

**ONTARIO ENERGY BOARD**

**BFN Transmission GP Holding Company Inc., on behalf of  
1000757443 Ontario LP**

**Application for authority to expropriate certain interests in land**

**REPLY ON MOTION**

**By Grant Lake for further and better interrogatory responses**

April 1, 2026

**Context for the Motion**

1. This is not a normal expropriation authority application. It is an application by a special purpose vehicle set up by two parties, one of whom is a private commercial enterprise that will be the sole beneficiary of the utility service in issue, and the commercial interests of/benefits to the other of whom from the proposed transmission project have not to date been clearly explained. Part of Grant Lake's motion is seeking a more complete picture of the interests of that second party.
2. Unlike in most other expropriation authority applications that have come before this Board Grant Lake has not been dealing with a regulated public utility with a public interest mandate, or a licenced power generator contracted under a government directed electricity supply procurement program. This Board has no experience with the contracting processes of the Applicant in this case.
3. Expropriation is an extraordinary power, and should be strictly construed in favour of those whose land rights have been affected.<sup>1</sup>
4. The Applicant is asking the OEB to grant it such an extraordinary remedy on the basis that:

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<sup>1</sup> Notice of Motion, paragraph 19.

- a. Benefits to the Batchewana First Nation (BFN) through its participation in this venture (among other factors) support a “public interest” characterization of the project and the exercise by the OEB of its section 99 authority.<sup>2</sup>
  - b. BFN and the other partner in the project, Alamos Gold Inc. (Alamos), have made good faith efforts to negotiate acquisition by the Applicant of the land interests sought from Grant Lake but “*despite having engaged in extensive discussions*” have been unable to agree with the owners of Grant Lake on compensation.<sup>3</sup>
5. Grant Lake has focussed its motion for further and better interrogatory response on these two topics, which are not only centrally relevant to the exercise of the OEB’s section 99 authority, but are two topics centrally put into issue by the Applicant itself in its Application.
  6. The essence of the Applicant’s Submissions on the Motion is that it has provided enough information to support its characterization of BFN’s interest in the project and the discussions had with Grant Lake’s owner, and the OEB should be satisfied with that.
  7. Grant Lake, whose land rights would be affected by the extraordinary relief sought by the Applicant, is not satisfied. An Applicant doesn’t get to constrain development of the record to serve its own characterization of the matter. The purpose of interrogatories, and to the extent appropriate cross-examination, is to test that characterization.
  8. As respectfully submitted in its Notice of Motion, if the OEB is going to consider granting an order that, as characterized by the Supreme Court of Canada, would constitute a “*very significant interference*” with Grant lake’s private property rights, then, within reason, and subject to relevance and potential probative value (precisely how much value cannot be determined until the information is provided), Grant Lake should be entitled to full answers to its interrogatories in defence of those rights.
  9. Grant Lake repeats and relies on its Notice of Motion, which articulated in detail in respect of each request for further information the relevance and potential probative value of that information as specifically related to the bases for relief advanced by the Applicant and

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<sup>2</sup> Application page PDF6.

<sup>3</sup> Transmittal letter page 2, 2<sup>nd</sup> paragraph and Application page PDF9, bottom to PDF10.

noted above. Brief reply to the Applicant's responding Submissions on the Motion (Motion Response) is provided below.

**Grant Lake.1, part d., paragraph (ii) & 1.Grant Lake.2, part d.**

10. As noted above, the Applicant asserts that benefits to the Batchewana First Nation (BFN) through its participation in this venture (among other factors) support a "public interest" characterization of the project and the exercise by the OEB of its section 99 authority.<sup>4</sup>

11. Grant Lake requested copies of the limited partnership agreement for the Applicant and of the Transmission Services Agreement (or Term Sheet if a full Transmission Services Agreement has not been concluded) between the parties in order to understand the commercial interests of and benefits to BFN in the proposed transmission line – i.e. its financial stake and the commercial arrangements supporting its participation in this venture. In its Notice of Motion Grant Lake candidly explained its position that those interests are of a purely private and commercial nature and do not support the exercise by the OEB of its jurisdiction to grant the extraordinary, public interest driven remedy of an authorization to expropriate.

