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Ritchie Murray
Acting Registrar
Ontario Energy Board
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Dear Ritchie Murray,

RE: EB-2026-0178: Written Argument in Chief of Impala Canada Ltd. in its Motion to Review and Vary the OEB's Decision and Order in EB-2025-0286

We are legal counsel to Impala Canada Ltd. ("**Impala**"), the moving party in the subject Motion to Review and Vary ("**Motion**") the Ontario Energy Board's ("**OEB**") Decision and Order, dated May 21, 2026, dismissing Impala's application for authority to expropriate interests in two parcels of land in the District of Thunder Bay in Ontario. On July 13, 2026, the OEB issued its Notice of Hearing and Procedural Order No. 1 in connection with the Motion and directed Impala to serve and file a written argument in chief by July 20, 2026. Enclosed is Impala's written argument in chief.

Sincerely,

Raivo Uukkivi
Partner
Encl.

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act*, 1998, S.O. 1998, c.15, Schedule B, as amended (the "***OEB Act***");

AND IN THE MATTER OF Application EB-2025-0286 by Impala Canada Ltd. for authority to expropriate land for the purpose of operating a transmission line to Impala Canada Ltd.'s mine;

AND IN THE MATTER OF a Motion pursuant to Rule 42 of the Ontario Energy Board's *Rules of Practice and Procedure* to Review and Vary the May 21, 2026 Decision and Order in EB-2025-0286.

ARGUMENT IN CHIEF OF IMPALA CANADA LTD.

A. OVERVIEW

1. This Motion concerns the scope of the Ontario Energy Board's ("**OEB**") jurisdiction to grant authority to expropriate land interests under section 99 of the *OEB Act* to owners of transmission infrastructure that was constructed prior to the enactment of the existing regulatory framework for the construction of private transmission lines under the *OEB Act*.

2. Impala Canada Ltd. ("**Impala**") owns and operates a 115 kV transmission line and associated facilities (the "**Impala Line**"), which was constructed at or around 1996 and has been in operation for the past 30 years as the sole source of power for the Lac Des Iles Mine (the "**LDI Mine**"). On October 3, 2025, Impala applied to the OEB under section 99 of the *OEB Act* for authority to expropriate a permanent easement over two parcels of land owned by North Star Forestry Ltd. ("**North Star**") for the continued operation of the Impala Line.

3. On May 21, 2026, the OEB denied Impala's application in its Decision and Order in EB-2025-0286 (the "**Decision**") on two grounds:

   (a) The approvals and permits authorizing the construction and operation of the Impala Line received prior to the enactment of the *OEB Act* did not constitute leave to construct under a predecessor to Part VI of the *OEB Act* for the purposes of subsection 99(1)1 of the *OEB Act*[1]; and

(b) Impala's intention to indefinitely maintain the Impala Line did not constitute an intention to "reinforce" the Impala Line for the purposes of satisfying the leave requirement (or accessing an exemption therefrom) further to subsection 99(1)2 of the *OEB Act*.[2]

4. Given the OEB's findings, the OEB declined to comment on whether Impala's application was in the public interest under subsection 99(5),[3] despite Impala's submissions that:

(a) Expropriation is consistent with the statutory objectives of the OEB;

(b) There is need for indefinite power at the LDI Mine, further to the operating and closure plans for the LDI Mine;

(c) The Impala Line is the only option for powering the LDI Mine, as the LDI Mine is not authorized to operate on power produced by on-site diesel generators on an indefinite basis;

(d) The LDI Mine, as the only Canadian source of pure play palladium, contributes significantly to the local and national economies and is important for Ontario's security, resilience and economic development objectives[4];

(e) The Impala Line can provide power to neighboring communities;

(f) There are no suitable alternative routes for the Impala Line, as relocation is inherently an inefficient outcome that results in unnecessary impacts to sensitive environmental regions on neighboring lands;

(g) Impala requested expropriation of the minimum legal interests required to safely and reliably operate the Impala Line; and

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[1] Decision and Order, in the matter of EB-2025-0286, dated May 21, 2026, PDF p 9 [**OEB Decision**].
[2] OEB Decision, PDF p 11.
[3] OEB Decision, PDF p 13.
[4] The OEB's statutory objectives with respect to regulating electricity includes supporting economic growth, consistent with the policies of the Government of Ontario: *OEB Act*, s 1(1)2.1.

(h) Expropriation is the only option available to Impala and is adequate to resolve the outstanding issue of compensation for the permanent easement.[5]

5. The OEB's denial of Impala's application on the basis of Impala's ineligibility under subsections 99(1)1 and 2 represents material and clearly identifiable errors of law resulting from the OEB's overly narrow interpretation of subsection 99(1) that is inconsistent with the statutory objectives of the OEB, which include regulating the electricity sector in a manner that supports economic growth, consistent with the policies of the Government of Ontario.[6]

6. The OEB erred in interpreting subsection 99(1)1 as applying only to leave to construct authorizations issued to Ontario Hydro under the *Power Corporation Act*, RSO 1990, c P.18 ("**PCA**").[7] The narrow construction of leave under Part VI of the *OEB Act* and its predecessor legislation is inconsistent with the established contextual and purposive approach to statutory interpretation endorsed by the Supreme Court of Canada.[8] If the legislature had intended that predecessor legislation would only apply to infrastructure that received leave to construct under the PCA, it would have drafted subsection 99(1)1 with appropriately narrow restrictive language. Instead, the language is broadly drafted to avoid absurd consequences that exclude owners of existing private transmission infrastructure from accessing relief that is otherwise available to transmission lines that were built with a formal authorization in place.

7. Further, the OEB fell into error finding that Impala is ineligible to apply for expropriation under subsection 99(1)2 as it is not a person that intends to construct, expand or reinforce a transmission line and is exempt from the requirement to obtain leave to construct.[9] The OEB found that the work that Impala intended to perform on the line does not constitute "reinforcement" and was merely "ordinary maintenance" work.[10] While the OEB noted that

[5] Impala Written Submissions, in the matter of EB-2025-0286, dated February 23, 2026 at paras 64-86, PDF pp 18-25 [**Impala Written Submissions**].
[6] See Impala Written Submissions at paras 35-37, PDF pp 11-12; *OEB Act*, s 1(1)2.1.
[7] OEB Decision, PDF p 9. The *Power Corporation Act*, RSO 1990, c P.18 applied only to Ontario Hydro which, after its statutory demerger in 1998, was split into separate entities. The transmission component of the former Ontario Hydro is now within Hydro One Networks Inc.
[8] *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42 at para 26.
[9] OEB Decision, PDF p 11.
[10] OEB Decision, PDF p 11.

there is no definition of "reinforcement" work, it nevertheless found that "some manner of upgrade is required".[11] The finding leads to the inefficient consequence that Impala must propose and carry out line reconstruction, significant upgrade work or increase the capacity on the line in order to be eligible to apply for expropriation under subsection 99(1)2 of the *OEB Act.* This result materially harms Impala by requiring it to incur unnecessary delay, cost and regulatory burden.

8. In addition to these errors, the OEB ignored, or provided insufficient reasons in its Decision to address submissions made by Impala. Specifically, the OEB failed to grapple with Impala's submissions on the inefficient consequences that result from the OEB finding that Impala was ineligible for expropriation authority on the basis that the Impala Line predates the OEB's jurisdiction.[12] The long-standing principle that the legislature does not intend to produce absurd consequences[13] demands that subsection 99(1) be interpreted broadly to capture private transmission lines that were constructed before there was a formalized process for private actors to receive authorizations for the same.

9. The result is a Decision that fails to follow longstanding and well-respected rules of statutory construction that give the *OEB Act* a fair, large and liberal interpretation that best ensures the attainment of its beneficial objects to continue existing electrical infrastructure.[14]

10. The OEB's interpretation of the scope of its jurisdiction under subsection 99(1) outlined in its Decision should be varied to affirm the legislature's intent when it enacted the *OEB Act*, to promote the OEB's statutory objectives, including ensuring consistency with the policies of the Government of Ontario, and to avoid the inefficient consequences that flow from its Decision.

11. The OEB Decision sets a precedent that will have unintended yet foreseeable negative consequences for other long-established electricity infrastructure that was constructed, with all required permits and approvals, before the OEB had statutory jurisdiction for leave

[11] OEB Decision, PDF p 9.
[12] See Impala Written Submissions at paras 56-59, PDF pp 16-17.
[13] *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 SCR 27 at para 27 [***Rizzo Shoes***].
[14] *Legislation Act, 2006*, SO 2006, c 21, Sch F, s 64: "An Act shall be interpreted as being remedial and shall be given such fair, large and liberal interpretation as best ensures the attainment of its objects."

to construct and expropriation matters. The result of the OEB declining jurisdiction in this matter creates a leverage opportunity for landowners driven by non-market factors removed from land costs, which materially impacts electricity transmitters such as Impala and customers that are dependent on the continued supply of electricity, such as the LDI Mine, which is necessary for Ontario's economic growth. That result of the OEB Decision will cause undue regulatory uncertainty, delay and increased costs for owners of existing electricity infrastructure.

12. The OEB Decision is not aligned with its statutory objectives and policies of the Government of Ontario to promote economic growth. There are strong public interest reasons to grant Impala's application for expropriation, which should further align the OEB Decision with the legislative purpose of the *OEB Act*.

B. BACKGROUND

13. This section briefly summarizes Impala's application for authority to expropriate land interests under section 99 of the *OEB Act*, and the resulting OEB findings.

1. The Expropriation Application

14. On October 3, 2025, Impala applied to the OEB under section 99 of the *OEB Act* for authority to expropriate a permanent easement over two parcels of land owned by North Star (the "**Application**"). Impala sought a permanent easement for the safe and efficient operation of the Impala Line, which is the sole source of continuous power for the LDI Mine. The OEB granted North Star intervenor status on December 8, 2025.

15. Impala acknowledged that it had not obtained leave to construct under section 92 of the *OEB Act*.[15] Instead, Impala submitted that the approvals and permits issued by the Ministry of Natural Resources authorizing the construction of the Impala Line constituted leave to construct under a predecessor to Part VI of the *OEB Act* for the purposes of subsection 99(1)1 of the *OEB Act*.[16] Such authorizations included: a land use permit for a powerline

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[15] Impala Written Submissions at para 28, PDF p 10.
[16] Impala Written Submissions at paras 47-48, PDF pp 14-15.

right of way, two work permits for forestry and construction of a powerline, and two licenses to harvest Crown forest resources.[17]

16. In the alternative, Impala submitted that it is eligible for expropriation authority on the basis that it intends to reinforce the Impala Line by indefinitely maintaining the Impala Line, including by replacing damaged or worn aspects of the transmission infrastructure,[18] and is subject to IESO-controlled grid connections which, taken as a whole, are all aspects underlying the objectives of safe reliable electricity transmission operations found in the *OEB Act*'s legislative scheme and specifically, the leave requirement (or exemption therefrom) under subsection 99(1)2 of the *OEB Act*.[19]

17. Impala also made submissions on the merits of its Application under subsection 99(5) of the *OEB Act*, further summarized in section C.3 below, arguing that granting the Application was in the public interest for the following reasons:

(a) There is need for indefinite power at the LDI Mine, further to the operating and closure plans for the LDI Mine;

(b) The Impala Line is the only option for powering the LDI Mine, as the LDI Mine is not authorized to operate on power produced by on-site diesel generators on an indefinite basis;

(c) The LDI Mine, as the only Canadian source of pure play palladium, contributes significantly to the local and national economies and is important for Ontario's security, resilience and economic development objectives[20];

(d) The Impala Line could provide power to neighboring communities;

(e) There are no suitable alternative routes for the Impala Line, as relocation is inherently an inefficient outcome that results in unnecessary impacts to sensitive environmental regions on neighboring lands;

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[17] Impala Response to OEB Staff Interrogatory 1(e), PDF p 4.
[18] Impala Written Submissions at para 53, PDF p 16.
[19] Impala Written Submissions at para 53, PDF p 16.
[20] The OEB's statutory objectives with respect to regulating electricity includes supporting economic growth, consistent with the policies of the Government of Ontario: *OEB Act*, s 1(1)2.1.

