions, including the exchange of draft MOUs and draft easement terms. Hydro One categorically rejects the suggestion that it misled the Board in the way Nyon alleges, or in any other manner.

#### **F. Expropriation is in the Public Interest**

45. Expropriation is in the public interest. The Board should make an order authorizing Hydro One to expropriate the Lands.<sup>60</sup>

46. Nyon submits that "Hydro One has failed to demonstrate that the expropriation is in the public interest."<sup>61</sup> It is telling that Nyon does not argue that expropriation is **contrary** to the public interest. No interested party has taken that position on this application. Nor has Nyon made any submissions or adduced any evidence to establish that expropriation would not be in the public interest.

47. Contrary to Nyon's submissions, Hydro One led ample evidence to support its submission that the expropriation authority requested herein is in the public interest.<sup>62</sup> And Hydro One's AIC

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<sup>60</sup> *OEB Act*, s. [99\(5\)](#).

<sup>61</sup> Nyon's Written Submissions, at paras. 3, 170.

<sup>62</sup> See, e.g., Exhibit A-1-1, at paras. 35-38; Exhibit I-1-5, response b); Exhibit I-1-7, response a) and b); and Exhibit I-2-6, response a); Exhibit I-2-11, responses a), b), c), d) and e), and Attachment 1 thereto.

is clear that it is “[t]he rights in the Lands requested herein” that are “necessary in the public interest.”<sup>63</sup>

48. The fallacy of Nyon’s approach is apparent from its alternative argument. It submits that if the Board determines that expropriation is in the public interest, then it should expand the scope of the expropriation to the entirety of the 117 Con 5 Lands, in addition to “the necessary portion” of Nyon’s lands required for the continued operation and maintenance of the Existing Transmission Lines.<sup>64</sup> In other words, Nyon asks this Board to authorize the expropriation of more land than is necessary, the result of which, of course, would extract greater financial compensation for the quantum of the proposed taking. Yet no evidence has been provided to support Nyon’s view that a greater quantity of land is required than what Hydro One has applied for in this application. The size of Hydro One’s proposed taking comports with the legal and policy objectives of minimizing the impacts of expropriation on fee simple owners.

49. Further, and in support of its argument that Hydro One has not demonstrated that the requested expropriation is in the public interest, Nyon makes the surprising submission that Hydro One’s concerns about the safe and reliable supply of electricity — which is threatened by Nyon’s own ever-changing position and looming legal action — are overblown. For example, Nyon submits that, while it is true that its civil action seeks equitable relief (such as an injunction) that would prevent Hydro One from maintaining and operating the Existing Transmission Lines, “[e]quitable relief is discretionary in nature” and may or may not be granted by the Court.<sup>65</sup>

50. Nyon attempts to minimize its own threat to the continued operation of the Existing Transmission Lines by suggesting that, perhaps, its threat will not crystallize because Nyon might

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<sup>63</sup> Hydro One’s AIC, at para. 101 (emphasis added).

<sup>64</sup> Nyon’s Written Submissions, at para. 171.

<sup>65</sup> Nyon’s Written Submissions, at para. 176.

not succeed before the Court. Such a brazen submission provides little comfort to tens of thousands of customers who reasonably expect the ongoing safe and reliable delivery of electricity. Nyon's submission also pays no mind to the policy objectives that will be compromised if the equitable relief Nyon seeks in its civil action is granted. As a licensed electricity transmitter and distributor, Hydro One must have the ability to fulfill its obligations of providing safe and reliable transmission and distribution services. Nyon's attempts to prevent such outcomes are at odds with these objectives and are not in the public interest.

51. Nyon also attempts to minimize the Notice of Trespass it issued to Hydro One by obscuring its content from the Board's view. In its submissions, Nyon asserts:

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". There is no suggestion that the police will be called, or any steps would be taken to preclude Hydro from accessing the property.<sup>66</sup>

52. In fact, the Notice of Trespass states:

***In the event of a trespass, the Plaintiffs [i.e., Nyon] will request local law enforcement to enforce the enforcement provisions of the Act***, specifically, sections 9, 10 and 11 against the Defendant [i.e., Hydro One] in violation of this Notice and/or his or her contractors and agents.

...

***In the event of a trespass, the Plaintiffs will bring a civil action against the Defendant***, and every other party convicted of the offence (including a contractor acting on behalf of the Defendant).<sup>67</sup>

53. In Hydro One's response to interrogatories, it referenced the fact that Nyon, through counsel, advised Hydro One that "[A]ny breach of this [i.e., the Notice of Trespass] will be relied

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<sup>66</sup> Nyon's Written Submissions, at para. 177 (footnotes omitted).

