EB-2026-0083

ONTARIO ENERGY BOARD

IN THE MATTER OF the Ontario Energy Board Act, 1998, S.O. 1998, c.15, Schedule B

AND IN THE MATTER OF section 99(1) of the Ontario Energy Board Act, 1998

AND IN THE MATTER OF an application by Hydro One Networks Inc. for authority to expropriate interests in lands between the City of London and the City of St. Thomas

SUBMISSIONS OF THE ROSS FIRM GROUP ON THE PRELIMINARY ISSUE

June 30, 2026

Overview and Relief Requested

1. The Ross Firm Group (RFG) files these submissions pursuant to Procedural Order No. 1, dated June 23, 2026, on the preliminary issue identified by the Ontario Energy Board (OEB): “Is Hydro One eligible to apply for leave to expropriate under s. 99 of the OEB Act?” RFG treats that question as whether Hydro One Networks Inc. (Hydro One) is a person entitled under section 99(1) of the Ontario Energy Board Act, 1998 to apply for authority to expropriate land for the work. Procedural Order No. 1, pp. 5-7.
2. RFG submits that Hydro One has not discharged that burden on the present record. The OEB should not make a positive jurisdictional finding on the basis of Hydro One’s assertions alone. RFG requests that the OEB either answer the Preliminary Issue in the negative on the present record, or, in the alternative, direct Hydro One to file focused supplemental evidence sufficient to establish each element of the regulatory exemption it relies upon.
3. RFG does not ask the OEB, at this preliminary stage, to determine compensation, to conduct a full section 92 leave-to-construct review, or to decide the ultimate public interest merits of the requested expropriations. RFG’s position is narrower. Because Hydro One has no leave-to-construct order and relies entirely on an exemption from that requirement, the exemption is the statutory gateway to the present section 99 application. That gateway must be established clearly before the application proceeds.

Context

4. Hydro One applied under section 99(1) of the OEB Act for authority to expropriate certain land interests to facilitate the construction and operation of a new 230-kilovolt double-circuit transmission line between the City of London and the City of St. Thomas. Hydro One filed an updated application on March 24, 2026 removing properties for which it stated expropriation relief was no longer required because voluntary agreements had closed. Procedural Order No. 1, p. 1; Application, Exhibit A, Tab 1, Schedule 1, pp. 2 and 7.

5. Hydro One's application states that it is exempt from obtaining leave to construct under section 92 of the OEB Act by virtue of subsection 6.2(1)(e.1) of Ontario Regulation 161/99. Hydro One states that the Project is being undertaken pursuant to a Connection and Cost Recovery Agreement with PowerCo Canada Inc. (PowerCo), that the cost of the Project is to be exclusively paid by PowerCo, and that PowerCo is not a licensed transmitter or distributor. Application, Exhibit A, Tab 1, Schedule 1, p. 2.
6. Procedural Order No. 1 correctly identifies the threshold significance of the Preliminary Issue. The OEB stated that if the regulatory exemption does not apply, Hydro One would not be eligible to apply for expropriation authority under section 99, and that the OEB's decision on the Preliminary Issue will determine whether the OEB has jurisdiction to otherwise consider the application and grant the requested relief. Procedural Order No. 1, p. 6.
7. Procedural Order No. 1 also found that RFG has a substantial interest in the Preliminary Issue. If Hydro One is not exempt from the requirement to obtain leave to construct, that determination could affect the interests of landowners along the Project route, including RFG. Procedural Order No. 1, p. 6.