(f) Impala requested expropriation of the minimum legal interests required to safely and reliably operate the Impala Line; and

(g) Expropriation is the only option available to Impala and is adequate to resolve the outstanding issue of compensation for the permanent easement.[21]

2. The Decision

18. On May 21, 2026, the OEB issued its Decision dismissing Impala's Application for authority to expropriate. The OEB found that Impala was ineligible for expropriation under subsection 99(1) on two grounds:

(a) The approvals and permits authorizing the construction and operation of the Impala Line received prior to the enactment of the *OEB Act* did not constitute leave to construct under a predecessor to Part VI of the *OEB Act* for the purposes of subsection 99(1)1 of the *OEB Act*[22]; and

(b) Impala's intention to indefinitely maintain the Impala Line, including by replacing damaged or worn aspects of the transmission infrastructure, did not constitute an intention to "reinforce" the Impala Line for the purposes of satisfying the leave requirement (or accessing an exemption therefrom) further to subsection 99(1)2 of the *OEB Act*.[23]

Findings on the application of OEB Act subsection 99(1)1

19. The OEB found that for the purposes of subsection 99(1)1, the authorizations that Impala's predecessors obtained to construct the Impala Line at or around 1996 did not constitute leave under a predecessor to the current leave to construct regime.[24] The OEB acknowledged that the OEB had limited oversight over the regulation of the electricity

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[21] Impala Written Submissions at paras 64-86, PDF pp 18-25.
[22] OEB Decision, PDF p 9.
[23] OEB Decision, PDF p 11.
[24] OEB Decision, PDF p 9: "The OEB does not accept that the permits obtained from the Ministry of Natural Resources around 1996 are a predecessor to the leave requirements under Part VI of the OEB Act. There is limited information on the record regarding the process required to obtain these permits, exactly what they authorize, and for how long. They are not the equivalent of the approval regime set out in the Power Corporation Act."

sector at the time the Impala Line was constructed,[25] but concluded that the "closest predecessor" was the PCA, which authorized the construction of transmission lines for the former Ontario Hydro.[26]

20. The OEB assessed whether the authorizations obtained to construct the Impala Line amounted to the leave requirement under the PCA.[27] The OEB concluded that the authorizations were not equivalent to the approval regime under the PCA.[28]

Findings on the application of OEB Act subsection 99(1)2

21. With respect to Impala's eligibility for expropriation under subsection 99(1)2, the OEB found that Impala's intention to indefinitely maintain the Impala Line, including by replacing damaged or worn aspects of the transmission infrastructure,[29] did not amount to reinforcement work for the purposes of satisfying the leave requirement, concluding reinforcement involves a material upgrade to transmission infrastructure.[30]

Failure to consider Impala's Application on the merits

22. Given the OEB's finding that Impala is ineligible for expropriation authority under subsection 99(1) of the *OEB Act*, the OEB did not proceed to consider whether Impala's Application was in the public interest under subsection 99(5).[31]

C. SUBMISSIONS

23. Impala submits that the Decision contains two material and identifiable errors of jurisdiction, fact and law, or mixed fact and law:

    (a) Adopting an interpretation of section 99(1)1 that unduly constrains its application to existing private transmission infrastructure constructed prior to 1998 that was

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[25] OEB Decision, PDF p 8: "When the Impala Line was built around 1996, the OEB had minimal mandate for the regulation of the electricity sector, and it did not have authority over the construction of electricity transmission lines."
[26] OEB Decision, PDF p 9.
[27] OEB Decision, PDF p 9.
[28] OEB Decision, PDF p 9.
[29] Impala Written Submissions at para 53, PDF p 16.
[30] OEB Decision, PDF p 11.
[31] OEB Decision, PDF p 13.

authorized under the PCA.[32] That interpretation resulted in finding that approvals and permits authorizing the construction and operation of the Impala Line prior to the enactment of Part VI of the *OEB Act* do not constitute leave to construct for the purposes of subsection 99(1)1, contrary to the legislative objectives of the *OEB Act*[33]*;* and

(b) Finding that Impala does not intend to "reinforce" the Impala Line and is therefore ineligible for expropriation, resulting in the inefficient consequence that Impala must propose and carry out line reconstruction work in order to satisfy the leave requirement under subsection 99(1)2 of the *OEB Act*, and then return to the OEB with a new application for authority to expropriate.

24. Further to the OEB's Notice of Hearing and Procedural Order No.1, dated July 13, 2026, Impala also makes submissions on the merits of its Application under subsection 99(5) of the *OEB Act*.

1. The OEB Has Jurisdiction Under Section 99(1)1

25. The OEB erred in its interpretation of the scope if the OEB's jurisdiction under subsection 99(1) of the *OEB Act* by adopting an overly narrow interpretation of "leave under… a predecessor of" Part VI of the *OEB Act*, inconsistent with the well-established principles of statutory interpretation endorsed by the Supreme Court of Canada.[34] The Decision found that the predecessor to the leave requirement in the *OEB Act*, as it relates to granting leave to construct electricity transmission lines, was the PCA and the authorizations Impala had obtained to construct the Impala Line were not equivalent to this regime.[35]

26. The preferred approach to statutory interpretation formulated by Elmer Driedger requires words to be read in their entire context, and in their grammatical and ordinary sense

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[32] OEB Decision, PDF p 9. The *Power Corporation Act*, RSO 1990, c P.18 applied only to Ontario Hydro which, after its statutory demerger in 1998, was split into separate entities. The transmission component of the former Ontario Hydro is now within Hydro One Networks Inc.
[33] See Impala Written Submissions at paras 35-37, PDF pp 11-12; *OEB Act*, s 1(1)2.1.
[34] *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42 at para 26.
[35] OEB Decision, PDF p 9.

harmoniously with the scheme and object of the Act, and the intention of the legislature.[36] The *Legislation Act, 2006*, SO 2006, c 21, Sch F further prescribes that all legislation in Ontario be interpreted as remedial and be given “such fair, large and liberal interpretation as best ensures the attainment of its objects.”[37]

27. The OEB did not apply these principles when it found that reference to the predecessor leave requirement in subsection 99(1)1 was limited to transmission lines authorized under the PCA, which is, according to the OEB, only available to successors of the former Ontario Hydro.[38]

28. The plain text of subsection 99(1)1 does not prescribe specific statutes or frameworks to qualify for eligibility to expropriate under a predecessor to Part VI of the *OEB Act*. When the *OEB Act* was enacted, there was widespread existing electrical infrastructure that was constructed and operated by both public and private utilities. The wording of the statute is intentionally broad to capture variances in how such infrastructure was authorized to be constructed. This is reinforced by the legislature’s intent when enacting the *OEB Act* as a whole to bring *all* electrical infrastructure under the regulation of the OEB through its comprehensive licensing regime.[39]

29. The OEB’s Decision states that only transmission infrastructure constructed by the former Ontario Hydro under the PCA could satisfy the leave requirement for historic transmission lines.[40] The wording of the statute does not support this interpretation and in fact, it reads into the statute a requirement that does not exist. Had the legislature intended “predecessor to this Part” to be a “transitional provision” applicable only to successors of Ontario Hydro[41], it would have chosen to draft the legislation as such.

30. The authorizations issued prior to the construction of the Impala Line by the Ministry of Natural Resources, namely a land use permit for the right of way, two work permits for

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[36] *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42 at para 26.
[37] *Legislation Act, 2006*, SO 2006, c 21, Sch F, s 64.
[38] See OEB Decision, PDF p 9.
[39] “Bill 35, Energy Competition Act, 1998”, Ontario, Legislative Assembly, *Hansard Transcript*, 3rd reading, 36-2, vol B (28 October 1998) (Barbara Fisher): “Under the proposed rules, all transmitters, distributors, generators, purchasers and retailers of electricity would require a licence from the board.”
[40] See OEB Decision, PDF p 9.
[41] See OEB Decision, PDF p 9.

forestry and construction of a powerline, and two licenses to harvest Crown forest resources, demonstrate clear governmental authorization to construct the Impala Line in accordance with the regulatory regime that applied to Impala's predecessor at that time. A large and liberal interpretation of the wording of subsection 99(1)1 supports the legislature's intention to capture nuanced authorization frameworks such as those that applied to Impala's predecessor. It was an error for the OEB to restrict its interpretation only to the "closest predecessor"[42] rather than taking a purposive approach that best attains the beneficial objects of subsection 99(1).

31. The OEB's findings on Impala's Application set a precedent that is inconsistent with the principle that the legislature does not intend to produce absurd consequences.[43] By finding that Impala's authorizations fall short of satisfying the leave requirement for the purposes of subsection 99(1)1, while at the same time acknowledging there was no formal regulatory regime for the construction of private transmission lines, an arbitrarily defined class of transmission entities are created that are excluded from accessing the remedial objects of section 99 based on the nature of the authorizations they received before there were formal regulatory procedures in place. That result creates a non-market driven leverage opportunity for landowners, which materially impacts electricity transmitters such as Impala and customers that are dependent on the continued supply of electricity, such as the LDI Mine.

32. This aforementioned consequence is inconsistent with the OEB's statutory objectives, which include regulating the electricity sector in a manner that promotes economic efficiency[44] and cost effectiveness in the electricity sector and supports economic growth, consistent with the policies of the Government of Ontario.[45] The preferred approach to statutory interpretation in Canada requires that these objectives are considered,[46] contrary to the OEB's approach which failed to grapple with Impala's submissions on the same.[47]

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[42] OEB Decision, PDF p 9.
[43] *Rizzo Shoes* at para 27.
[44] Promoting economic efficiency in the transmission of electricity was a statutory objective of the OEB when the *OEB Act* was enacted in 1998, see Schedule B to Bill 35, *Energy Competition Act, 1998*, 2nd Sess, 36th Leg, Ontario, 1998 (assented to 30 October 1998), s 1.
[45] See Impala Written Submissions at paras 35-37, PDF pp 11-12; *OEB Act*, s 1(1)2.1.
[46] *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42 at para 26.
[47] See Impala Written Submissions at paras 35-37, PDF pp 11-12.

