

Reply to the Attention of: Marc Kemerer  
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Our File No.: 297087  
Date: January 28, 2026

**EMAIL**

**Ontario Energy Board**

2300 Yonge Street 27<sup>th</sup> Floor  
Toronto ON M4P 1E4

**Attention: Jessy Serrao, Regulatory  
Administrator**

Dear Ms. Serrao,

Re: **EB-2025-0314**  
**Response to Intervenors Comments on the Issues List**

As you know, we represent the Applicant in this matter. By way of this letter we reply to the requests made by the intervenors for amendments to the 19 January 2026 Issues List attached to Procedural Order No. 1.

In our 26 January 2026 letter to the OEB we requested a minor modification of Issue 1 to reflect the unique circumstances of the application which is brought forward by a First Nations community with an economic interest in a project over its traditional lands. The Applicant submits that this is a unique feature of the Application which should be considered by the OEB in determining whether the project is in the broader "public interest".

In its request made that same day, the intervenors, Grant Lake Forest Resources Ltd. and Josephine Forest Resources Ltd. (together "**Grant Lake**"), requested the following additions to the Issues List:

- a) *Has the applicant demonstrated due diligence, and made best efforts, in negotiating settlements with impacted landowners?*
- b) *Has the applicant made efforts to minimize the disruption to the impacted landowners?*

For ease of reference, the Applicant has identified the Grant Lake's requested additional issues as "A" and "B". The Applicant submits that Grant Lake has not provided any justification for the proposed addition of Issues A or B.

**Issue A**

The Applicant disagrees with the proposed addition of proposed Issue A. While the preamble to the Issues List states that applicants are expected to make best efforts to negotiate an agreement with a landowner before resorting to an expropriation application, the standard required by the OEB is one of “due diligence” rather than “best efforts”.

The OEB Filing Requirements state:

*The applicant must demonstrate **due diligence** in negotiating settlements with impacted landowners, relevant lienholders, and other encumbrancers, including a list of issues and explanation(s) of how each issue was resolved or proposed to be resolved.* (emphasis added)

There is no OEB precedent that requires an applicant to exhaust all efforts to reach a voluntary agreement with a landowner before seeking authorization expropriation relief from the OEB.

The Applicant has fulfilled this requirement by filing a detailed document titled *Timeline of Land Access Agreements, Negotiations, and Related Communications*<sup>1</sup> which sets out the several meetings held between the Applicant, Grant Lake and others between March 2023 and October 2025 when negotiations came to a standstill due to a disagreement over compensation. Throughout the negotiations, and as demonstrated in the Application material, Grant Lake has been supportive of the project and did not express any objections to the land acquisition until the issue of compensation could not be resolved. In particular, the Applicant notes the letter of support provided by Grant Lake which was included in the Application.<sup>2</sup>

Grant Lake is a sophisticated commercial entity with professional advisors and legal counsel and there is no indication, either in the pre-filed evidence or in the intervenors comments on the Issues List, to suggest that there has been a lack of good faith or unfairness towards the Grant Lake. The parties are free to continue negotiating compensation while the expropriation application proceeds.

**Issue B**

The Applicant disagrees with the proposed addition of proposed Issue B and submits that any impacts on the subject properties and landowners can be addressed under Issue 2 and, if necessary, by conditions under Issue 3.

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<sup>1</sup> [Exhibit I](#)

<sup>2</sup> [Exhibit H](#)

In its January 26 letter, Grant Lake's counsel stated:

*Grant Lake also wishes to test whether reasonable steps have been taken by the applicant to minimize the impact of the proposed expropriation, including the proposed route, on the subject properties and the owners thereof. This inquiry goes beyond the minimization of the amount of land needed for the project (which is a topic already part of issue 2. on the Proposed Issues List), goes to the fairness of the treatment of the landowners by the party seeking the authority to expropriate, and is an issue that the OEB includes in its filing requirements for applications for authority to expropriate<sup>3</sup> and has considered in past applications for expropriation authority. (emphasis added)*

The Applicant submits that the issue of route selection:

- 1. is beyond the scope of an application for expropriation authorization;*
- 2. was examined in the Environmental Assessment (EA) process.<sup>3</sup> Grant Lake was aware of the EA process, received all relevant documentation and had the opportunity to provide input in the EA process; and*
- 3. was well know to, and agreed by, Grant Lake as demonstrated by the access agreement it entered into dated December 12, 2024.<sup>4</sup>*

Moreover BFN is exempt from the requirement to obtain leave to construct as well as the filing requirements under a leave to construct application and it is not required to file the project route and the form of agreement offered to landowners in its application for expropriation authorization. In the *Toyota* expropriation case (copy attached), the OEB stated:

*While the Board is required to deal with matters relating to route under a leave to construct application, the same is not true for a section 99 application. In a leave to construct case, the applicant has to file a map showing the general location of the proposed work (section 94 of the Act). No such requirement exists in a section 99 application. Furthermore, in a leave to construct application (i.e., an application under section 90, 91, or 92 of the Act), an applicant has to satisfy the Board that it has offered or will offer to each owner of land affected by the approved route an agreement in a form approved by the Board (section 97 of the Act). Again, no such requirement exists in a section 99 application.<sup>5</sup>*

If Grant Lake has concerns regarding impacts on particular land parcels these can be addressed either with compensation (which is beyond the scope of an application for

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<sup>3</sup> [Appendix D\(1\)](#) Notice of Completion, [Appendix D\(2\)](#) Wawa Transmission Line Class EA Report, [Appendix E](#) Environmental Justification Report

<sup>4</sup> [Appendix F](#) (Amended and Restated Access Licence Agreement)

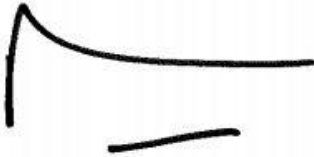
<sup>5</sup> EB-2006-0352 *Toyota Woodstock Transmission Interconnection*, Second Interim Decision, para 14

expropriation authorization) or practical solutions which can be included in the conditions if the OEB grants approval for expropriation authorization. However, a review of the selected route or overall project is beyond the scope of the proceeding as the OEB has determined in several previous decisions.<sup>6</sup>

The Applicant notes that it conducted extensive consultation with community stakeholders and landowners, as demonstrated by the extensive consultation record filed with the OEB on 23 December 2026. As the Application demonstrates, Grant Forest and the broader community are supportive of the project. The only outstanding issue between the Applicant and Grant Forest is the determination of compensation which is beyond the scope of this proceeding.

For the reasons set out above the Applicant requests that the OEB not include Issues A and B in the Issues List for this Application.

Yours truly,

A handwritten signature in black ink, consisting of a vertical line on the left, a horizontal line extending to the right, and a short horizontal line below the main horizontal line.

Marc Kemerer

Cc: 1000757443 LP

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<sup>6</sup> See for example [EB-2025-0093](#), *Hydro One St. Clair Expropriation*, Decision on Issues List, June 16, 2025, page 3 and EB-2006-0352 *Toyota Woodstock Transmission Interconnection*, Second Interim Decision, April 25, 2007, 2007 CarswellOnt 8809, 93 L.C.R. 17 at para 14 (attached)

2007 CarswellOnt 8809  
Ontario Energy Board

**Hydro** One Networks Inc., Re

2007 CarswellOnt 8809, 93 L.C.R. 17

## **In the Matter of the Ontario Energy Board Act, 1998, S.O. 1998, c.15, (Schedule B)**

In the Matter of an application by **Hydro** One Networks Inc. under section 99(1) of the Ontario Energy Board Act, 1998 for authority to expropriate land for the purposes of an overhead transmission line for the **Toyota** Woodstock Transmission Interconnection project

B. Rupert Member, C. Spoel Presiding Member

Judgment: April 25, 2007  
Docket: EB-2006-0352

Counsel: None given

Subject: Natural Resources; Property; Civil Practice and Procedure; Environmental; Public