Statutory Framework

8. Section 99(1) of the OEB Act permits two categories of persons to apply to the OEB for authority to expropriate land for a work. The first is a person who has leave under Part VI of the OEB Act or a predecessor of that Part. The second is a person who intends to construct, expand or reinforce an electricity transmission line or distribution line, or make an interconnection, and who is exempted under the Act from the requirement to obtain leave.
9. Hydro One does not rely on the first category. It has not obtained leave to construct for this Project. Hydro One relies solely on the second category and, specifically, on subsection 6.2(1)(e.1) of Ontario Regulation 161/99.
10. To establish eligibility under the exemption relied upon, Hydro One must establish at least the following: first, that the work for which expropriation authority is sought is the construction, expansion or reinforcement of an electricity transmission line; second, that the construction, expansion or reinforcement of that line is undertaken pursuant to an agreement between Hydro One and one or more customers; third, that the agreement specifies that the cost of the construction, expansion or reinforcement of the line is to be exclusively paid for by the customer or customers; and fourth, that none of those customers is a licensed transmitter or licensed distributor.

11. Those requirements are not technicalities. In a typical section 99 application, the OEB's standard expropriation framework assumes that the project itself has already been subject to a leave-to-construct process. Here, Hydro One asks to proceed directly to section 99 without that prior leave-to-construct determination. The exemption therefore performs the gateway function that leave to construct would otherwise perform. OEB Standard Section 99 Expropriation Issues List, p.1.

The Present Record Does Not Permit a Positive Finding

12. Hydro One's present evidence is not sufficient to permit the OEB to answer the Preliminary Issue in the affirmative. On the key elements of the exemption, the record is largely conclusory.

13. The public version of the Connection and Cost Recovery Agreement is heavily redacted. RFG does not suggest that all commercially sensitive dollar amounts must be made public. However, the public record does not permit RFG to verify payment milestones, capital contribution calculations, security requirements, risk classification, true-up obligations, load forecast assumptions, or other Schedule C terms that bear directly on the assertion that the cost of the transmission line work is exclusively paid by PowerCo. Connection and Cost Recovery Agreement, Schedule C, Appendix 2, pp. 18-20.

14. The agreement filed by Hydro One also appears to cover a broader bundle of work than the expropriation work before the OEB. Schedule A describes, among other things, a new Centennial Transformer Station, an approximately 20-kilometre 230 kV double-circuit transmission line tap from new M31W/M33W tap structures near Buchanan TS to the east side of Centennial TS, an approximately 2-kilometre 230 kV double-circuit transmission line tap from existing W44LC/W45LS tap structures near Edgeware TS to the west side of Centennial TS, and network pool allocated work. Hydro One must identify the precise "work" for which section 99 authority is sought and map that work to the provisions of the agreement that are said to satisfy subsection 6.2(1)(e.1). Connection and Cost Recovery Agreement, Schedule A, Appendix 2, pp. 8 and 11-13.

15. The need for precise mapping is reinforced by the difference between the application's description of an approximately 18-kilometre transmission line and the Connection and Cost Recovery Agreement's description of separate Buchanan-Centennial and Edgeware-Centennial line components. That difference may be explainable. It should be explained in evidence before the OEB makes a jurisdictional finding. Application, Exhibit A, Tab 1, Schedule 1, p. 4; Connection and Cost Recovery Agreement, Schedule A, Appendix 2, pp. 8 and 12.

16. The Connection and Cost Recovery Agreement also records that, at the time of execution, the IESO System Impact Assessment and Hydro One Customer Impact Assessment were not complete, and that the customer accepted risks associated with changes to the scope, estimated cost, and schedule. Hydro One should therefore be required to confirm that the final work for which expropriation authority is now sought remains the same work governed by a qualifying agreement under

subsection 6.2(1)(e.1). Connection and Cost Recovery Agreement, Special Circumstances, Appendix 2, p. 4.

17. The agreement further states an assumption that all required easements for the Buchanan-Centennial Line could be obtained at fair market value and in a timely manner without the need for expropriation. Hydro One is now before the OEB seeking expropriation authority. The agreement's scope change provisions also identify Hydro One having to expropriate property, and conditions included by the OEB in any approval to expropriate, as Non-Customer Initiated Scope Changes. Those provisions do not necessarily defeat the exemption, but they require explanation. The OEB should know whether PowerCo remains exclusively responsible for the costs of the line work in light of expropriation-related costs, OEB-imposed conditions, scope changes, and any customer consent thresholds under the agreement. Connection and Cost Recovery Agreement, Schedule A, Appendix 2, pp. 12 and 14.