33. Impala submits that a variance of the OEB's Decision to correct the unduly narrow interpretation is necessary and consistent with the principles of statutory interpretation, including the principle that the legislature does not intend to produce absurd consequences. As such, Impala asks the OEB to find that the authorizations issued by the Ministry of Natural Resources for the construction of the Impala Line amount to leave for the purposes of subsection 99(1)1 and find Impala eligible for expropriation.

2. The OEB Has Jurisdiction Under Section 99(1)2

34. In its Application, Impala submitted that if the OEB found it was ineligible for expropriation under section 99(1)1, it was eligible for expropriation under subsection 99(1)2 as it intends to indefinitely maintain the integrity of the Impala Line, including by replacing damaged or worn aspects of the transmission infrastructure,[48] and is exempt from the leave requirement under subsection 95(2) of the *OEB Act* and subsection 6.2(1)(e) of the *Definitions and Exemptions* regulations.[49] The OEB found that Impala was ineligible under this subsection because Impala's intended works do not amount to reinforcement of the Impala Line for the purposes of subsection 99(1)2.[50] The OEB Decision holds that reinforcement requires some manner of upgrade to transmission infrastructure.[51]

35. As with the OEB's findings with respect to the application of subsection 99(1)1, the OEB's findings violate the long-standing and respected principle that the legislature does not intend to produce absurd consequences.[52] The OEB Decision produces the consequence that Impala has no ability to seek expropriation other than through proposing, according to the OEB, some form of substantive system upgrade in order to meet the minimum leave requirement. That result imposes undue cost, delay, and regulatory burden on Impala by requiring Impala to return to the OEB with an application for a material system upgrade before it can proceed with an expropriation proposal that is clearly in the public interest.

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[48] Impala Written Submissions at para 53, PDF p 16.
[49] *Definitions and Exemptions*, O Reg 161/99, s 6.2(1)(e); Impala Written Submissions at para 54, PDF p 16: Because Impala will finance future work on the Impala Line, it falls under s. 6.2(1)(e) of the *Regulations*.
[50] OEB Decision, PDF p 11.
[51] OEB Decision, PDF p 11.
[52] *Rizzo Shoes* at para 27.

Impala raised these issues in its Application, however the OEB failed to grapple with these considerations in its Decision.

36. The aforementioned consequences further support a liberal interpretation of subsection 99(1) as a whole that is consistent with the OEB's statutory objectives and allows the successors of historical infrastructure to access the remedial benefits provided under this provision. Section 99(1) was not drafted to exclude Impala and other owners of private transmission lines that were constructed prior to the OEB's jurisdiction strictly on the basis of the type of work that needs to be done on the line or the legislation its authorizations were issued under. A reasonable interpretation of subsection 99(1) supports Impala's eligibility under the same.

3. The Proposed Expropriation is in the Public Interest

37. The OEB Decision failed to grapple with Impala's submissions on the satisfaction of the public interest criteria under subsection 99(5) of the *OEB Act*.[53] In this Motion, Impala submits that the public interest criteria under subsection 99(5) of the *OEB Act* is satisfied and the OEB should vary the Decision to reflect the same. The merits of the application also assist in demonstrating how the statutory scheme must benefit existing electricity infrastructure that was installed with the appropriate authorizations and permits that were required at the time.

38. The OEB's past practice indicates that assessment of the public interest is a fact-specific determination with no firm list of criteria.[54] The OEB may take into account the objects and purposes of the *OEB Act*, the broad public interest, and the interests of Impala and North Star.[55] As part of its public interest considerations, the OEB must assess whether the impact on the landowner is minimized.[56]

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[53] OEB Decision, PDF p 13.
[54] EB-2006-0352, OEB Decision and Order, dated July 19, 2007 ["**Toyota Decision**"], PDF p 11.
[55] Toyota Decision, PDF p 12.
[56] EB-2019-0127, OEB Decision and Order, corrected December 3, 2019, PDF p 6.

(a) The OEB's Statutory Objectives

39. The OEB's powers under section 99 are a means to achieve its legislated objectives relating to electricity under the *OEB Act*, including:

(a) To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.[57]

(b) To regulate the electricity sector in a manner that supports economic growth, consistent with the policies of the Government of Ontario.[58]

OEB Statutory Objectives – Economic Efficiency and Economic Growth

40. As outlined in Impala's Application, the Impala Line is the sole source of power for the LDI Mine, which contributes significantly to the local and national economies,[59] including through the employment of over 700 Canadians.[60] Continued commercial operations at the LDI Mine help support Ontario's economic development objectives.[61] Maintaining operation of the Impala Line is critical to protect these sources of economic growth for the region.

41. Impala's Application further advances economic efficiency and cost effectiveness in the electricity sector by avoiding redundant and costly regulatory processes to propose a material system upgrade to, according to the OEB, satisfy the leave requirement under subsection 99(1)2.

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[57] *OEB Act*, s 1(1)2.
[58] *OEB Act*, s 1(1)2.1.
[59] Impala Expropriation Application in EB-2025-0286, dated October 3, 2025 at paras 39-42, PDF pp 11-12 [**Impala Application**].
[60] Impala Application at para 39, PDF p 11; North Star Evidence, PDF p 33.
[61] Impala Application at para 42, PDF p 12; *Protect Ontario by Unleashing our Economy Act, 2025*, SO 2025, c 4.

Protect Ontario By Unleashing Our Economy Act

42. The Government of Ontario's policies—which include the promotion of critical minerals and economic growth—are clearly reflected in the preambular clause of a recent piece of Ontario legislation:

> The Government of Ontario is:
>
> Protecting Ontario from global economic uncertainty by unleashing our economy.
>
> Unlocking the potential of Ontario's critical minerals by streamlining approval processes for mining and critical infrastructure projects to achieve outcomes that fuel our economy while also creating jobs and protecting the strategic national mineral supply chain – all for the benefit of the people of Ontario and Canada.
>
> Supporting the acceleration of provincial permitting and approvals for projects so Ontario can build mines and infrastructure faster, while ensuring environmental protections for future generations.[62]

43. As set out in the Application, the LDI Mine is Canada's only pure play palladium mine,[63] and one of only two known pure palladium sources in North America.[64] Palladium produced at the LDI Mine can be used in emissions-control systems, industrial catalysts, and emerging hydrogen technologies.[65] Palladium is a critical mineral,[66] and continued commercial operations at the LDI Mine serve Ontario's objectives to support critical mineral production in Ontario.[67]

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[62] *Protect Ontario by Unleashing our Economy Act, 2025*, SO 2025, c 4.
[63] Impala Response to OEB Staff Interrogatory 2(a), PDF p 6.
[64] Impala Application at para 42, PDF p 12.
[65] North Star Evidence, Vol II, Tab I: Implats Annual Integrated Report for the year ended 30 June 2024, PDF p 165; North Star Evidence, Vol III, Tab K: Implats Annual Integrated Report for the year ended 30 June 2025, PDF p 19.
[66] Under the *Canadian Critical Minerals Strategy*, a "critical mineral" is a mineral that is: (1) essential to Canada's economic security and its supply is threatened; (2) required for Canada's national transition to a low-carbon economy; or (3) a sustainable source of highly strategic critical minerals for Canada's partners and allies (online), PDF p 15. This includes palladium, a platinum-group metal.
[67] Impala Application at para 42, PDF p 12; *Protect Ontario by Unleashing our Economy Act, 2025*, SO 2025, c 4.

Protect Ontario by Securing Affordable Energy for Generations Act

44. The Government of Ontario's policies also include access to clean power, which is further reflected in the preambular language in another piece of Ontario legislation:

> The Government of Ontario is committed to:
>
> Building an affordable, secure, reliable and clean energy system to power the strongest economy in the G7.
>
> Prioritizing economic growth, job creation and strong governance as objectives of Ontario's energy system.
>
> Supporting the responsible growth of energy-intensive industries like data centres that align with Ontario's economic priorities and benefit local communities.
>
> […]
>
> Delivering affordable and clean energy for generations to power our economy and peoples' lives.[68]

45. Given the Impala Line's capacity to provide power to neighbouring communities, and the environmentally unsound alternatives to powering the LDI Mine's critical safety and environmental protection systems, maintaining the operation of the Impala Line helps to secure the advancement of Ontario's objectives with respect to clean power.

(b) "Broad Public Interest" Factors

46. As confirmed in the OEB's Decision and Order in EB-2006-0352 (the "**Toyota Decision**"), the public interest framework applies even where transmission infrastructure is for the exclusive use of one industrial party: the public interest in securing a reliable supply of power to an industrial site can outweigh the private interests of landowners affected by easements sought.[69] In the Toyota Decision, the OEB granted Hydro One expropriation authority to build a transmission line for the exclusive use of a Toyota manufacturing facility being constructed in Woodstock, Ontario.[70] The OEB accepted that the Toyota manufacturing facility would provide direct and indirect economic benefits and that other

[68] *Protect Ontario by Securing Affordable Energy for Generations Act, 2025*, SO 2025, c 22.
[69] Toyota Decision, PDF p 16.
[70] Toyota Decision, PDF pp 3-4.

generation methods were not viable alternatives.[71] The route had been approved through an environmental assessment,[72] and all impacts on the landowners' use of the lands in question could be compensated for financially.[73]

47. As shown in the Toyota Decision, the "public interest" does not turn on whether a transmission proponent is a "public utility" or a privately funded transmitter. Impala submits that the fact the Impala Line is privately funded, seeks no fees or subsidies from ratepayers, and imposes no financial risk or liability on ratepayers for operational costs or overruns, only bolsters the argument that expropriation is in the public interest.

48. In addition to the lack of risk of economic impacts to Ontario ratepayers, Impala submits that the expropriation it seeks is in the public interest, based on the following submissions: (1) there is need for power to the LDI Mine; (2) the Impala Line is the only option for powering the LDI Mine; (3) the Impala Line could provide power to neighboring developments or communities; (4) there are no suitable alternative routes for the Impala Line; (5) Impala has requested expropriation of the minimum legal interests required; and (6) expropriation is the only available option.

There is need for power to the LDI Mine

49. There are currently 60 million tonnes of palladium ore in the ground at the LDI Mine.[74] The LDI Mine is Canada's only pure play palladium mine,[75] and one of only two known pure palladium sources in North America.[76] Palladium produced at the LDI Mine can be used in emissions-control systems, industrial catalysts, and emerging hydrogen technologies.[77]

[71] Toyota Decision, PDF pp 12-13.
[72] Toyota Decision, PDF p 13.
[73] Toyota Decision, PDF p 14.
[74] Impala Response to OEB Staff Interrogatory 2(a), PDF p 6.
[75] Impala Response to OEB Staff Interrogatory 2(a), PDF p 6.
[76] Impala Application at para 42, PDF p 12.
[77] North Star Evidence, Vol II, Tab I: Implats Annual Integrated Report for the year ended 30 June 2024, PDF p 165; North Star Evidence, Vol III, Tab K: Implats Annual Integrated Report for the year ended 30 June 2025, PDF p 19.