12. In its interrogatory responses the Applicant states:

*While the Project will operate on a cost recovery basis and does not generate distributable profits, it delivers significant long term qualitative value to Batchewana First Nation by building lasting capacity within the community. ... the Project is expected to create direct and indirect employment opportunities in Algoma region which will also benefit BFN.*<sup>5</sup>

13. While the term "distributable profits" was not explained, this brief statement could be construed as indicating that there will be no direct net financial benefit to BFN from its involvement in the project.

14. In its Motion Response the Applicant submits that "further information as to the identity of the investors in the Project, the allocation of risk and responsibility among the various

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<sup>4</sup> Application page PDF6. [Note that all references to the Application provide PDF page numbers which include the transmittal letter at the outset of, and forming part of, the PDF.]

<sup>5</sup> Response to 1.Grant Lake .2, part d.

*investors, or commercial arrangements, in support of the Project are not relevant to any of the issues in the proceeding.”*

15. It is the Applicant that has put the nature of BFN’s interest in the project in issue, in support of the Applicant’s contention that the project, and the granting of authorization to expropriate in connection therewith, is in the public interest. Grant Lake is entitled to test that contention. The requested commercial documents are relevant to, and potentially probative of, the nature of BFN’s interest in the project and should be produced.
16. The Applicant further asserts that *“who pays for the construction of the Project is not relevant to any of the above issues, including the “public interest” question.”*<sup>6</sup> Without accepting this proposition, we submit that the other side of that equation – who benefits – is directly relevant to the public interest assertion that underlies this Application and the determination that the OEB will be asked to make.
17. To the extent that the content of these agreements are commercially sensitive<sup>7</sup>, the OEB has a process to address that while ensuring that relevant and probative information is produced and properly considered. That is not a basis for a refusal to respond to the interrogatory.
18. The Applicant further submits in its Motion Response<sup>8</sup>:

*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”.*

19. While no basis for this statement was provided, and its validity is not obvious to us, in any event the Applicant in this case is not like *“any other applicant”* normally seeking expropriation authority; generally a regulated utility or a licenced generator contracted to supply electricity to the provincial system. The parties to the agreements in issue are not independent third parties. They are the owners of the Applicant and the entities that the

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<sup>6</sup> Motion Response, page 4.

<sup>7</sup> Motion Response, page 4, first full paragraph.

<sup>8</sup> Motion Response, page 4, first full paragraph.

Applicant puts forth as demonstrative of the public interest based on which an extraordinary remedy is being sought from this Board, contrary to the interests of Grant Lake.

20. Grant Lake maintains its request for these documents.

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

21. As noted above, the Applicant has put into issue the lack of ability of the parties to agree on compensation, despite what the Applicant asserts were “good faith efforts”.<sup>9</sup> In his November 28, 2025 Application transmittal letter, Applicant’s counsel specifically states<sup>10</sup>:

*Unfortunately, despite having engaged in extensive discussions, the Applicant and Shanda have not been able to agree on compensation for the use of Expropriation Lands. This has necessitated this Application.*

22. In interrogatory 1. Grant Lake.6 Grant Lake requested that the Applicant detail the communications between the parties that, in its view, demonstrate its efforts to negotiate compensation.

23. In its Motion Response the Applicant indicates that it has set out the commercial and legal issues outstanding between the parties, has demonstrated “*extensive communications with Grant Lake’s agents*”, and has “*demonstrated, and provided ample evidence of, due diligence in negotiating settlement on **all unresolved matters** with Grant Lake and not just compensation*” [emphasis in original].<sup>11</sup>

24. Review of the interrogatory response, and the prefiled evidence, in fact indicates very little information on the discussions between the parties related to compensation, beyond the assertion noted above of “*extensive discussions*” in that respect.

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<sup>9</sup> Application, page PDF9, first and last two paragraphs.

<sup>10</sup> Application page PDF2, 2<sup>nd</sup> paragraph.

<sup>11</sup> Motion Response, page 5.

