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 SISKINDS GROUP ON THE PRELIMINARY ISSUE

June 30, 2026

OVERVIEW AND RELIEF REQUESTED

1. The Siskinds Group respectfully files these submissions in accordance with the provisions of Procedural Order No. 1, dated June 23, 2026, on the preliminary issue identified by the Ontario Energy Board (the "**OEB**"): "Is Hydro One eligible to apply for leave to expropriate under section 99 of the OEB Act?" The real issue being raised is whether Hydro One Networks Inc. (Hydro One) has the authority under the provisions of section 99(1) of the Ontario Energy Board Act **(the "*OEB Act*")** to apply for authority to expropriate land for the work, being described as the Project (Procedural Order No. 1, pp. 5-7).

2. The Siskinds Group submits that Hydro One has not discharged its regulatory burden and for the reasons set out below is unable to meet the statutory requirements for an exemption based on the information in the public realm and in the present record. The Siskinds Group requests that the OEB confirm that Hydro One is required to seek and obtain Leave to Construct under the provisions of the *OEB Act*.

3. The Siskinds Group is not seeking that the OEB, to make a determination on, or conduct a full section 92 leave-to-construct review, or to decide the ultimate public interest merits of the requested expropriations at this time. The Siskinds Group understands that the Preliminary Issue is to determine whether an exemption to seek Leave to Construct is appropriate. If it is found that the Project does not fall under the exemption then Hydro One will be required to comply with the provisions of the *OEB Act* and seek Leave to Construct prior to engaging in any further steps associated with the Project including any expropriation or private property.

4. 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 indicated that the Project is being undertaken pursuant to a Connection and Cost Recovery Agreement with PowerCo Canada Inc. ("**PowerCo**"). The cost of the Project, according to Hydro One, is to be exclusively paid by PowerCo, and further that PowerCo is not a licensed transmitter or distributor. Application, Exhibit A, Tab 1, Schedule 1, p. 2.

5. If it is determined by the OEB that the regulatory exemption does not apply, Hydro One would not be eligible to apply for expropriation authority under section 99 of the *OEB Act*

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.

THE EXEMPTION IS **NOT** APPROPRIATE

6. The *OEB Act*, section 92(1) requires that Hydro One Networks Inc. ("**Hydro One**") obtain leave of the Ontario Energy Board (the "**OEB**") for the construction, expansion or reinforcement of electricity transmission lines. An electricity transmission line is defined under section 89 of the *OEB Act* as a line, transformer, plant or equipment used for the conveyance of electricity at voltages higher than 50 kilovolts.

7. The *OEB Act*, along with its associated regulations as set out in Ontario Regulation 161/99, subsection 6.2(1)(e.1) provides certain exemptions to the requirement that Hydro One obtain Leave to Construct under the OEB.

8. As indicated above, the Preliminary Issue to be addressed is whether the regulatory exemption as set out in *OEB Act* applies to exempt Hydro One for having to obtain Leave to Construct the Project from the OEB.

9. As part of a section 99 application, the OEB's standard expropriation framework assumes that the Project itself has already been subject to a Leave to Construct process. In this scenario, Hydro One seeks to by-pass this statutory process and instead proceed directly to section 99 of the *OEB Act* absent having a determination on the Leave to Construct. OEB Standard Section 99 Expropriation Issues List, p.1.

10. The exemption as set out in subsection 6.2(1)(e.1) of Ontario Regulation 161/99 removes any requirement of the balancing of the public interest versus the private interests of individual landowners in the area impacted by the Project. This balancing is an important and fundamental aspect of the *OEB Act*. The regulatory regime has been created to allow for a balance between those public infrastructure needs with private property rights through the OEB Review process. The application of the exemptions from this process should only occur in circumstances where the regulatory requirements in support of the exemption are unequivocally met. Such scenario does not exist in these circumstances.

11. Hydro One has not obtained Leave to Construct for this Project. Hydro One instead is relying on the exemption as set out in subsection 6.2(1)(e.1) of Ontario Regulation 161/99.

12. To establish eligibility under the exemption as set out in subsection 6.2(1)(e.1) of Ontario Regulation 161/99, Hydro One must establish:

(i) that the work for which expropriation authority is sought is the construction, expansion or reinforcement of an electricity transmission line;

(ii) that the construction, expansion or reinforcement of that line is undertaken pursuant to an agreement between Hydro One and one or more customers;

(iii) 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

(iv) none of those customers is a licensed transmitter or licensed distributor.

THE PROJECT'S SOLE PURPOSE IS TO SERVICE POWERCO AND CREATE ENERGY STORAGE

13. The Project is being constructed to supply electricity to the facility identified as the PowerCo battery plant ("**PowerCo**"). Hydro One has confirmed that Project is required to meet the forecasted electricity demand of a battery cell manufacturing facility, being PowerCo, and that the Project is being exclusively paid for by PowerCo.

14. PowerCo is a global battery company established by the Volkswagen Group, the PowerCo facility is characterized as a massive $7 billion gigafactory located in the City of St. Thomas. It is this facility for which Hydro One is constructing the Project and is the subject of this application.