Palladium is a critical mineral,[78] and continued commercial operations at the LDI Mine serve Ontario's security, resilience, and economic development objectives.[79]

50. The LDI Mine also contributes significantly to the local and national economies,[80] including through the employment of over 700 Canadians.[81]

51. These factors make the LDI Mine a strategic asset, and Impala is working with both the federal and provincial governments to protect this resource.[82]

52. The long-term future of the LDI Mine is not determined by the term of the current mining leases held by Impala, contrary to assertions from North Star.[83] Mining leases in Ontario are issued for a fixed number of years but can be renewed where the lessee can demonstrate production or reasonable efforts to bring the property into production.[84] As the LDI Mine meets the criteria for renewal, the end date of the associated mining leases does not limit the long-term future of the LDI Mine.

53. Rather, the long-term future of the LDI Mine is dependent on global palladium prices.[85] Though Impala has previously stated that it will cease commercial operations in June 2027, this cessation is distinct from permanent closure and reclamation: the decision to cease commercial operations is neither permanent nor irreversible, and if there is a change in the economics of the LDI Mine, it could continue or re-enter commercial production.[86] Further, the stated intention to cease operations in June 2027 is subject to change. Loss of the Impala Line would force premature closure of the Impala Line, sacrificing the benefits outlined above.

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[78] Under the *Canadian Critical Minerals Strategy*, a "critical mineral" is a mineral that is: (1) essential to Canada's economic security and its supply is threatened; (2) required for Canada's national transition to a low-carbon economy; or (3) a sustainable source of highly strategic critical minerals for Canada's partners and allies (online), PDF p 15. This includes palladium, a platinum-group metal.
[79] Impala Application at para 42, PDF p 12; *Protect Ontario by Unleashing our Economy Act, 2025*, SO 2025, c 4.
[80] Impala Application at paras 39-42, PDF pp 11-12.
[81] Impala Application at para 39, PDF p 11; North Star Evidence, PDF p 33.
[82] Impala Response to OEB Staff Interrogatory 2(a), PDF p 6.
[83] See North Star Response to OEB Staff Interrogatory 1(d), PDF pp 4-5.
[84] *Mining Act*, RSO 1990, c M.14, s 81.
[85] Impala Response to OEB Staff Interrogatory 2(a), PDF p 5; Impala Application at para 40, PDF p 11.
[86] Impala Response to OEB Staff Interrogatory 2(a), PDF p 6.

54. Further, if and when the LDI Mine ceases commercial production, the site will remain subject to provincial and federal regulatory requirements until the LDI Mine has satisfied criteria for closure and full reclamation.[87] Accordingly, a power source is required on an indefinite basis after the end of commercial production to comply with these regulatory requirements and sustain environmental and safety activities, which are plainly in furtherance of the public interest.[88] These activities include pumping and dam services for water and tailings management, critical work that requires a reliable power source in order to ensure environmental and safety protections.[89]

The Impala Line is the only option for powering the LDI Mine

55. There are no reasonable alternatives to the Impala Line. Through its interconnection with the Hydro One transmission system, the Impala Line provides a clean, efficient power source for the LDI Mine,[90] and it is in the public interest to maintain this existing source.

56. The only alternative would be a transition to diesel generation, which is only available as an option in the short term. Existing diesel generators at the LDI Mine have been designed as a backup power source for environmental and safety systems in the event of loss of power from the grid.[91] They lack redundancy and cannot support environmental or safety systems on an ongoing or permanent basis.[92] Further, increased reliance on diesel would result in a significant increase in emissions and traffic on public highways.[93]

57. Removing the fully functioning Impala Line and powering the LDI Mine with diesel generation on an indefinite basis will lead to increased risk of environmental and safety system failure and other clear adverse environmental effects. These avoidable impacts are not in the public interest.

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[87] Impala Application at para 40, PDF p 11.
[88] Impala Response to OEB Staff Interrogatory 2(b), PDF p 6.
[89] Impala Application at para 41, PDF pp 11-12.
[90] Impala Response to North Star Interrogatory 1(b), PDF p 4; Impala Application at para 4, PDF p 3.
[91] Impala Response to OEB Staff Interrogatory 2(c), PDF p 6.
[92] Impala Response to OEB Staff Interrogatory 2(c), PDF p 6.
[93] Impala Response to OEB Staff Interrogatory 2(c), PDF p 6.

The Impala Line could provide power to other developments and communities

58. In addition to the LDI Mine, the Impala Line could potentially serve other nearby developments or off-grid communities.[94] The capacity of the Impala Line is greater than the LDI Mine's required load,[95] and enquiries have been made by communications and generation industry proponents about the use of this excess capacity.[96]

59. Continued operation of the Impala Line has the potential to support economic growth in the region, consistent with the policies of the Government of Ontario.[97] As noted above, recent legislative enactments indicate the Government of Ontario's intention to support the responsible growth of energy-intensive industries, and to deliver affordable and clean energy to meet industry and community needs.[98] Both of these objectives are served by maintaining the Impala Line as a potential power supply for the surrounding region.

There are no suitable alternative routes for the Impala Line

60. Given that the Impala Line is currently constructed and operational, relocation is an inherently inefficient outcome. The relocation of this linear infrastructure would result in unnecessary environmental impacts, including clearing of protected areas and disruption of wildlife,[99] and jeopardize the operation of critical environmental and safety systems at the LDI Mine that require continuous power.[100]

61. Moreover, there are no suitable alternative routes.

62. During the planning phase for the Impala Line, several routes were proposed.[101] In configuring the route, and in collaboration with the Ministry of Natural Resources, significant efforts were made to avoid unnecessary passage through Silver Falls Provincial Park, which abuts Block 1.[102] The northern portion of the Impala Line was specifically re-routed onto Block 3 at the suggestion of the Ministry of Natural Resources to avoid the

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94 Impala Application at para 43, PDF p 12.
95 Impala Response to OEB Staff Interrogatory 3(a), PDF p 7.
96 Impala Response to OEB Staff Interrogatory 3(b), PDF p 7.
97 *OEB Act*, s 1(1)2.1.
98 *Protect Ontario by Securing Affordable Energy for Generations Act, 2025*, SO 2025, c 22, preamble.
99 Impala Application at para 43, PDF p 12.
100 Impala Response to OEB Staff Interrogatory 2(c), PDF p 6.
101 Impala Response to OEB Staff Interrogatory 1(f), PDF p 4.
102 Impala Response to OEB Staff Interrogatory 1(f), PDF p 4.

Dog River Conservation Area and access the approved crossing location along the Dog River.[103]

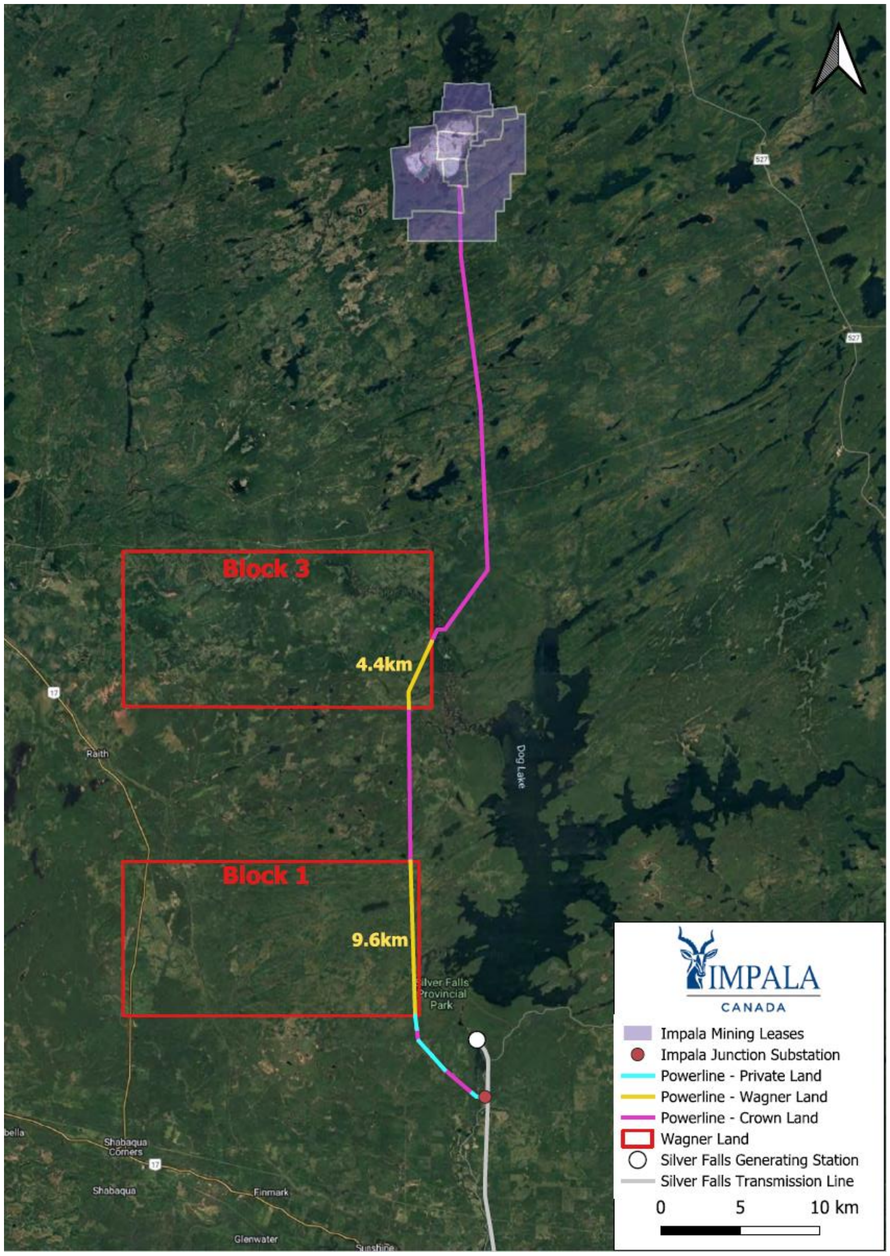

***Figure 1**: Impala Canada Ltd., Powerline Map by Land Type (Impala Application, Appendix 4: Route and Aerial Map, PDF p 22).*

[103] Impala Response to OEB Staff Interrogatory 1(f), PDF p 4.

63. Figure 1, included above and attached to Impala's Application,[104] demonstrates that relocation is not a viable alternative. Silver Falls Provincial Park and the Dog River can be seen to the right (i.e., to the East) of Block 1 and Block 3, respectively.

64. A relocation of the Impala Line would require one of two options: moving the Impala Line further into North Star's properties, or moving the Impala Line off the properties altogether. The former option would have more significant impacts on North Star's use of the properties, and the latter would entail unnecessary impacts on Silver Falls Provincial Park and on the Dog River. As noted above, these sensitive areas were deliberately avoided during planning of the existing route.[105] Relocation of the Impala Line therefore carries undue risk of adverse environmental impacts that are untenable in these circumstances.