### **Related Abridgment Classifications**

#### **Real property**

##### **VII Expropriation**

###### **VII.2 Power to expropriate**

###### **VII.2.e Statutory power of public utility**

#### **Real property**

##### **VII Expropriation**

###### **VII.3 Procedure on expropriation**

###### **VII.3.a Statutory requirements**

###### **VII.3.a.iii Miscellaneous**

### **Headnote**

**Real property --- Expropriation — Power to expropriate — Statutory power of public utility**

**Real property --- Expropriation — Procedure on expropriation — Statutory requirements — General principles**

### **Table of Authorities**

#### **Statutes considered:**

*Environmental Assessment Act*, R.S.O. 1990, c. E.18

Generally — referred to

*Expropriations Act*, R.S.O. 1990, c. E.26

Generally — referred to

*Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched. B Generally — referred to

- s. 90 — referred to
- s. 91 — referred to
- s. 92 — referred to
- s. 94 — referred to
- s. 95 — referred to
- s. 97 — referred to
- s. 99 — considered
- s. 99(1) — considered

**Regulations considered:**

- Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched. B *Definitions and Exemptions*, O. Reg. 161/99
- Generally — referred to
- s. 6.2(1)(c) [en. O. Reg. 365/00] — considered

**Decision of the Board:**

- 1 The following three procedural issues have arisen in this application:
  - whether **Toyota** Motor Manufacturing Company of Canada (“**Toyota**”) is properly an intervenor in this matter;
  - whether the hearing of this application should be written or oral; and
  - whether the issue of the route chosen should be an issue at the hearing of this application.

2 Procedural Order #2 was issued April 9, 2007. Among other things, it provided the Ontario Energy Board’s (the “Board”) decision on these three issues and advised that reasons for those decisions would be released shortly. The reasons supporting the Board’s decision on the first two issues were issued on April 17, 2007. The reasons supporting the Board’s decision on the issue of route selection are set out below.

**Background**

3 **Hydro** One Networks Inc. (“**Hydro** One” or the “Applicant”) filed an application, dated December 22, 2006, with the Board under [section 99\(1\) of the Ontario Energy Board Act, 1998 \(the “Act”\)](#). The application is for authority to expropriate land for an overhead transmission line in Woodstock, Ontario (the “Application”).

4 The Board’s Notice of Application was issued on January 26, 2007.

5 On February 16, 2007, Andrew Streutker (“Streutker”), Edward Tuns (“Tuns”) and Bruce Forster (“Forster”), all landowners with interests in property affected by the Application, were granted intervenor status. In their letters applying for intervenor status (the “application letters”), Streutker and Tuns advised that they would be calling evidence on route selection for the transmission line.

6 On February 18, 2007, in its written response to the application letters, the Applicant took the position that the issue of route should not form part of any hearing, as it had been examined immediately prior to the Application as part of the process mandated by the [Environmental Assessment Act](#).

7 By letter dated March 2, 2007, the Board advised the parties that the route for the transmission line would not be an issue at the hearing of the application.

8 As a result of correspondence from Streutker and Tuns, on March 14, 2007 the Board issued Procedural Order No. 1. Among other things, it ordered those intervenors who wanted the issue of route selection to be part of any hearing held to file their written submissions by March 23, 2007, and ordered any responses to those submissions to be filed by March 30, 2007. Streutker and Tuns made submissions on March 29, 2007. The Applicant and **Toyota** made submissions on March 30, 2007.

Forster made no submissions.

## Findings

9 The Panel has determined that the issue of route will not form part of the hearing of the application. In reaching its conclusion, the Panel considered the relevant legislation and the process of route selection under the *Environmental Assessment Act*.

### *The Legislation Governing Expropriation before the Board*

10 [Section 99 of the Act](#) states that:

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 from the requirement to obtain leave by the Board under section 95 or a regulation made under clause 127(1)(f).

(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.

(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.

(4) Repealed.

(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.

11 The issue before this Panel was whether [section 99 of the Act](#) requires the Board to consider the route of a proposed project as part of an expropriation application.

12 [Section 99 of the Act](#) allows persons to apply to expropriate land for a work in two circumstances:

1. where a leave to construct has already been granted to a person; and
2. where a person is not required to obtain a leave to construct authorization from the Board under [section 95 of the Act](#) or a regulation.