18. The public record also includes categories such as Network Pool Allocated Work and states that Network Pool Work (Non-Recoverable from Customer) is not applicable. Hydro One says the Project will result in no harm to ratepayers. The OEB should require a concise declaration identifying whether any costs associated with the work are or may be recovered from ratepayers, pooled rates, or other transmission customers, and, if so, why those costs are not part of the cost of the construction, expansion or reinforcement of the line for purposes of subsection 6.2(1)(e.1). Application, Exhibit A, Tab 1, Schedule 1, p. 8; Connection and Cost Recovery Agreement, Schedule A and Schedule C, Appendix 2, pp. 13 and 18.

19. Hydro One also asserts that PowerCo is not a licensed transmitter or licensed distributor. Given the jurisdictional role of that fact, the OEB should require direct confirmation of PowerCo's licence status and identification of any other customer whose status is relevant to the exemption.

20. Finally, Hydro One's reliance on confidentiality should not prevent meaningful participation by directly affected landowners on the threshold issue. The OEB can protect genuinely confidential commercial information while still requiring a non-confidential evidentiary summary, and, if necessary, confidential disclosure to counsel subject to an undertaking or other protective terms.

Requested Procedural Directions

21. RFG requests that the OEB refrain from answering the Preliminary Issue in the affirmative on the present record. If the OEB is not prepared to answer the issue in the negative at this stage, RFG requests that Hydro One be directed to file focused supplemental evidence addressing each element of subsection 6.2(1)(e.1).

22. That supplemental evidence should include: (a) a table identifying each statutory and regulatory requirement and the evidence relied upon for that requirement; (b) the complete Connection and Cost Recovery Agreement, together with all amendments, customer consent letters, Land Rights Notices, Temporary Land Rights Notices, scope change notices, and other documents by which the relevant line work was added to or changed under the agreement, with confidentiality protections if required; (c) identification of the exact section 99 "work" and the exact agreement provisions that govern that work; (d) confirmation that all costs of the construction, expansion or reinforcement of the relevant line, including costs arising from land acquisition, expropriation, OEB-imposed conditions, scope changes, and SIA or CIA-driven changes, are exclusively payable by PowerCo or another customer that is not a licensed transmitter or distributor; (e) confirmation whether any costs associated with the work are or may be recovered from ratepayers, pooled rates, or other transmission customers, and an explanation of any such treatment; and (f) evidence confirming PowerCo's licence status and identifying any other relevant customer.

23. RFG further requests that the OEB provide intervenors with an opportunity to make supplemental submissions after any such filing. If Hydro One cannot or will not provide evidence sufficient to establish the exemption, the Preliminary Issue should be answered in the negative and the application should be dismissed or stayed unless and until Hydro One obtains leave to construct or otherwise establishes a lawful basis to proceed under section 99.

24. In the alternative, if the OEB determines that the current confidential record is sufficient to establish eligibility, RFG requests that the OEB provide reasons identifying the evidentiary basis for each element of subsection 6.2(1)(e.1). A generic acceptance of Hydro One's assertion that the exemption applies would not be sufficient for a threshold jurisdictional determination in an expropriation proceeding.

Reservation of Rights

25. These submissions are made without prejudice to RFG's position on the RFG Participation Issue identified in Procedural Order No. 1. RFG reserves its right to respond by July 15, 2026 to Hydro One's submissions on that issue.

26. RFG also reserves its rights with respect to any future issues list, interrogatories, evidence, public interest submissions, minimum land and minimum legal interest issues, conditions of approval, and cost award eligibility if the OEB determines that Hydro One is eligible to proceed and that RFG should participate in further steps of the proceeding.

Generative Artificial Intelligence Disclosure

27. Counsel to confirm before filing: RFG discloses that generative artificial intelligence was used to assist with the preparation of an initial draft of these submissions. Counsel for RFG confirms that the accuracy of the final filing has been verified without assistance from generative artificial intelligence.

All of which is respectfully submitted.

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