Impala has requested expropriation of the minimum legal interests required

65. Impala seeks expropriation authority over interests equivalent to those provided for under the voluntarily negotiated Easements: permanent easements along the existing route of the Impala Line across the properties.[106] These interests are the minimum interests necessary to safely and reliably operate the Impala Line.

(a) **Term**: Impala agrees with North Star that the appropriate term for the easements sought depends on Impala's intended use of the land.[107] As discussed above, Impala seeks permanent easements to supply power to the LDI Mine on an indefinite basis. This reliable supply of power will prevent premature cessation of commercial operations at the LDI Mine[108] and will allow Impala to comply with provincial and federal requirements for long-term water management and treatment to ensure protection of the environment. These are not "hypothetical future operations" as characterized by North Star.[109]

[104] Impala Application, Appendix 4: Route and Aerial Map, PDF p 22.
[105] Impala Response to OEB Staff Interrogatory 1(f), PDF p 4.
[106] A detailed description of the specific interests over which the authority to expropriate is being requested is attached as Appendix 1 to Impala's Application, PDF p 15.
[107] North Star Response to OEB Staff Interrogatory 1(d), PDF p 4.
[108] Impala Response to OEB Staff Interrogatory 2(b), PDF p 6.
[109] North Star Response to OEB Staff Interrogatory 1(d), PDF p 5.

(b) **Geographic Footprint**: Impala seeks expropriation authority over the minimum geographic area necessary to continue safe operations of the Impala Line: a 30m corridor that runs along the eastern edge of Block 1 and across the southeastern corner of Block 3.[110] Together, these two easements sought cover approximately 43 hectares of North Star's land[111] and, given their location along the edges of the parcels, minimally impair North Star's use and enjoyment of the properties.

(c) **Scope of Rights:** Impala seeks an easement to maintain and operate the Impala Line, clear the easement area of brush and trees, erect necessary gates and crossings, access the line to repair and renew, relocate the Impala Line within the easement area, and install an underground conductor when required.[112] These are the minimum interests required to ensure safe and efficient operation of the Impala Line, as well as to support the safe and environmentally sound operation of the LDI Mine. They are consistent with the terms agreed to by North Star and Impala's predecessors,[113] which indicate a mutually beneficial arrangement for minimal impairment of the landowner's use of the properties.

Expropriation is the only available option

66. Impala has engaged in good faith conversations and negotiations with North Star over the course of a year, but the parties have been unable to reach a resolution during this time. As indicated by the correspondence between the parties, North Star indicated it was open to renewing the easement in perpetuity[114] yet rejected an offer worth 10 times the current land value.[115] This is inconsistent with North Star's characterization of itself as a "willing seller" for the negotiation of a permanent easement.[116]

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[110] Impala Application, Appendix 2: Reference Plans Suitable for Registration, PDF pp 17-18.
[111] Impala Application, Appendix 2: Reference Plans Suitable for Registration, PDF pp 17-18. The easement sought on Block 1 covers 29.061 Ha, and the easement sought on Block 3 covers 18.088 Ha.
[112] Impala Application, Appendix 1: Description of Lands and Specific Interests in Lands over which Authority to Expropriate is being Requested, PDF p 15.
[113] Impala Application, Appendix 5: Easements, PDF p 39.
[114] North Star Evidence, Tab C: September 11, 2025 Letter from Andy Gibbons to Jeremy Barretto, PDF p 29.
[115] Impala Response to North Star Interrogatory 2(a)c, Appendix B: September 18, 2025 Letter from Jeremy Barretto to Andy Gibbons, PDF p 17.
[116] North Star Response to Impala Interrogatory 8(a), PDF p 13.

67. The only remaining issue between the parties is compensation, which can be properly dispensed with through the *Expropriations Act*.[117]

D. CONCLUSION

68. For the reasons indicated above, Impala asks that the OEB vary its Decision to find that Impala is eligible for expropriation under subsection 99(1) and therefore the OEB has jurisdiction to grant Impala's requested relief. Impala further submits that its submissions on the merits of its Application under subsection 99(5) of the *OEB* are satisfied, and that it is in the public interest for the OEB to grant Impala's application.

69. The Impala Line was constructed following receipt of all necessary approvals under a prior legislative scheme, which included oversight by the Ministry of Natural Resources. A large and liberal interpretation of the *OEB Act* supports a reasonable interpretation that the leave requirement outlined in subsection 99(1) applies to such approvals. The OEB erred when it adopted an unduly narrow construction of the provision to only include authorizations issued under the PCA.

70. Further, Impala intends to indefinitely maintain the integrity of the Impala Line and is exempt from leave requirements for this work because it will be privately funded. The OEB's error in its constrained interpretation of "reinforce" that resulted in the OEB finding Impala ineligible for expropriation under subsection 99(1)2 produces inefficient consequences that are contrary the construction of section 99(1) and the statutory objectives of the *OEB Act*.

71. An interpretation of the OEB's jurisdiction under section 99 that includes expropriation authority for historic private infrastructure like the Impala Line is consistent with the scheme as a whole. It is also consistent with the OEB's statutory mandate to promote economic efficiency in the transmission of electricity, and to regulate the electricity sector in a manner that supports economic growth in line with the policies of the Government of Ontario.

[117] *Expropriations Act*, RSO 1990, c E.26.

72. To affirm the OEB Decision and deny Impala's application on a jurisdictional basis would mean that existing transmission infrastructure is afforded fewer privileges than proposed future transmission infrastructure, an inherently inefficient result that is inconsistent with the OEB's mandate.

73. Furthermore, the expropriation sought is in the public interest as required by subsection 99(5) of the *OEB Act*, which further substantiates a variance in the Decision. The Impala Line is the only reasonable option for powering the LDI Mine, which provides significant benefit to the local, provincial, and national communities. The LDI Mine requires a permanent power source to continue commercial operations as long as supported by global palladium prices and to sustain necessary environmental and safety systems on an indefinite basis. Transitioning to diesel would result in significant avoidable adverse environmental effects and is inconsistent with Ontario's stated policy objectives.[118] Further, the Impala Line could supply clean power to communities or industrial developments in the Thunder Bay region.

74. The current configuration of the Impala Line across the two North Star parcels was specifically selected to avoid sensitive environmental regions on neighboring lands. The terms of the easements sought, which minimize the term, geographic footprint, and scope of rights, are the minimum legal interests required to continue the safe and efficient operation of the Impala Line. Though Impala has engaged in good faith negotiations with North Star, the parties have not been able to reach agreement on compensation.

75. On this basis, Impala requests that the OEB vary its Decision to find Impala is eligible for expropriation and grant Impala the authority to expropriate the interests sought, and any other relief the OEB deems necessary.

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[118] See e.g., preamble of the *Protect Ontario by Securing Affordable Energy for Generations Act, 2025*, SO 2025, c 22: "The Government of Ontario is committed to… Delivering affordable and clean energy for generations to power our economy and peoples' lives."

July 20, 2026

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AND TO: All Intervenors in EB-2026-0178

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act*, 1998, S.O. 1998, c.15, Schedule B, as amended (the "***OEB Act***");

AND IN THE MATTER OF Application EB-2025-0286 by Impala Canada Ltd. for authority to expropriate land for the purpose of operating a transmission line to Impala Canada Ltd.'s mine;

AND IN THE MATTER OF a Motion pursuant to Rule 42 of the Ontario Energy Board's *Rules of Practice and Procedure* to Review and Vary the May 21, 2026 Decision and Order in EB-2025-0286.

BOOK OF AUTHORITIES

INDEX

Tab 1

Ontario Energy Board Act, 1998

ONTARIO REGULATION 161/99

DEFINITIONS AND EXEMPTIONS

CURRENT Consolidation period: January 1, 2024 - e-Laws currency date (July 15, 2026)

Last amendment: 376/23.

This is the English version of a bilingual regulation.

Legislative History

subsection 78 (3) of the Act. O. Reg. 161/99, s. 6.

6.0.1 Section 80 of the Act does not apply to Hydro One Remote Communities Inc. O. Reg. 20/02, s. 4.

6.0.2 Section 81 of the Act does not apply to Hydro One Remote Communities Inc. O. Reg. 20/02, s. 4.

6.0.3 Section 81 of the Act does not apply to a generator or affiliate of a generator that acquires an interest in a transmission system in Ontario or constructs a transmission system in Ontario if,

(a) none of the lines in the transmission system are more than two kilometres in length; and

(b) the generator transmits electricity only for,

(i) the purpose of conveying electricity generated by the generator into the IESO-controlled grid, or

(ii) the purpose of transmitting electricity during,

(A) planned outages as defined in the market rules that have been approved by the IESO in accordance with the market rules,

(B) forced outages as defined in the market rules, or

(C) emergencies as defined in the market rules. O. Reg. 15/03, s. 3; O. Reg. 496/10, s. 8.

6.0.4 Section 81 of the Act does not apply with respect to a transaction described in or authorized by section 49, 50, 50.1 or 50.2 of the *Electricity Act, 1998*. O. Reg. 264/15, s. 1.

6.1 Subsection 86 (2) of the Act does not apply to a corporation that acquires all the voting securities of a distributor if the voting securities of the corporation are all owned by one or more municipalities and the voting securities of the distributor are all owned by the same municipality or municipalities. O. Reg. 516/99, s. 1.

6.2 (1) Subsection 92 (1) of the Act does not apply to,

(a) a person that constructs, expands or reinforces an electricity distribution line;

(b) a person that makes an interconnection linking a distribution system with an adjacent distribution system;

(c) a person that constructs or reinforces an electricity transmission line that is two kilometres or less in length;

(d) a person that expands an electricity transmission line in length by two kilometres or less;

(e) a person, other than a licensed transmitter or licensed distributor, that constructs, expands or reinforces an electricity transmission line, if the cost of the construction, expansion or reinforcement of the line is to be exclusively paid for by the person;

(e.1) a person that constructs, expands or reinforces an electricity transmission line, if

(i) the construction, expansion or reinforcement of the line is undertaken pursuant to an agreement between the person and one or more customers that specifies that the cost of the construction, expansion or reinforcement is to be exclusively paid for by the customer or customers, and

(ii) none of the customers is a licensed transmitter or licensed distributor;

(f) a person that makes an interconnection linking a transmission system with an adjacent transmission system in Ontario; or

(g) a person that makes an interconnection linking a distribution system with an adjacent transmission system. O. Reg. 365/00, s. 4; O. Reg. 72/02, s. 6; O. Reg. 511/22, s. 1 (1).

(2), (3) Revoked: O. Reg. 511/22, s. 1 (2).

7. Omitted (provides for coming into force of provisions of this Regulation). O. Reg. 161/99, s. 7.

SCHEDULE 1

1. Eabametoong First Nation.
2. Keewaywin First Nation.
3. Muskrat Dam First Nation.
4. Nibinamik First Nation.
5. North Spirit Lake First Nation.
6. Poplar Hill First Nation.
7. Wawakapewin First Nation.

Tab 2

Legislation Act, 2006

S.O. 2006, CHAPTER 21

SCHEDULE F

CURRENT

Consolidation period: December 11, 2025 - e-Laws currency date (July 15, 2026)

Last amendment: 2025, c. 27, Sched. 3.

