



Reply to the Attention of: Marc Kemerer
Direct Line: 416.865.7222
Email Address: marc.kemerer@mcmillan.ca
Our File No.: 297087
Date: March 25, 2026

BY COURIER and EMAIL

Ontario Energy Board

P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

**Attention: Mr. Ritchie Murray, Acting
Registrar**

Mr. Murray:

**Re: EB-2025-0314 - BFN Transmission GP Holding Company Inc. - Application
for authority to expropriate certain interests in land – Reply to Grant
Lake Motion for Further Information and Request to File Evidence**

We are counsel to the Applicant, 1000757443 LP by its general partner, BFN Transmission GP Holding Company Inc. ("**Applicant**") in the above-referenced proceeding.

The Applicant applied for authority, under section 99(1) of the *Ontario Energy Board Act, 1998* (the "**OEB Act**") to expropriate certain easements for the purpose of constructing and operating a transmission line in Algoma District, from the Hydro One Hollingsworth Transmission Station to the Island Gold District mines which are owned and operated by Alamos Gold Inc. (the "**Project**").

The sole intervenor in this proceeding is the affected landowner, Grant Lake Forest Resources Ltd. and Josephine Forest Resources Ltd. (together "**Grant Lake**").

Grant Lake submitted a Notice of Motion on March 18, 2026 requesting further and better responses to certain interrogatory questions that Grant Lake had posed to the Applicant (the "**Motion**").

On March 19, 2026, Grant Lake submitted a letter to the OEB setting out the scope of its proposed evidence ("**Request to File Evidence**").

In accordance with OEB [Procedural Order No.3](#), we are making this submission on behalf of the Applicant in response to the Motion and Request to File Evidence.

Introduction

In a motion for further and better responses to interrogatories, the central issue should be whether adequate disclosure has been made by the Applicant in order for the OEB to (i) have the information and evidence necessary to make findings on the issues in the proceeding, as set out in the OEB's [Decision on Issues List](#); and (ii) to fairly adjudicate whether the requested expropriation authorization relief sought should be granted, or not.

The Applicant submits that the Motion should be dismissed and the Request to File Evidence should be denied. The Applicant has already provided considerable evidence on the record in order for the OEB to fairly determine if the requested expropriation authorization is in the public interest and should be granted. In its Motion and Request to File Evidence, Grant Lake has not demonstrated that the requested information is necessary, in addition to what is already on the evidentiary record, or relevant to the issues that the OEB needs to determine in this proceeding.

In our respectful view, the relief sought by Grant Lake does not arise out of a genuine need to obtain or file further information that it needs to make its case or that the OEB needs to decide the issues in this proceeding. Rather, it is respectfully submitted that the Motion and Request to File Evidence are an attempt by Grant Lake to inappropriately (i) pre-empt a decision by the OEB regarding whether the requested expropriation is in the "public interest", and (ii) unnecessarily delay the OEB's proceedings.

Grant Lake's position, which appears to be driving the requests in its Motion and Request to File Evidence, is that there is no "public interest" supporting the Applicant's request for expropriation authorization, because the Project would serve only the private commercial interests of the Applicant's partners.

Based on this narrow interpretation of the "public interest", Grant Lake is seeking significant information about the Project, the Applicant's investors, the non-Grant Lakes land arrangements, and other commercial information about the Project in order to further argue that the Project is not in the "public interest" because it is a privately funded transmission line that will supply the one large industrial customer (Alamos).

The Applicant does not dispute the fact that the Project is being privately funded and supplying a large industrial customer (at least initially). No further evidence is required as this fact is not in dispute. What does appear to be in dispute is whether such a project is in the "public interest" and that is a matter for final argument and not served by further discovery or evidentiary filings.,

In response to the specific requests being sought in the Motion, the Applicant submits as follows:

1. Motion for further information

Grant Lakes seeks further and better information in respect of four (4) interrogatories, each of which are addressed below:

1. Grant Lake.1, part d., paragraph (ii).

"In particular, Grant Lake seeks production of a copy of the limited partnership agreement for the Applicant between Alamos Gold Inc. (Alamos) and Batchewana First Nation (BFN)."