25. The OEB has confirmed that the efforts of the Applicant to negotiate an agreement with Grant Lake is within the scope of this matter.<sup>12</sup> There can, of course, be no agreement without consensus on the matter of compensation.
26. Despite aspersions by the Applicant otherwise, Grant Lake is well aware that the OEB will not determine compensation. Nonetheless, facts regarding the discussion of compensation (or the lack of such discussion) are relevant to the extent of the Applicant's efforts to negotiate an agreement.
27. Again, Grant Lake has been candid in its position that there was a lack of any real willingness and effort on the part of the Applicant and its investors to negotiate compensation.
28. The question is relevant, is probative of a consideration that the OEB has acknowledged is within the scope of this proceeding, and the Applicant has not indicated that it has no further information to provide in response. Response should thus be required.

**2. Grant Lake.8, part c.**

29. Interrogatory 2. Grant Lake.8, part c., asked for a copy of agreements entered into by the Applicant for other land rights acquired for the subject transmission line. In its interrogatory response the Applicant declined to provide such agreements on the basis that "*only the fact of the existence of the agreements with other landowners is relevant*". However, as noted in the Notice of Motion, the Applicant went on to make representations regarding the compensation provided for in those other agreements.<sup>13</sup>
30. The bases for Grant Lake's request that copies of the other agreements for the Applicant's project be filed are set out in the Notice of Motion.<sup>14</sup> In short, they are:
- a. Consideration of appropriate conditions to protect the interests of the landowner subject to an authorization for expropriation.

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<sup>12</sup> *Decision on Issues List*, February 3, 2026, page 3.

<sup>13</sup> Notice of Motion, paragraph 30.

<sup>14</sup> Notice of Motion , paragraphs 27-29.

- b. Consideration of the extent to which the Applicant has been consistent in its dealings with various affected landowners, in assessing whether the Applicant has fulfilled its obligations of fairness to, and best efforts to negotiate resolution with, Grant Lake.
- c. Testing the veracity of the statement in the Applicant's response to this interrogatory that *"no landowner is receiving a higher rent or fee (per acre) than the rent that was previously offered to and rejected by Grant Lake Landowners"*.

31. In its Motion Response the Applicant relies on the fact that there is no filing requirement in a section 99 application for the form of landowner agreement proposed by the applicant.
32. The Applicant also cites an interim scoping decision of the OEB in the *Toyota Woodstock Transmission Interconnection* case<sup>15</sup> wherein the Hearing Panel in that case did comment that in an application for authority to expropriate there is no requirement that an applicant satisfy the OEB that it has offered each owner of affected land an agreement in a form approved by the Board. This comment was an aside to a finding by that Hearing Panel that it is not required to consider the route for the proposed work under a section 99 application, as this determination would be duplicative of the determinations made under the applicable *Environmental Assessment Act* process.<sup>16</sup>
33. This finding that it is not necessary for the Board to approve a form of landowner agreement in a section 99 application did not preclude the OEB in that case from considering whether the applicant, Hydro One (a fully regulated and often appearing provincially owned utility with a public interest mandate) treated the landowners fairly throughout the expropriation process.<sup>17</sup> The interim scoping determination cited by the Applicant in its Motion Response is not determinative of whether production (not approval) of landowner agreements is warranted in this case to assess precisely that same issue (whether the Applicant, a private proponent in this case, has treated Grant Lake fairly throughout the expropriation process).

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<sup>15</sup> Included as Appendix A to the Applicant's Motion Response.

<sup>16</sup> Motion Response, Appendix A, paragraph 23.

<sup>17</sup> EB-2006-0352, *Decision and Order*, July 19, 2007, page 16.

34. The Environmental Registry posting cited by the Applicant in support of its refusal to produce these other landowner agreements does not assist it. In fact, quite the opposite. In that excerpt it is clear that in the Ministry of Energy, Northern Development and Mines in proposing the exemption from leave to construct that the Applicant now relies on expressly relies on the fact that:

- a. Transmitters currently adopt best practices with regard to landowner agreements.
- b. The OEB will continue to administer the expropriation of land under section 99.

The transmitter in this instance is a private entity unknown to the OEB, and the OEB's continued administration of expropriation of land is particularly important in this case for ensuring best practices in regard to the proposed agreement with Grant Lake.