15. PowerCo has publicly stated that it requires 380 megawatts of power for its facility when in full production. The amount of power required to operate PowerCo has been confirmed by Hydro One to be equivalent to the energy needed for a city the size of Windsor. The electrical energy consumption requirements of PowerCo necessitated and required the construction of the Project by Hydro One.

16. Hydro One has indicated that the costs associated with the Project will be the sole responsibility of PowerCo. This statement is incorrect as Hydro One has confirmed that the proposed Project is expected to power Ontario's growing electric vehicle industry **and** support future economic growth in the City of St. Thomas and surrounding communities. The Project is being constructed and designed to support other private industry and other communities.

17. PowerCo has received significant funding from both the Provincial and Federal governments to facilitate the construction of the PowerCo facility. This construction for the PowerCo includes but is not limited to the construction of the Project by Hydro One.

18. PowerCo is also involved in the production of stationary energy storage allowing it to be in a position where it can supply energy to other users.

POWERCO CANADA INC. ("POWERCO")

19. In 2023, it was announced that PowerCo committed to establishing an electrical vehicle (EV) battery manufacturing facility in the City of St. Thomas and has the technology to engage in stationary energy storage.

20. PowerCo was specifically founded to become a global battery champion and developing gigafactories throughout the world including Salzgitter, Valencia and St. Thomas, Canada providing a total volume of up to 200 GWh[1].

21. The information available in the public realm indicates that PowerCo will be involved in stationary energy storage allowing the batteries to store energy that is obtained from the

[1] 1 GWh is equal to 1,000 Megawatt-hours or 1,000,000 kilowatt-hours and is approximately enough electricity to power 1,000 to 1,500 homes for an entire year.

power grid and supply it back to residential and business owners during peak energy demand periods. PowerCo has indicated that it is involved in the production of large-scale energy storage systems for power grids.

22. PowerCo has publicly stated:

> "In its initial stage, the St. Thomas gigafactory is intended to supply battery cells for the automotive market," the company wrote in a statement. "At the same time, PowerCo globally is developing a unified battery cell technology that can support multiple applications, including stationary energy storage."

23. PowerCo's charging and energy subsidiary, Elli, announced its first large scale stationary storage system in Germany based on PowerCo battery packs. PowerCo has the capabilities to engage in energy storage, and when it considers appropriate, engage in the sale of its excess electrical energy.

24. PowerCo is appropriately considered as a distributor[2] as the owner of the large scale storage system which falls within the definition of a distribution system[3] as set out in the *OEB Act*. It is foreseeable that, in the circumstances, PowerCo will, through its stationary energy storage capacities become a distributor of electricity as defined by the *OEB Act*.

THE PROJECT'S SOLE PURPOSE IS TO SERVICE POWERCO AND CREATE ENERGY STORAGE

25. The Project is being constructed to supply electricity to the PowerCo battery plant. Hydro One has confirmed that Project is required to meet the forecasted electricity demand of a battery cell manufacturing facility, being PowerCo, and exclusively paid for by PowerCo.

26. PowerCo has confirmed that it requires 380 megawatts of power when in full production. The amount of power required to operate PowerCo has been confirmed by Hydro One to be equivalent to the energy needed for a city the size of Windsor. The electrical energy consumption requirements of PowerCo are what necessitated and required the construction of the Project by Hydro One. It has also been confirmed that the cost of the line will be the responsibility of PowerCo.

THE REGULATORY REQUIREMENTS

27. Hydro One is prohibited from construction the project under the provisions of section 92(1) of the *OEB Act* unless an order granting leave is first obtained from the Board. The default position is that such Projects be required to secure Leave to Construct and as a result meet the applicable requirements for the granting of leave. This ensures the appropriate balancing of public and private interests occur.

28. As part of a Leave to Construct under section 96(1), of the *OEB Act*, the OEB is required to take into consideration, prior to the granting of leave, as to whether the construction of the Project is in the public interest. This is an important requirement to ensure that any

[2] "distributor" means a person who owns or operates a distribution system;
[3] "distribution system" means a system for distributing electricity, and includes any structures, equipment or other things used for that purpose;

expropriation or taking of private property is in the public interest and for the benefit of the public. In determining whether the project is in the public interest, when considering whether to grant an order for Leave to Construct, the OEB is required to take into consideration the interests of its consumers and the reliability and quality of the electrical service. Under the exemption request this balance of public and private interests is not taken into consideration.

29. Ontario Regulation 161/99, specifically section 6.2(1) sets out those circumstances where Hydro One is exempted from the requirement to secure leave to construct from the OEB. These exemptions sets out the requirements pursuant to which Hydro One is not required to seek Leave to Construct the Project from the OEB. Hydro One is relying on the exemption as set out in subsection 6.2(1)(e.1) of Ontario Regulation 161/99 on the basis that the PowerCo is paying for the construction and expansion, and it is not a licensed transmitter or licensed distributor. The intent of the *OEB Act* in requiring that Leave to Construct be obtained is to ensure that these major energy infrastructure projects is in the public interest and for the public benefit.