As indicated in the response to the interrogatory, the Applicant is not a party to the limited partnership agreement which is a private agreement among the investors in the Applicant. While the Applicant declined to produce the agreement and stated that it did not believe the requested information was relevant, the Applicant nevertheless responded to several detailed questions about its corporate structure.¹

We submit that further information as to the identity of the investors in the Project, the allocation of risk and responsibility among the various investors, or commercial arrangements in support of the Project are not relevant to any of the issues in the proceeding.

The only issues established in the Decision on Issues List are:

1. *Is the proposed expropriation in the public interest?*
2. *Has the applicant requested expropriation of the minimum amount of land needed for the project, and the minimum legal interest required for that land?*
3. *What conditions, if any, should be attached to the OEB's Order in this proceeding?*

The question of who pays for the construction of the Project is not relevant to any of the above issues, including the "public interest" question. It goes to the question of whether the Project is exempt from the requirement to obtain "Leave to Construct", which is not an issue before the OEB in this proceeding.

The limited partnership agreement governs who is responsible for contributing funds for the construction of the Project, which has no relation to the issue of whether the requested expropriation is in the "public interest". The ownership of the Project throughout its intended lifespan is already on the record. There is no additional information to be gleaned

¹ Response to Interrogatory 1. Grant Lake.1 (d), [BFN Responses to Interrogatories redacted 20260226](#), page 4

from the limited partnership agreement relevant to the OEB's determination of whether expropriation is in the public interest.

Furthermore, the contents of the limited partnership agreement are commercially sensitive and confidential to the parties to such agreement (which, again, do not include the Applicant). It is inconceivable that the OEB would require any other applicant in an expropriation proceeding to disclose confidential commercial information of a third party (i.e., its shareholders or investors) to determine whether a requested expropriation is in the "public interest".

1. Grant Lake.2, part d.

"In particular, Grant Lake seeks production of the transmission services agreement between the Applicant and Alamos, or if that agreement has not been finalized then any term sheet entered into that anticipates that agreement."

In its interrogatory response, the Applicant explained that the Transmission Services Agreement is currently being negotiated, and in any event is not relevant to the issues in this proceeding. Nevertheless, the Applicant disclosed that, based on the status of current negotiations, the expectation is that the customer(s) will pay Transmission Services Fees that collectively compensate the Applicant for its reasonable costs to construct, operate, maintain, decommission, etc. the Project.²

Grant Lake's Motion does not demonstrate why it needs additional information about, or a copy of the draft Transmission Services Agreement, other than to argue that it demonstrates the private, commercial nature of the agreement which, according to Grant Lake's apparent logic, demonstrates that the requested expropriation relief is not in the "public interest".

The Applicant does not dispute that Alamos is the customer that will be receiving the required electricity supply from the Project and will be one of the parties that benefits from the Project. This undisputed fact is one of several factors that the OEB can take into consideration. The contents of the Transmission Services Agreement are not required in order for the OEB to determine whether the requested expropriation relief is in the public interest.

1. Grant Lake.6, parts d. and e.

"In particular, Grant Lake seeks production of communications between the Applicant and Grant Lake related to compensation."

² Response to Interrogatory 1. Grant Lake.2(d), [BFN Responses to Interrogatories redacted 20260226](#), page 6

The Applicant disagrees that a “*central element in any expropriation*”³ is that the Applicant demonstrate best efforts or due diligence in negotiating *compensation* with a landowner. The OEB Filing Requirements do not require the Applicant to do so.⁴

As the Motion correctly notes, the OEB does not determine issues of compensation.⁵ That being the case, there is no reason for Grant Lake to seek further information specifically regarding the Applicant’s efforts to negotiate *compensation* with Grant Lake and not any other issues the parties could not agree on.