35. The requested agreements are available, they are probative of both assertions by the Applicant and the extent to which the Applicant has treated Grant Lake fairly, and they should be filed.

### **Potential Grant Lake Evidence**

36. In Procedural Order No. 3 Grant Lake was directed to provide a summary of its potential proposed evidence, including how such evidence may relate to the interrogatories that are the subject of the motion. Grant Lake filed a letter on March 19, 2026, in response to this direction.

37. Grant Lake's letter indicated that, depending on the outcome of its motion for further and better interrogatory responses and any further production directed as a result thereof, it may seek to file its own evidence on:

- a. The degree to which the Applicant and its investors fairly and diligently made efforts (or not) prior to filing the Application to resolve, among other issues, compensation to Grant Lake for the requested land rights.
- b. The *bona fides* of the Applicant's claim that it and its principals sought to deal fairly with the landowner.

- c. The basis for any particular conditions that would be appropriate considering the essentially fresh ingress to Grant Lake's lands that the proposed route for the transmission line would take.

38. The extent to which such evidence is sought to be filed will depend on what further evidence is elicited from the Applicant regarding:

- a. Discussions between the parties regarding compensation [1. Grant Lake.6, parts d. and e.].
- b. The features of the agreements entered into by the Applicant with other parties along the proposed route [2. Grant Lake.8, part c.].

39. In its Motion Response the Applicant has submitted that no such evidence should be permitted, on the basis that:

- a. Compensation negotiations are irrelevant and out of scope.
- b. The proceeding is not a suitable forum for an intervenor to raise concerns regarding past conduct of the Applicant.
- c. Issues regarding route selection are out of scope.

40. In respect of these objections:

- a. We have already, and repeatedly, addressed the relevance of compensation negotiations in respect of the sufficiency of the Applicant's attempts to resolve matters between the parties prior to bringing its Application.
- b. We disagree that the Applicant's conduct *vis a vis* Grant Lake is irrelevant to this proceeding, given the OEB's directions that Applicants are expected to make good faith efforts to negotiate an agreement with subject land owners.
- c. Contrary to the characterization by the Applicant, the issue is not route selection *per se*, rather it is the extent to which the selected route poses disruption to the land owner and how (i.e. with what conditions) such disruption could be mitigated.

41. If it would be of assistance to the OEB, a more precise description of the nature and intent of any proposed evidence from Grant Lake can be provided following disposition of its motion and the filing of any further production ordered as a result thereof.

### **Method of Hearing**

42. In our letter filed March 19, 2026 in response to the direction in P.O. No. 3 to provide a summary of Grant Lake's potential evidence, we also reiterated the request first advanced in Grant Lake's Intervention Form that Grant Lake be given the opportunity to address its desire for an oral hearing following completion of the written record (i.e. disposition of Grant Lake's motion, any further filings resulting therefrom, and determination of whether Grant Lake would seek, and be granted, the opportunity to file evidence in which case we anticipated the potential for interrogatories thereon).

43. In its Motion Response the Applicant asked the OEB to deny this request as well, stating as follows:<sup>18</sup>

*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 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 this 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.*

44. This assertion by the Applicant effectively assumes that there is an onus on the affected landowner to demonstrate why a hearing should be required. While Grant Lake is most certainly willing to provide further representations regarding how an oral hearing would allow for further development of the record in a manner that would be relevant to, and probative of, the issues for determination herein, the appropriate time to do that would be following disposition of this motion and any subsequently directed filing.

45. In P.O. No. 3, the OEB indicated that it would determine the type of hearing at a later date.

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<sup>18</sup> Motion Response, page 10.

46. At this time, we would only reiterate what we have previously noted; that the OEB has considered the option for an oral hearing to be a requirement in expropriation applications given the legislative authority to expropriate and *“the gravity of an expropriation case, involving as it does the compulsory taking of a person’s property or an interest in their property, without their consent”*.<sup>19</sup>

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<sup>19</sup> See EB-2013-0268, Dufferin Wind Power Inc., *Decision and Order*, May 1, 2014, page 4, first full paragraph.