Legislative History

Static incorporation

(3) The reference to the document is a reference to it as it read when the provision containing the reference was most recently enacted, made or amended. 2006, c. 21, Sched. F, s. 62 (3).

Access to incorporated document and earlier versions

(4) When a document is incorporated by reference as described in subsection (1), the Minister responsible for the administration of the Act under which the regulation is made shall take steps to ensure that,

(a) the incorporated document is readily available to the public, on and after the day the regulation or amending regulation containing the reference is filed under Part III (Regulations); and

(b) the incorporated document and any earlier versions of it that were previously incorporated into the regulation or into a predecessor of the regulation remain readily available to the public. 2006, c. 21, Sched. F, s. 62 (4); 2009, c. 33, Sched. 2, s. 43 (28).

Transition

(5) Subsection (4) applies with respect to documents incorporated by reference as described in subsection (1) on and after October 19, 2006. 2006, c. 21, Sched. F, s. 62 (5); 2024, c. 2, Sched. 15, s. 14.

v **Section Amendments with date in force (d/m/y)**

GENERAL RULES OF CONSTRUCTION

Law always speaking

63 The law is always speaking, and the present tense shall be applied to circumstances as they arise. 2006, c. 21, Sched. F, s. 63.

Rule of liberal interpretation

64 (1) An Act shall be interpreted as being remedial and shall be given such fair, large and liberal interpretation as best ensures the attainment of its objects. 2006, c. 21, Sched. F, s. 64 (1).

Same

(2) Subsection (1) also applies to a regulation, in the context of the Act under which it is made and to the extent that the regulation is consistent with that Act. 2006, c. 21, Sched. F, s. 64 (2).

Bilingual texts

65 The English and French versions of Acts and regulations that are enacted or made in both languages are equally authoritative. 2006, c. 21, Sched. F, s. 65.

Bilingual names

66 If the Act or regulation that creates or continues an entity refers to it by both an English and a French name, or if the English and French versions of the Act or regulation refer to the entity by different names, it may be referred to for any purpose by either name or by both names. 2006, c. 21, Sched. F, s. 66.

Number

67 Words in the singular include the plural and words in the plural include the singular. 2006, c. 21, Sched. F, s. 67.

Gender

68 Gender-specific terms refer to any gender and include corporations. 2016, c. 23, s. 56.

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v **Section Amendments with date in force (d/m/y)**

PREAMBLES AND REFERENCE AIDS

Preambles

69 (1) A preamble to a new Act is part of that Act and may be used to help explain its purpose. 2006, c. 21, Sched. F, s. 69 (1).

Same

(2) A preamble to an Act that amends one or more other Acts is part of the amending Act and may be used to help explain the purpose of the amendments. 2006, c. 21, Sched. F, s. 69 (2).

Tab 3

Mining Act

R.S.O. 1990, CHAPTER M.14

CURRENT Consolidation period: January 1, 2026 - e-Laws currency date (July 15, 2026)

Last amendment: 2025, c. 17, Sched. 1, s. 43.

Legislative History

∨ **Section Amendments with date in force (d/m/y)**

ISSUE OF LEASE FOR MINING CLAIM

Lease of mining claim

Right to lease of claim

81 (1) Upon compliance with this Act and the regulations and upon payment of the rent for the first year, the holder of a mining claim is entitled to a lease of the claim. R.S.O. 1990, c. M.14, s. 81 (1).

Exception

(1.1) Despite subsection (1), and despite the *Statutory Powers Procedure Act*, the Minister may, without prior notice or hearing, deny the issuance of a lease if the Minister considers denying the lease desirable for the protection of the strategic national mineral supply chain. 2025, c. 4, Sched. 5, s. 6 (1).

Factors to consider

(1.2) In making a determination for the purposes of subsection (1.1), the Minister shall consider the following factors:

1. Any risk assessment provided by the Ministry of the Solicitor General.
2. The economic interests of Ontario.
3. Any prescribed factors. 2025, c. 4, Sched. 5, s. 6 (1).

No compensation payable

(1.3) No person is entitled to any compensation or any other remedy or relief for the denial of a lease under subsection (1.1). 2025, c. 4, Sched. 5, s. 6 (1).

Application for lease

(2) The application and payment for a lease may not be made to a recorder until the applicant,

(a) has performed the fifth prescribed unit of assessment work on a mining claim or, if a regulation provides that payment may be made in place of performing some or

Tab 4

Ontario Energy Board Act, 1998

S.O. 1998, CHAPTER 15

SCHEDULE B

CURRENT

Consolidation period: December 11, 2025 - e-Laws currency date (July 15, 2026)

Last amendment: 2025, c. 22, Sched. 3.

Legislative History

Table of contents

PART I
GENERAL

Board objectives, electricity

1 (1) The Board, in carrying out its responsibilities under this or any other Act in relation to electricity, shall be guided by the following objectives:

1. To inform consumers and protect their interests with respect to prices and the adequacy, reliability and quality of electricity service.

1.1 Repealed: 2019, c. 6, Sched. 2, s. 1.

2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.

2.1 To regulate the electricity sector in a manner that supports economic growth, consistent with the policies of the Government of Ontario.

3. To promote electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances.

4. To facilitate innovation in the electricity sector.

5. Repealed: 2020, c. 36, Sched. 34, s. 1.

2004, c. 23, Sched. B, s. 1; 2009, c. 12, Sched. D, s. 1; 2015, c. 29, s. 7; 2019, c. 6, Sched. 2, s. 1; 2020, c. 36, Sched. 34, s. 1; 2025, c. 22, Sched. 3, s. 1.

(2) Repealed: 2016, c. 10, Sched. 2, s. 11.

v Section Amendments with date in force (d/m/y)

Damages

(6) Any damages resulting from an entry onto land carried out under subsection (1) or under an order made under subsection (2) or (3) shall be determined by agreement or, failing agreement, in the manner set out in section 100. 2020, c. 36, Sched. 34, s. 6 (1).

v Section Amendments with date in force (d/m/y)

Expropriation

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 under this Act from the requirement to obtain leave. 1998, c. 15, Sched. B, s. 99 (1); 2023, c. 2, Sched. 6, s. 1.

Hearing

(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. 1998, c. 15, Sched. B, s. 99 (2).

Information to be filed

(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. 1998, c. 15, Sched. B, s. 99 (3).

(4) Repealed: 2003, c. 3, s. 67.

Power to make order

(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. 1998, c. 15, Sched. B, s. 99 (5).

v Section Amendments with date in force (d/m/y)

Tab 5

CHAPTER 22

An Act to amend various statutes with respect to energy, the electrical sector and public utilities

Assented to December 11, 2025

Table of contents

Preamble

The Government of Ontario is committed to:

Building an affordable, secure, reliable and clean energy system to power the strongest economy in the G7.

Prioritizing economic growth, job creation and strong governance as objectives of Ontario’s energy system.

Supporting the responsible growth of energy-intensive industries like data centres that align with Ontario’s economic priorities and benefit local communities.

Keeping our energy supply secure by supporting the sector with the implementation of limitations on foreign participation in Ontario’s energy sector.

Delivering affordable and clean energy for generations to power our economy and peoples’ lives.

Therefore, His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Contents of this Act

1 This Act consists of this section, sections 2 and 3 and the Schedules to this Act.

Tab 6

CHAPTER 4

An Act to enact the Special Economic Zones Act, 2025, to amend the Endangered Species Act, 2007 and to replace it with the Species Conservation Act, 2025, and to amend various Acts and revoke various regulations in relation to development and to procurement

Assented to June 5, 2025

Table of contents

Preamble

The Government of Ontario is:

Protecting Ontario from global economic uncertainty by unleashing our economy.

Unlocking the potential of Ontario's critical minerals by streamlining approval processes for mining and critical infrastructure projects to achieve outcomes that fuel our economy while also creating jobs and protecting the strategic national mineral supply chain – all for the benefit of the people of Ontario and Canada.

Supporting the acceleration of provincial permitting and approvals for projects so Ontario can build mines and infrastructure faster, while ensuring environmental protections for future generations.

Keeping our energy supply safe by limiting foreign participation in Ontario's energy sector.

Working to make Ontario the best place in the G7 to invest, create jobs and do business.

Therefore, His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Contents of this Act

1 This Act consists of this section, sections 2 and 3 and the Schedules to this Act.

Tab 7

Bell ExpressVu Limited Partnership *v*. Rex, [2002] 2 S.C.R. 559, 2002 SCC 42

Bell ExpressVu Limited Partnership *Appellant*

v.

Richard Rex, Richard Rex, c.o.b. as 'Can-Am Satellites', and c.o.b. as 'Can Am Satellites' and c.o.b. as 'CanAm Satellites' and c.o.b. as 'Can Am Satellite' and c.o.b. as 'Can Am Sat' and c.o.b. as 'Can-Am Satellites Digital Media Group' and c.o.b. as 'Can-Am Digital Media Group' and c.o.b. as 'Digital Media Group', Anne Marie Halley a.k.a. Anne Marie Rex, Michael Rex a.k.a. Mike Rex, Rodney Kibler a.k.a. Rod Kibler, Lee-Anne Patterson, Michelle Lee, Jay Raymond, Jason Anthony, John Doe 1 to 20, Jane Doe 1 to 20 and any other person or persons found on the premises or identified as working at the premises at 22409 McIntosh Avenue, Maple Ridge, British Columbia, who operate or work for businesses carrying on business under the name and style of 'Can-Am Satellites', 'Can Am Satellites', 'CanAm Satellites', 'Can Am Satellite', 'Can Am Sat', 'Can-Am Satellites Digital Media Group', 'Can-Am Digital Media Group', 'Digital Media Group', or one or more of them *Respondents*

and

The Attorney General of Canada, the Canadian Motion Picture Distributors Association, DIRECTV, Inc., the Canadian Alliance for Freedom of Information and Ideas, and the Congres Iberoamericain du Canada *Interveners*

Indexed as: Bell ExpressVu Limited Partnership *v*. Rex

Neutral citation: 2002 SCC 42.

9(1)(*c*) grammatically in accordance with its structure, namely, a prohibition with a limited exception. Finally, the majority of the court effectively inverted the words of the provision, such that the signals for which a lawful distributor could provide authorization to decode (i.e., the exception) defined the very scope of the prohibition.

B. *Does Section 9(1)(c) of the Radiocommunication Act Create an Absolute Prohibition Against Decoding, Followed by a Limited Exception, or Does it Allow all Decoding, Except for Those Signals for Which There Is a Lawful Distributor who Has not Granted its Authorization?*

(1) Principles of Statutory Interpretation

26 In Elmer Driedger's definitive formulation, found at p. 87 of his *Construction of Statutes* (2nd ed. 1983):

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

Driedger's modern approach has been repeatedly cited by this Court as the preferred approach to statutory interpretation across a wide range of interpretive settings: see, for example, *Stubart Investments Ltd. v. The Queen*, [1984] 1 S.C.R. 536, at p. 578, *per* Estey J.; *Québec (Communauté urbaine) v. Corp. Notre-Dame de Bon-Secours*, [1994] 3 S.C.R. 3, at p. 17; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21; *R. v. Gladue*, [1999] 1 S.C.R. 688, at para. 25; *R. v. Araujo*, [2000] 2 S.C.R. 992, 2000 SCC 65, at para. 26; *R. v. Sharpe*, [2001] 1 S.C.R. 45, 2001 SCC 2, at para. 33, *per* McLachlin C.J.; *Chieu v. Canada (Minister of Citizenship and*

Immigration), [2002] 1 S.C.R. 84, 2002 SCC 3, at para. 27. I note as well that, in the federal legislative context, this Court's preferred approach is buttressed by s. 12 of the *Interpretation Act*, R.S.C. 1985, c. I-21, which provides that every enactment "is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects".