In its response to the interrogatory, the Applicant set out the commercial and legal issues outstanding between the parties, in addition to the dispute regarding compensation.⁶ The Applicant also referred to the “*Timeline of Land Access Agreements, Negotiations and Related Communications*” filed with its Application⁷ and notes other interrogatory responses which demonstrated the extensive communications with Grant Lake’s agents.⁸

Grant Lake should be fully aware of, and has copies of and access to, all the communications between the Applicant and Grant Lake which are being sought. Grant Lake’s request for these documents appears to be: (i) an attempt at a make-work project to create administrative burden for the Applicant and to further delay the OEB process and/or (ii) an attempt by Grant Lake to surreptitiously place compensation issues on the evidentiary record by placing exclusively compensation-focused communications before the OEB for its review and consideration.

We respectfully submit that the provision of further information regarding compensation negotiation is not necessary, and the Applicant has demonstrated, and provided ample evidence of, due diligence in negotiating settlement on *all unresolved matters* with Grant Lake and not just compensation.

2. Grant Lake.8, part c.

“In particular, Grant Lake seeks production of agreements entered into by the Applicant for other land rights acquired for the subject transmission line.”

³ Grant Lake Motion, paragraph 18

⁴ Filing Requirements for Electricity Transmission Applications, [Chapter 4 - Leave to Construct and Related Matters](#), updated December 16, 2025 (Filing Requirements) section 4.5.2 states:

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.

⁵ Grant Lake Motion, paragraph 17

⁶ Interrogatory Responses to 1. Grant Lake.6(b), [BFN Responses to Interrogatories redacted 20260226](#), pages 15-16

⁷ EB-2025-0314, Application, [Appendix I](#)

⁸ Interrogatory Responses to 1. Grant Lake.4(d) and (e), [BFN Responses to Interrogatories redacted 20260226](#), pages 8-9

In its interrogatory response, the Applicant declined to provide the copies of agreements with other landowners but confirmed that no other landowner is receiving higher rent or fee (per acre) than what was previously offered to and rejected by Grant Lake.⁹

In its Motion, Grant Lake argues that, because the Applicant is exempt from the requirement to obtain leave to construct, the OEB has not reviewed or approved the form of agreement offered to landowners (as the OEB would have done in a leave to construct proceeding).¹⁰

We submit that the Applicant is not required to file forms of agreements in an application for expropriation relief; such filing is only required in a leave to construct proceeding.¹¹

The OEB has opined on such matters previously. Like the present case, EB-2006-0352 related to a transmission line which was exempt from the need to obtain leave to construct and fell within the exemption referred to in section 99(1)2 of the OEB Act. The OEB concluded that, in the case of a project that is exempt from leave to construct, the OEB should not use an expropriation proceeding to review the form of landowner agreements that would otherwise have been considered in the leave to construct process. Specifically, 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.¹²

(emphasis added)

If Grant Lake was truly interested in the form of easement agreement that it could negotiate with the Applicant, it could have simply asked for such a document, instead of requesting copies of agreements with other landowners who entered into voluntary agreements.

⁹ Interrogatory Response to 2.Grant Lake.8 (c), [BFN Responses to Interrogatories redacted 20260226](#), page 20

¹⁰ Grant Lake Motion, paragraph 26

¹¹ Section 97 of the OEB Act states that the OEB may not grant leave to construct until it is satisfied that the applicant has offered or will offer to each landowner an agreement in a form approved by the OEB. Section 99(1) does not contain such a requirement.