13 In the case at hand, **Hydro** One is exempt from having to obtain a leave to construct from the Board because of [Ontario Regulation 161/99 — Definitions and Exemptions](#) (made under [the Act](#)). [Section 6.2\(1\)\(c\)](#) of the regulation states that a person is exempt from [section 92 of the Act](#) (the section requiring the Board's leave to construct an electricity transmission or distribution line) if the person is constructing or reinforcing an electricity transmission line that is 2 kilometres or less in length.

14 While the Board is required to deal with matters relating to route under a leave to construct application, the same is not true for a [section 99](#) application. In a leave to construct case, the applicant has to file a map showing the general location of the proposed work ([section 94 of the Act](#)). No such requirement exists in a [section 99](#) application. Furthermore, in a leave to construct application (i.e., an application under [section 90, 91, or 92 of the Act](#)), an applicant has to satisfy the Board that it has offered or will offer to each owner of land affected by the approved route an agreement in a form approved by the Board

(section 97 of the Act). Again, no such requirement exists in a section 99 application.

15 Section 99 of the Act requires the applicant to file a planned description of the land required, not a complete plan of the entire route. Furthermore, the Board determines whether the expropriation of the land is in the public interest, not whether the entire work is in the public interest. There is no mention of the Board approving a route, examining a route, or even having the route filed as part of the application. If the Legislature had intended the Board to consider route as part of a section 99 application, it would have required the filing of information similar to that required for leave to construct applications.

16 Under section 99 of the Act, the person applying for the expropriation has either already received leave to construct from the Board (in which case, the Board would have approved the route as part of that order) or is exempt from the need to obtain the Board's leave. By exempting certain persons from the leave to construct provisions, the Legislature intended that those persons would not need to file complete route information with the Board nor offer to each owner of land affected by the approved route an agreement in a form approved by the Board.

17 The Panel finds that it is not required to consider the proposed route of a work in the determination of an application under section 99 of the Act.

18 The Panel offers the following comment upon the submission made by Streutker and Tuns that the Board should proceed in a manner similar to Inquiry Officers under the *Expropriations Act* who “regularly consider alternative routes or acquisitions” when considering expropriations of land.

19 Statutory tribunals may exercise only those powers given to them by the Legislature. Those powers are found in the tribunal's governing statute and corresponding regulations. The powers of a Panel sitting on an expropriation application under the *Ontario Energy Board Act, 1998* differ significantly from those given to Inquiry Officers under the *Expropriations Act*. The Panel must proceed with this application in accordance with its legislation and procedure. It cannot import criteria from a different legislative regime when determining this application.

#### ***The Process of Route Selection under the Environmental Assessment Act***

20 Had the Board been required to consider the proposed route of a work in a section 99 application, the Board would have found that the process used to determine the proposed route in this case was satisfactory and the Board would not have heard evidence on route selection as part of this Application.

21 As is clear from the pre-filed evidence, and the written submissions of the Applicant and **Toyota**, the issue of alternative routes has been reviewed and concluded pursuant to the requirements of the *Environmental Assessment Act*. As part of the process which culminated in the filing of the draft Class Environmental Assessment Environmental Study Report with the Ministry of the Environment, two Public Information Centres were held where public input into the proposed route was solicited. There was also a thirty-day public and agency review period, as required by the *Environmental Assessment Act* (the “review period”). Comments made during the review period by the public, which would include affected landowners, and agencies would be taken into account in determining the final approved route and location for the transmission line.

22 In their submissions **Hydro One** and **Toyota** submitted that any consideration of alternative routes at this stage would be a repetition of the process already undertaken and completed.

23 The Panel agrees that an examination of the proposed route would be duplicative. The issue of alternate routes was dealt with by the Ministry of the Environment pursuant to its authority under the *Environmental Assessment Act*. The Board will not replicate processes which have already been carried out under the jurisdiction and authority of other agencies and ministries.

#### ***Conclusion***

24 For the reasons set out above, the Board finds that route selection will not be an issue to be examined in this proceeding.

**End of Document**

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