<sup>67</sup> Notice of Trespass dated November 28, 2024 (enclosed at **Tab 2**).

upon as evidence...”.<sup>68</sup> As Nyon is aware, those words were written by its counsel in the covering e-mail serving the Notice of Trespass.<sup>69</sup> Despite Nyon’s false assurances to the Board that the Notice of Trespass is a meaningless piece of paper that could only generate evidence for use in some subsequent proceedings, it is clear that the Notice of Trespass threatened law enforcement involvement and further legal consequences for any breach. As a result, Hydro One employees have not attempted to access Nyon’s property since receipt of the Notice of Trespass.<sup>70</sup>

54. Finally, Nyon suggests that if Hydro One’s “true motive” was the public interest, Hydro One would have sought authority to expropriate the Lands in 2013 and would not have waited until “Nyon began to actively pursue it”.<sup>71</sup> Nyon ignores two important facts in making this submission.

55. **First**, Nyon ignores the fact that this application is only necessary because Nyon commenced litigation seeking extraordinary relief, including denying Hydro One the ability to operate and maintain the Existing Transmission Lines.

56. **Second**, Nyon ignores the fact that much of the delay in resolving these matters is a result of Nyon’s own silence. As Nyon acknowledges, in October 2015 the parties agreed to hold Nyon’s letters and Notices to Pay or Quit “in abeyance”.<sup>72</sup> Hydro One sent the final piece of without-prejudice correspondence to Nyon in December 2015; Nyon did not respond. Whether or not Nyon subjectively intended to hold its rights in abeyance indefinitely, the ball was in its court as of 2015. Nyon did nothing for many years, and then delivered its “comprehensive letter” after

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<sup>68</sup> Exhibit I-1-5, response b).

<sup>69</sup> Email from Scott Lemke to Sam Rogers, enclosing Notice of Trespass, dated November 28, 2024 (enclosed at **Tab 3**).

<sup>70</sup> Exhibit I-1-5, response b).

<sup>71</sup> Nyon’s Written Submissions, at para. 184.

<sup>72</sup> Nyon’s Written Submissions, at para. 50.

having already commenced a civil action seeking extraordinary relief against Hydro One.<sup>73</sup> This is what required Hydro One to seek authority to expropriate in order to secure the public interest.

57. Nyon is not motivated by the public interest. Its self-interest motivations are grounded in the search of an economic windfall. Nyon claims that it is “seeking fair and appropriate compensation from Hydro One”.<sup>74</sup> Nyon also purports to seek compensation for “environmental harm”;<sup>75</sup> there is not a scintilla of evidence that such harms exist. In any event, this Board has already observed that compensation is not an issue to be determined in this application.<sup>76</sup>

58. By contrast, Hydro One’s application to this Board is motivated by the public interest. The Existing Transmission Lines are clearly in the public interest. Their continued reliable and safe operation, in light of Nyon’s unpredictable conduct and legal threats, makes necessary the expropriation authority sought herein. Such expropriation is in the public interest and is integral to ensuring the continued uninterrupted use of the Existing Transmission Lines.

### **PART III - CONCLUSION**

59. Hydro One requests that the Board issue an Order(s):

(a) For a declaration that Hydro One owns the Existing Transmission Lines; and

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<sup>73</sup> Nyon’s Written Submissions, at para. 51; Letter from Nyon to Hydro One dated February 22, 2024, Appendix 4 to Exhibit A-1-1; Nyon’s Notice of Action dated February 21, 2024, Schedule 28 to Nyon’s Evidence.

<sup>74</sup> Nyon’s Written Submissions, at para. 126.

<sup>75</sup> Nyon’s Written Submissions, at para. 126.

<sup>76</sup> Procedural Order No. 2 dated July 16, 2025.

- (b) For authority to expropriate certain permanent easements, as described in Appendix 6 to Exhibit A-1-1, as recently updated by Hydro One to account for the consolidation of certain PINs referenced therein.<sup>77</sup>

60. The requested relief is in the public interest.

DATED THE 22<sup>nd</sup> DAY OF AUGUST, 2025, AT TORONTO, ONTARIO.



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HYDRO ONE NETWORKS INC.  
By its counsel

McCarthy Tétrault LLP  
Per: Gordon Nettleton / Sam Rogers / Aya Schechner

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<sup>77</sup> Letter from Hydro One to the Board encl. Updated Appendix 6, dated August 19, 2025 ([online](#)).

**Tab 1**

July 24, 2025

The Attorney General of Canada  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Dear [REDACTED],

**Re: Constitutional Question being considered by the Ontario Energy Board**

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We are counsel to 1170367 Ontario Inc. and Nyon Oil Inc. (collectively, “**Nyon**”). Hydro One Networks Inc. (“**Hydro One**”) has applied to expropriate easements comprising approximately 50 acres of land owned by Nyon in Port Colborne, Ontario. The subject lands are immediately adjacent to the lithium-ion battery separator plant being built by Asahi Kasei Battery Separator Canada Corporation (“**Asahi Kasei**”). We understand that the hydroelectric transmission infrastructure on Nyon’s property (the “**Transmission Infrastructure**”) will be used to provide electricity to Asahi Kasei’s plant. The R-Plan for the subject lands and Asahi Kasei’s Site Plan are enclosed. The application made by Hydro One to the OEB is also enclosed; it was previously delivered to you via email on June 6, 2025.