30. As part of a Leave to Construct under section 96(1) of the *OEB Act*, Hydro One would be required to consider whether the construction of the Project is in the public interest. This requires the OEB to consider the interests of its consumers and the reliability and quality of the electrical service. It is foreseeable that, in the circumstances, PowerCo will, through its stationary energy storage capacities become a distributor of electricity as defined by the *OEB Act*. At this time, it is appropriate in the circumstances to treat PowerCo as a distributor of electricity and as a result the Project does not meet the exemption requirements and must seek Leave to Construct under the of the *OEB Act*.

31. Hydro One is taking the position that PowerCo is not a licensed transmitter or licensed distributor. Such statement must be carefully considered as it is important to note that it does not bind or restrict from PowerCo in applying for and becoming a distributor at any time throughout the development of the Project. It is clear from the evidence presented that at all times PowerCo will be in charge, management and control of a distribution system.

POWERCO NOT "EXCLUSIVELY" PAYING FOR PROJECT

32. The Connection and Cost Recovery Agreement that is available for public review, is significantly redacted. The Siskinds Group is not suggesting that the disclosure of any commercially sensitive amounts must be made public. In this scenario, the public record does not permit for any verification of the various 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.

33. The Connection and Cost Recovery Agreement indicates that at the time the Parties executed the Agreement, the IESO System Impact Assessment and Hydro One Customer Impact Assessment were not complete. It is unclear in terms of whether there have been changes in its scope, estimated costs, and schedule. In addition, no information is provided on the use and application of the federal and provincial funding and the use of such funding for the payment of the Project costs.

34. In 2023, the Federal government confirmed that it was giving PowerCo up to $13 billion in subsidies over the court of a period of ten years for the purposes of constructing its electric-vehicle battery plant in southern Ontario. The federal government has also confirmed its intention to provide annual production subsidies for the St. Thomas facility.

35. In addition to the funding provided by the Federal government, the Province of Ontario confirmed that it is providing, or has provided, up to $500 million in direct incentives to PowerCo towards the construction and operation of the PowerCo facility.

36. PowerCo has received significant funding in the form of incentives and subsidies from the Federal and Provincial governments. It is clear that PowerCo is not exclusively paying for the Project. This is evidenced by the fact that such Project would not be proceeding absent receipt of funding from the public purse and use of taxpayers monies.

37. Hydro One is seeking an exemption from the requirement to obtain Leave to Construct from the OEB on the basis that it is solely funded by the customer (PowerCo). That is not the case, Hydro One is aware that the construction of PowerCo is heavily reliant and dependant on the significant funding received from both levels of government. This funding is used for the development of PowerCo which includes the costs associated with the Project. As a result, it is clear that the Project is also being paid for through the use of taxpayer funds (due to the Federal and Provincial subsidies and grants). The exemption as set out in subsection 6.2(1)(e.1) of Ontario Regulation 161/99 does not apply as the costs associated with the electricity transmission line is not exclusively being paid for by PowerCo.

38. Again, the costs associated with the construction of the Project are not being "exclusively" paid for by PowerCo. Such costs associated with the construction of the Project is being paid for and subsidized with public funds. The Project does not meet the requirement for the application of the exemption from getting Leave to Construct as set out in subsection 6.2(1)(e.1) of Ontario Regulation 161/99 as it is **not** exclusively paying for the Project.

39. Under section 99 of the *OEB Act*, the OEB can authorize the expropriation of land if it is in the public interest. Any person who has Leave to Construct from the OEB, or who has been exempted under the regulatory requirements, may apply for expropriation where they have been unable to reach an agreement with an affected landowner. In determining whether the expropriation is in the public interest, the OEB must consider the objectives of the Act, the broad public interest, and the interests of each of the parties to the proceeding. In this case, Hydro is attempting to skirt and by-pass this balancing of public and private interest.

40. The importance of requiring Hydro One obtain Leave to Construct is to provide a check and balance to ensure that the Project is being constructed for a public purpose and that public purpose outweighs the harm to the private individuals who are subject to any expropriation and loss of private lands.

41. The expropriation of lands is considered a draconian measure. Expropriation forces private property owners to transfer ownership of their land without consent. Such action is considered a necessary tool to ensuring the construction of public infrastructure – in other words the public benefit of the works requiring the expropriation outweighs the private

interests of the landowners. Such action should not be taking lightly.

LEAVE TO CONSTRUCT

42. The Siskinds Group requests that the OEB, based on the information submitted, confirm the Project as being proposed by Hydro One does not fall within the statutory exemption from the requirement that Hydro One obtain a Leave to Construct.

GENERATIVE ARTIFICIAL INTELLIGENCE DISCLOSURE

43. Counsel to confirm before filing: the Siskinds Group discloses that generative artificial intelligence was used to assist with the preparation of an initial draft of these submissions. Counsel for the Siskinds Group 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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