¹² EB-2006-0352 *Toyota Woodstock Transmission Interconnection*, Second Interim Decision, para 14, attached as Appendix A

The OEB standard forms of agreement for land acquisitions are readily available and the OEB Filing Requirements reference various types of lands rights agreements and forms of agreement that have been approved and used in numerous other OEB cases.¹³

In addition to the OEB's decision in EB-2006-0352 cited above, the fact that a person is exempt from the requirement to obtain leave to construct and therefore file forms of agreement was also considered by the government when it introduced the new exemption in the Regulation.¹⁴ The government did not anticipate any mischief resulting from an applicant being exempt from the requirement to obtain leave to construct and not having its forms of agreement reviewed by the OEB. In the Environmental Registry posting¹⁵ with respect to the amended Regulation, the Ministry of Energy, Northern Development and Mines stated:

"With respect to the form of landowner agreement, review of hearings to date indicate that transmitters currently adopt best practices with regard to landowner agreements. In the event the transmitter and landowners do not reach agreement related to land, the OEB will continue to administer the expropriation of land under Section 99 of the Ontario Energy Board Act, 1998."¹⁶

We note that while Grant Lake presumably also has in its possession privately negotiated easements and leases with other utilities, the Applicant has not sought to have those agreements filed on the record. The Applicant recognizes and respects that those are private agreements, negotiated under perhaps different contexts, for different parcels of lands. They are not directly transferrable to the lands needed for the Project, and in any event would, if anything, provide insight only into compensation and other lease or easement terms, neither of which issues are determinable by the OEB or are in any way relevant to the proceedings. Such agreements would not contribute in any manner to the issue of "public interest", or the issue of what lands are required by the Applicant.

As to whether other landowner agreements might inform "conditions" to be attached to any expropriation order, the Applicant notes that the OEB has broad experience and expertise in determining what conditions are appropriate to attach to an expropriation order for a transmission line, and can refer to its own prior decisions in that regard rather than to

¹³ Filing Requirements for Electricity Transmission Applications, [Chapter 4 - Leave to Construct and Related Matters](#), section 4.2.1, page 8 and footnote 13. Also, Filing Requirements, section 4.3.5.3 (Land-Related Forms), pages 31-32 and footnote 45 which sets out sample easement agreements.

¹⁴ [O. Reg. 161/99: Definitions and Exemptions](#). Sections 6.2.1(1) and 6.2.1(e.1) were added to the Regulation in November 2022 by [Ontario Regulation O. Reg. 511/22](#)

¹⁵ Environmental Registry of Ontario (ERO) posting setting out the government's intention and rationale for the new exemption ([ERO 019-3038](#)).

¹⁶ <https://ero.ontario.ca/notice/019-3038>

individual elements or provisions of some larger document that was settled in the context of a larger commercial agreement between private parties.

The same analysis would apply to any private agreements negotiated by the Applicant with other landowners for other parcels.

2. Request to File Evidence

As noted above, Grant Lake indicates that it may wish to file evidence on certain matters. Our response to each request is set out below:

"Grant Lake may seek to file its own evidence on the degree to which the Applicant and its investors fairly and diligently made efforts (or not) prior to filing the Application for expropriation to resolve, among other issues, compensation to Grant Lake for the requested land rights."¹⁷

As indicated in the reply to the Motion with respect to Interrogatory 1. Grant Lake.6 (d) and (e), the request for further information regarding the level of an Applicant's efforts to negotiate *compensation* is out of scope and not relevant.

We submit that the OEB should not allow Grant Lake to further delay the proceeding by filing any further evidence pertaining to compensation negotiation, which is irrelevant to the issues set out on the Issues List, and not required by the OEB Filing Requirements.