The constitutional issue at hand can be summarized as follows:

- In the 1960s the federal government expropriated lands for the purpose of widening and deepening the St. Lawrence Seaway (the “**Seaway**”) – a federal infrastructure project.
- At the time of expropriation, a significant portion of the Transmission Infrastructure was on the property.
- The Transmission Infrastructure was never transferred by Canada Lands or any successor in title back to Hydro One
- The property that was expropriated by the federal government, but ultimately not used to expand the Seaway was transferred by Canada Lands to The Corporation of the City of Port Colborne and then to Nyon.
- Hydro One now takes the position that provincial legislation in effect at the time of the federal expropriation excused the Transmission Infrastructure from the expropriation.

An expropriation is the taking of real property and the extinguishing all rights thereon for public use or benefit. Hydro One has made submissions that provincial legislation can limit the ability of the federal government to do so. The





Attorney General of Canada cannot permit the OEB to make such a determination.

Nyon respectfully urges you to intervene in the matter.

Yours truly,  
**MASSEY LLP**

Scott Lemke  
SGL/ac

cc. Frank Portman, counsel to Nyon  
cc. Sam Rogers, counsel to Hydro One  
cc. Gordon Nettleton, counsel to Hydro One  
cc. Colm Boyle, counsel to Asahi Kasei Battery Separator Canada Corporation  
cc. John Vellone, counsel to Asahi Kasei Battery Separator Canada Corporation

# Tab 2

**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

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**NOTICE OF TRESPASS**

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**TO THE DEFENDANT:**

1. This Notice is served upon you pursuant to section 5(1)(a) of the *Trespass to Property Act*, R.S.O. 1990 c T.21 (the “**Act**”).
2. You are hereby notified that any attempt to access Parts 2, 3, 4, 12, and 13, on Lot 17, 18, and 19, Concession 5, Plan 59R-15312, in Port Colborne, Ontario will be considered a trespass by the Plaintiffs pursuant to section 2(1) of the Act.
3. You are hereby further notified that any attempt to access Parts 1, 2, 3, 4, 5, 8, 9, 11, 12, 13, 15, 16 and 17 on Lots 23, 24 and 25, Concession 4, Plan 59R15310, in Port Colborne, Ontario will be considered a trespass by the Plaintiffs pursuant to section 2(1) of the Act.
4. In the event of a trespass, the Plaintiffs will request local law enforcement to enforce the enforcement provisions of the Act, specifically, sections 9, 10 and 11 against the Defendant in violation of this Notice and/or his or her contractors and agents.

5. In the event of a trespass, the Plaintiffs will request the provincial Crown Attorney to enforce the section 2(1) of the Act against the Defendant in violation of this Notice and/or his or her contractors and agents.
6. In the event of a trespass, the Plaintiffs will bring a civil action against the Defendant, and every other party convicted of the offence (including a contractor acting on behalf of the Defendant).

November 28, 2024

**MASSEY LLP**

[REDACTED]  
[REDACTED]

**Scott Lemke (LSO # 64482N)**

*Email:* [REDACTED]

**Frank Portman (LSO # 63471M)**

*Email:* [REDACTED]

**Alexa Cheung (LSO # 88127C)**

*Email:* [REDACTED]

*Tel:* [REDACTED]

*Lawyers for the Plaintiffs*

**TO: McCarthy Tetrault LLP**

[REDACTED]  
[REDACTED]

**Sam Rogers (LSO #62358S)**

*Email:* [REDACTED]

**Aya Schechner (LSO # 81976D)**

*Email:* [REDACTED]

*Tel:* [REDACTED]

*Lawyers for the Defendant*

NYON OIL INC. et al.  
Plaintiffs

-and-

HYDRO ONE NETWORKS INC.  
Defendant

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
  
PROCEEDING COMMENCED AT  
WELLAND

**NOTICE OF TRESPASS**

**MASSEY LLP**  
[Redacted]  
[Redacted]  
  
**Scott Lemke (LSO # 64482N)**  
*Email:* [Redacted]  
  
**Frank Portman (LSO # 63471M)**  
*Email:* [Redacted]  
  
**Alexa Cheung (LSO # 88127C)**  
*Email:* [Redacted]  
  
*Tel:* [Redacted]  
  
*Lawyers for the Plaintiffs*

# Tab 3

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**From:** Scott Lemke <[REDACTED]>  
**Sent:** Thursday, November 28, 2024 2:21 PM  
**To:** Rogers, Sam  
**Cc:** Frank Portman; Malti Mahajan; Dala, Debbie; Schechner, Aya; Nettleton, Gordon M.; Alexa Cheung  
**Subject:** RE: [EXT] Nyon Oil Inc. ("Nyon") et al. v. Hydro One Networks Inc. ("HONI") - Court File No. CV-24-00014768-0000 - draft Discovery Plan  
**Attachments:** 2024.11.28 - Nyon - Notice of Trespass.pdf

Sam,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Attached is a Notice of Trespass. Your client is hereby notified that it is not to access our clients' property for any purpose, whatsoever. Any breach of this will be relied upon as evidence of your client's ongoing intentional disregard for our clients' property rights.

Regards,

Scott Lemke

[REDACTED]

**MASSEYLLP**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]