27 The preferred approach recognizes the important role that context must inevitably play when a court construes the written words of a statute: as Professor John Willis incisively noted in his seminal article "Statute Interpretation in a Nutshell" (1938), 16 *Can. Bar Rev.* 1, at p. 6, "words, like people, take their colour from their surroundings". This being the case, where the provision under consideration is found in an Act that is itself a component of a larger statutory scheme, the surroundings that colour the words and the scheme of the Act are more expansive. In such an instance, the application of Driedger's principle gives rise to what was described in *R. v. Ulybel Enterprises Ltd.*, [2001] 2 S.C.R. 867, 2001 SCC 56, at para. 52, as "the principle of interpretation that presumes a harmony, coherence, and consistency between statutes dealing with the same subject matter". (See also *Stoddard v. Watson*, [1993] 2 S.C.R. 1069, at p. 1079; *Pointe-Claire (City) v. Quebec (Labour Court)*, [1997] 1 S.C.R. 1015, at para. 61, *per* Lamer C.J.)

28 Other principles of interpretation — such as the strict construction of penal statutes and the "*Charter* values" presumption — only receive application

Tab 8

Ontario Energy Board

Commission de l'Énergie de l'Ontario

Ontario

EB-2006-0352

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*, S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF an application by Hydro One Networks Inc. for authority to expropriate land for the purposes of an overhead transmission line for the Toyota Woodstock Transmission Interconnection project.

BEFORE: Cathy Spoel
Presiding Member

Bill Rupert
Member

DECISION AND ORDER

Hydro One Networks Inc. (the "Applicant" or "Hydro One") filed an application with the Ontario Energy Board (the "Board") under section 99 of the *Ontario Energy Board Act 1998,* S.O. 1998, c. 15 (Schedule B) (the "Act") for approval to expropriate lands to construct an overhead 115 kilovolt (kV) transmission line (the "Application"). The purpose of the line is to supply electricity to an automotive plant being built by Toyota Motor Manufacturing Canada Inc. ("Toyota") in the City of Woodstock.

In support of the Application, the Applicant filed a brief of documents which included a Class Environmental Assessment Environmental Study Report, descriptions and copies of registered plans of the permanent and temporary easements sought, and a copy of its Electricity Transmission Licence (collectively the "pre-filed evidence brief").

A Notice of Application and Hearing (the “Notice”) was issued by the Board and Hydro One served the Notice, the Application and the pre-filed evidence brief on all parties identified as having an interest in the lands directly affected by the Application (the “interested parties”). An affidavit setting out the search of title for each property and the service upon all interested parties was filed with the Board Secretary.

On June 19, 2007 an oral hearing was held in Woodstock to hear evidence and submissions from the Applicant and certain of the Intervenors. After consideration of the oral and pre-filed evidence, and after hearing and reading the oral and written submissions of the Applicant and certain of the Intervenors, the Board finds the expropriation of the properties affected by the Application to be in the public interest. The reasons for that decision are set out below.[1]

THE PROPOSED TRANSMISSION LINE

The proposed overhead transmission line is 1.6 kilometers in length. It will be tapped from an existing nearby 115 KV transmission line on Towerline Road and will proceed north to cross the Highway 2/Highway 401 interchange to connect with a transformer station located on the Toyota lands.

The transmission line will be located on lands subject to permanent easements to accommodate the line and supporting structures, and future accommodation for a second circuit on the same structures. Temporary easements will also be required during the period of construction. Maps and copies of registered plans locating the temporary and permanent easements were filed as part of the Application.

THE INTERVENORS AND THE PROPERTIES TO BE EXPROPRIATED

There are four properties for which expropriations of temporary and permanent easements are requested.

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[1] Prior to the oral hearing, the Board rendered three interim decisions with reasons which are attached as Appendices A, B and C. Those decisions confirmed Toyota’s status as an intervenor; ordered an oral hearing; ordered that route selection would not be an issue at the hearing; and ordered that a redacted copy of the Connection and Cost Recovery Agreement between the Applicant and Toyota (the “Agreement”) be placed on the public record. The Agreement was filed and made Exhibit J.2 at the hearing.

Property 1 is a 171.4 acre parcel belonging to Rebecca Mae and Andrew Henry Streutker (the "Streutker property"). The permanent and temporary working easements sought for the Streutker property require 7.061 acres and 0.386 acres respectively. Mr. and Mrs. Streutker were granted intervenor status. Mr. Streutker was a witness, and was represented by counsel, at the hearing.

Property 2 is a 38.7 acre parcel belonging to William Bruce Forster (the "Forster property"). The permanent and temporary working and access easements sought for the Forster property require 0.543 acres, 1.031 acres and 1.110 acres respectively. Mr. Forster was granted intervenor status. He did not attend the hearing and his counsel did not attend the hearing.

Property 3 is a 35.8 acre parcel belonging to Douglas Herbert Ede (the "Ede property"). The permanent and temporary working and access easements sought for the Ede property require 1.517 acres, 1.092 acres and 0.41 acres respectively. Mr. Ede did not seek intervenor status and did not participate in the hearing.

Property 4 is an 11.97 acre parcel belonging to Ted and Ingrid Tuns (the "Tuns property"). The permanent and temporary working easements sought are 0.284 acres and 0.635 acres respectively. Mr. and Mrs. Tuns were granted intervenor status and participated in the hearing through their counsel.

Toyota was granted intervenor status and participated in the hearing through its counsel.

THE EVIDENCE

The Applicant

In its pre-filed evidence brief, the Applicant submitted that the proposed expropriations are required to complete the easement rights for the construction of the transmission line needed to provide a safe and reliable supply of electricity to the automotive plant being built by Toyota in the City of Woodstock.

The Applicant also stated that it has complied with the class assessment provisions of the *Environmental Assessment Act* by submitting an Environmental Study Report to the Ministry of the Environment on September 29, 2006.

As part of the environmental assessment, two Public Information Centres were held and there was a thirty-day public and agency period for review of the draft Environmental Study Report. At the Public Information Centres and during the thirty-day public and agency review period, property owners affected by the proposed transmission line were given the opportunity to voice their concerns, if any, and these comments were taken into account in determining the preferred route for the transmission line.

In addition to relying on the Application and the pre-filed evidence brief, the Applicant called Glen Hoglund, the Manager of project management for engineering and construction services, as a witness. Mr. Hoglund gave evidence that the Applicant's Electricity Transmission Licence and section 26 of the *Electricity Act, 1998*, S.O. 1998, chapter 15, Schedule A, require the Applicant to provide access to the Applicant's transmission system and to convey electricity when requested to do so by a consumer, generator or retailer. Toyota's request for service was the impetus for the Connection and Cost Recovery Agreement entered into between the Applicant and Toyota[2]. The transmission line is for the exclusive use of Toyota.

Mr. Hoglund's evidence was that a large automotive manufacturing facility requires a significant amount of energy to build and to operate, and the only reliable source of such energy would be a high voltage transmission line.

Mr Hoglund testified that it is Hydro One's practice to request the minimum property rights that are required; in this case, where there is a need to build, operate and maintain a high voltage transmission line, a limited-right easement is sufficient for the purpose.

In response to a request by counsel for Streutker and Tuns, Hydro One produced a document titled "Draft Policy and Process" which deals with real estate acquisitions. This policy has not yet been approved by Hydro One's Executive Committee but is in the form that will be submitted for approval. The draft policy states that Hydro One will acquire the minimal rights required to meet operational needs. If the acquisition of a limited interest (i.e. an easement) renders the real estate uneconomic to the affected property owner or the construction proposed requires it, Hydro One will acquire the fee simple. Hydro One is not relying on the draft policy for the purpose of arguing that it

[2] See footnote 1.

should be permitted to take only the easement and not the fee, rather, it relies upon the evidence of Mr. Hoglund.

The Applicant gave consideration to alternative means of supplying the electricity to the Toyota plant, involving a combination of low-voltage and high-voltage facilities. While aware of the existence of anaerobic facilities where methane gas is created from animal waste and used to generate electricity, Hydro One did not consider using an anaerobic facility to generate electricity to supply the Toyota plant. It was Mr. Hoglund's evidence that such a facility could not provide a reliable supply of electricity.

If Hydro One is granted the expropriation order, the transmission line and related structures placed upon the four properties will consist of a combination of four lattice transmission structures and four single pedestal steel poles.

The width of the permanent easements will be 30 metres in total. The width is needed for maintenance and to ensure that the conductors will not swing out beyond the edge of the right of way when blown by high winds. If the structures are put in place, Hydro One will not restrict the type of farming operations that can continue within the right of way. There is no need for permanent roadways for access for maintenance.

If Hydro One is granted the expropriation order, the Tuns property will have three lattice transmission structures. Those structures will have a footprint of between 6 to 8 feet and a height of 50 to 60 feet. They are required to connect the new section of line to the existing transmission line along Towerline Road. The Tuns property currently has two transmission towers located on a permanent easement which runs parallel to Towerline Road. Those towers have been on the property for approximately ninety years.

If Hydro One is granted the expropriation order, the Streutker lands would have one lattice transmission structure and three single pedestal steel poles.

Intervenor Evidence

Andrew Streutker was called as a witness. Mr. Streutker's father purchased the property in 1956 or 1957, when Highway 401 was a gravel road. Mr. Streutker purchased the farm in 1991 or 1992, by which time Highway 401 was fully developed.

The Streutker property is 172 acres and is bounded by Towerline Road on the south, a CN rail line on the north and Highway 401 on the east. It has always been a dairy operation. Corn is cultivated to feed the herd of 250 dairy cows, and there is some pasture. There are three houses on the property, one occupied by Mr Streutker's parents, one occupied by him and his family, and one occupied by farm workers. There are also several farm buildings. None of the buildings are located in the areas over which easements are sought.

Mr. Streutker testified that the effect of an easement down the centre of his property would be an "inconvenience, to say the least." He testified that these days a farmer has to be a large operator and cultivate lots of land in order to feed all the animals, and that equipment gets bigger all the time. Farmers want large fields for speed and efficiency. His view was that with towers in the way, it would be more difficult to work efficiently.

Mr Streutker also testified that he has a concern about the possible effect of stray voltage on his cows. He stated that "Holstein cows are ten times more susceptible to stray voltage than human beings are, so they can sense it a lot quicker and it has a large effect on them with reproduction, production and feed consumption. It's not to say, I don't have that issue now, but at any time they say you mess with -- or mess -- you work with Hydro in any which way, something like that could happen."