In the Request to File Evidence, Grant Lake states that it may also seek to file the following evidence:

1. *Further information on the history of dealings between the Applicant and its principals and Grant Lake, and by the Applicant with Grant Lake's lands, which reflect a significant disregard for Grant Lake's authority over its lands and the "bona fides" of the Applicant's claim that it and its principals sought to deal fairly with the landowner. Such a pattern of conduct would be a factor which the OEB should take into account in determining whether it is appropriate to grant the requested authority to expropriate, and if so with what conditions.*

This statement by Grant Lakes only reinforces the Applicant's evidence that Grant Lake has supported the Project and the proposed route by its issuance of a Letter of Support, an original Access License Agreement and an amended Access License Agreement.¹⁸ The fact that Grant Lake elected to renew and extend the original Access License Agreement

¹⁷ Request to File Evidence, page 2, first paragraph

¹⁸ EB-2025-0314, Application, pdf page 9 of 14, and Appendices F and G

suggests that any alleged “pattern of conduct” was not considered to be material at the time, and is only now being raised as an excuse to further delay this proceeding. In any event, this proceeding is not about any prior arrangements or agreements. It is about whether the expropriation of land for the Project is in the public interest and therefore justifies authorization to expropriate. This proceeding is not a suitable forum for an intervenor to raise past grievances against an Applicant.

The Request to File Evidence also indicates that Grant Lake may seek to file the following:

2. Further information regarding the route that the Applicant proposes to expropriate, and the extent to which that route affects Grant Lake’s lands and thus may support any particular conditions should the OEB determine to grant authority to expropriate those lands. That route is quite remote, represents an essentially fresh ingress to Grant Lake’s lands, and if access is not properly controlled and monitored poses a number of risks of injurious affection and incremental costs to Grant Lake.

As the Applicant noted in its Response to Grant Lake’s submission on the Issues List,¹⁹ issues regarding route selection are beyond the scope of an application for expropriation authorization and such issues were examined in the Environmental Assessment (EA) process.²⁰ The OEB has determined in several previous decisions that a review of the selected route or overall project is beyond the scope of the proceeding.²¹

If Grant Lake had genuine concerns regarding particular impacts, it could have submitted interrogatories to the Applicant on specific areas of concern and the Applicant could have addressed the concerns in its responses.

3. Method of Hearing

We note that, in its Request to File Evidence, Grant Lake requests that it be provided the opportunity at a later date to advise whether it wishes the OEB to conduct an oral hearing.²²

We respectfully request that the OEB not allow Grant Lake to further delay this proceeding by providing for unnecessary procedural steps such as a motion or submissions to determine whether an oral hearing is warranted or not.

¹⁹ [BFN Letter to OEB Issues List Transmission 20260128](#)

²⁰ [Appendix D\(1\)](#) Notice of Completion, [Appendix D\(2\)](#) Wawa Transmission Line Class EA Report, [Appendix E](#) Environmental Justification Report

²¹ 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)

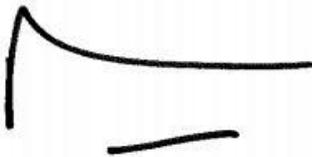
²² Request to File Evidence, page 3

Grant Lake has not demonstrated why it may need to cross-examine the Applicant's witnesses and why an oral hearing may be appropriate. Oral hearings should be reserved for cases involving contested evidence or issues of witness credibility, neither of which are applicable to this proceeding. Grant Lake has not indicated that it is challenging the Applicant's evidence and has only engaged in unnecessary inquisition for further information which is not relevant to the issues in the proceeding. The fundamental dispute in this proceeding is a matter of legal argument and does not warrant expending the OEB's resources on an oral hearing.

For the foregoing reasons, the Applicant respectfully submits that the OEB should dismiss Grant Lake's Motion and deny its Request to File Evidence or make submissions on whether an oral hearing is appropriate.

All of which is respectfully submitted.

Yours truly,

A handwritten signature in black ink, consisting of a vertical line on the left, a curved line at the top, and a horizontal line extending to the right.

Marc Kemerer

Attachment

Hydro One Networks Inc., Re, 2007 CarswellOnt 8809

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

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

Hydro One Networks Inc., Re, 2007 CarswellOnt 8809

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

- 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

Hydro One Networks Inc., Re, 2007 CarswellOnt 8809

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

(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.

Hydro One Networks Inc., Re, 2007 CarswellOnt 8809

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

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