In cross examination, Mr. Streutker said he understood that Hydro One does attempt to provide solutions to any problems that may occur with stray voltage.

Counsel for Streutker and Tuns also filed two documents dated March 22, 2007. The documents reflect that offers were made by Streutker and Tuns to sell the entire fee of their property to the Applicant. The offers were not accepted.

POSITIONS OF THE PARTIES

The Applicant

It was the Applicant's position that as it had complied with all of the administrative and filing requirements of section 99 of the Ontario Energy Board Act, the only issue to be determined was whether the expropriation of the land sought was in the public interest.

Counsel for Hydro One submitted:

- the expropriation powers of the Board should be read in the context of the objects and purposes of the Act rather than in the context of expropriation law in general;
- the interest of the public in having the Toyota plant operate in Woodstock and the economic benefits that would flow from the plant operation constituted the "public interest" in this case;
- a limited easement was what was sought and what should be granted as a smaller footprint on the land is a better footprint;
- the land can be used productively for dairy farming and corn production if a limited easement is granted;
- the Board should take judicial notice that transmission corridors and transmission lines have been constructed throughout the province using the smallest footprint possible, and that this is not a case in which to depart from that general principle; and
- use of a methane gas plant as an alternative source of power is not a solution.

Toyota

Counsel for Toyota submitted:

- a specific individual's or locale's interest should be weighed against general public interest;
- if something is in the greater public interest the specific interest must give way particularly when the harm to the specific interests is of a compensable nature;
- a high voltage line is necessary for the Toyota plant to function, and without electricity sufficient to operate the entire facility, all of the public benefits of the project cannot be achieved;

- "public benefits" are the direct and indirect economic benefits connected with the provision of goods and services to the plant, both during the construction period and during the life of the plant;

- Hydro One is obligated to connect a high voltage transmission line in order to fulfill its legal obligations; and

- Toyota is not a generator and should not be required to place an anaerobic digester on property assembled solely for the purpose of manufacturing cars; in any event, an anaerobic digester would not be a reliable source of electricity for Toyota, and a transmission solution would be required.

The Intervenors Streutker and Tuns

As background to his submissions, counsel for Streutker and Tuns read the following paragraph from *Dell Holdings* v. *Toronto Area Operating Authority*:

> *The expropriation of property is one of the ultimate exercises of governmental authority. To take all or part of a person's property constitutes a severe loss and a very significant interference with a citizen's private property rights. It follows that the power of an expropriating authority should be strictly confined in favour of those whose rights have been affected. This principle has been stressed by eminent writers and emphasized in the decisions of this Court.*[3]

Counsel for Streutker and Tuns submitted:

- Hydro One should be directed to examine whether or not an anaerobic digester could be incorporated into the Toyota plant;

- if that is not feasible or Hydro One and Toyota do not want to use an anaerobic digester, the Board should order Hydro One to expropriate the entirety of the Streutker property and the fee of the Tuns property;

- the Board should consider whether placing the transmission tower and poles on the Streutker property renders its continued operation as a dairy farm uneconomic, so making the taking of the property as a whole appropriate;

[3] [1997] S.C.J. No. 6 para. 20.

- the placing of the transmission tower and poles on the Streutker property makes the movement of farm equipment difficult, and may cause stray voltage, both consequences which ought not to be permitted and which work an unfairness that can be alleviated by an order directing Hydro One to acquire the entire property; and

- a consideration of public interest must always include a consideration of fairness, and the Board should decide whether or not in these circumstances there has been any fairness shown to the property owners.

Applicant's Reply Submissions

Counsel for the Applicant submitted:

- the *Dell* case is support for the proposition that an expropriating authority should not take a greater interest or more land than it needs, should not take farmland out of production when it is not necessary to do so, and should not take a fee simple when a simple easement will do;

- Mr. Hoglund stated clearly that anaerobic digestion generation is not a viable alternative; and

- there is no evidence that supports an allegation that the real estate of the property owners would be rendered uneconomic if an easement was ordered.

THE BOARD'S AUTHORITY AND FINDINGS

The Legislative Scheme

The exercise of the Board's powers is informed by the objectives contained in the Act. The objectives in relation to electricity are found in subsection 1(1) which reads as follows:

> 1. (1) The Board, in carrying out its responsibilities under this or any other Act in relation to electricity, shall be guided by the following objectives:
>
> 1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.

2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.

The Board derives its authority to deal with matters of expropriation under section 99 of the Act.

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.

As the proposed transmission line is under two kilometers in length, the Applicant is within the exemption referred to in s. 99(1) 2.

Prior Board and Court Decisions Involving the Public Interest

Section 99 (5) of the Act provides that 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.

This Board has previously considered the phrase “the public interest”. In one decision the Board noted:

> Clearly there are no firm criteria for determining the public interest which would hold good in every situation. Like 'just and reasonable' and 'public convenience and necessity', the criteria of public interests in any given situation are understood rather than defined, and it may well not serve any purpose to attempt to define these terms too precisely. Rather, it must be left to those who have to arrive at a conclusion to strike the balance of puts and takes, pluses and minuses, that at the particular point in time are considered appropriate.
>
> The public interest is dynamic, varying from one situation to another, if only because the values ascribed to the conflicting interests alter. It follows that the criteria by which the public interest is served may also change according to the circumstances.[4]

In another decision, the Board made the following observations regarding the definition of “the public interest”:

> In the opinion of the Board, the public interest can only be more particularly defined by examining the facts and nature of the situation in which the test is to be used. The public interest will consistently take the form of the facts to which it is applied, moulding itself to the specific use to which it is to be put.
>
> Having determined that the public interest is not generally definable, the Board would add that in spite of its elusiveness, when it is applied to a specific set of facts the reasonable man of the common law has no trouble determining if a particular act meets the test. A transmission tower, by this test, might be located in a productive, peaceful countryside, in spite of the residents' objections, if the tower is found to be in the public interest of a nearby population centre. The public interest of the urban residents may be said to outweigh the local interests of the rural public in those circumstances.
>
> Lord Coke put it succinctly when he wrote: 'The law prefers the public good to the private good, and if it has to choose between prejudice to the many and mischief particular to the individuals, the individuals must suffer.'[5]

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[4] 2 E.B.R.O 1985, cited in Robert W. Macaulay, Q.C. and James L.H. Sprague, *Practice and Procedure Before Administrative Tribunals*, Vol. 1, Ch. 8, “The Public Interest”, p. 8-4. The cite for the decision, taken verbatim from the textbook, is incomplete.

[5] Re E.B.O, 118, 119, reported January 1985, cited in Robert W. Macaulay, Q.C. and James L.H. Sprague, *Practice and Procedure before Administrative Tribunals*, Vol. 1, Ch. 8, “The Public Interest”, p. 8-5.

In *Union Gas Ltd.* v. *Township of Dawn* the Divisional Court dealt with an appeal of a Board decision made in the public interest, and in its reasons stated: “The words ‘in the public interest’…would seem to leave no room for doubt that it is the broad public interest that must be served.” [6]

As noted previously, section 99 (5) of the Act provides that 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.

As was stated in its prior decisions, in forming this opinion the Board cannot rely on predetermined criteria and must consider the specific facts and circumstances of the case before it.

The Board must take into account the objects and purposes of its Act, the broad public interest, the interests of each of the parties to the application (the landowners, the Applicant and Toyota), and the obligation to serve imposed upon the Applicant by the terms of its licence and section 26 of the *Electricity Act, 1998*. The Board must consider and weigh each of the competing interests in forming its opinion.

The Toyota Project

The Environmental Study Report (the “ESR”) indicated that Woodstock has manufacturing and construction as its largest industry. According to the City of Woodstock’s Economic Development profile for 2005, 31% of the manufacturing and construction industries are automotive related. The ESR also notes that the unemployment rate of Woodstock is 7.1% compared to 5.8% for the County of Oxford.

While no evidence was led at the hearing on the specifics of the manufacturing facility being built by Toyota in the City of Woodstock, it is a matter of public record and the Board accepts that it will contribute to the expansion and diversification of the already established automotive manufacturing base in the Woodstock area, and will provide direct and indirect employment and economic benefits to the City of Woodstock and the Province of Ontario.

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[6] [1997] O.J. No. 2223 (Div. Ct.), para. 29,

Power Supply Options

The Board accepts the evidence of the Applicant that low voltage alternatives would provide insufficient capacity to operate the manufacturing facility and that a high voltage transmission line is necessary to provide a reliable supply of power to the plant.

In his closing submissions, counsel for Streutker and Tuns asked the Board to require Hydro One to examine whether an anaerobic digester, supplied by animal waste from farms in the surrounding area, could be incorporated into the Toyota manufacturing facility to generate the electricity required to run the facility.

The Board accepts the evidence of the Applicant that an anaerobic digester could not provide sufficient and reliable power to the manufacturing facility and finds that it is not a viable option.

The Board also finds that it has no authority to require either the Applicant or Toyota to build generation facilities of any kind, and that the Applicant's licence specifically prohibits it from doing so.

The Proposed Route

The landowners requested that the question of route selection be made an issue in the proceeding.

The preferred route for the transmission line was identified and approved through the environmental assessment process. As noted above, this process was open to participation by the public, including the landowners affected by this application. As route has already been approved through the appropriate process, the Board determined that it was not an issue in this proceeding.

Landowner concerns

The Board accepts Mr Streutker's evidence that construction and the ongoing presence of the transmission line and related structures on his farm will result in some inconvenience to his commercial farm operations. However, there was no evidence that the expropriation of the easements required for this purpose would render the use of his or any of the other affected lands uneconomic. Rather, the evidence was that, save for the immediate footprint of the transmission towers and poles, the lands could continue to support farming operations.

Accordingly, the Board finds that any impacts on the landowners' farm operations can be compensated for financially.

Mr Streutker also expressed concerns about the possibility of stray voltage affecting his cows as it has in some other farm operations, once the transmission line and related structures were in place. While the Board acknowledges the concerns expressed, there was no evidence that stray voltage is likely to result from the type of transmission line which is the subject of the Application.

Minister's Directive and Order in Council

On June 22, 2007, counsel for Streutker and Tuns wrote to the Board and requested that the hearing be reconvened to consider a Minister's Directive and an Order in Council, which had been the subject of news reports earlier that day.

The Minister's Directive states:

> The Board shall implement such measures which, in its own discretion, having regard to the objective related to quality of electricity service provided for under paragraph 1(1)1 of the Act, are necessary to ensure electricity service to farm customers, in relation to "tingle" or "stray" voltage, is of a quality that does not unduly impact the operation of the farm (the "Directive").

The Board issued Procedural Order No. 5 on June 26, 2007, and ordered that counsel for Streutker and Tuns make written submissions on the relevance of the Directive to the issues raised in the Application and the evidence to be considered by the Panel deciding the Application. Those submissions were served on all parties, who were provided with an opportunity to respond by way of written submission, and counsel for Streutker and Tuns were provided with an opportunity to make reply submissions.

Counsel for Streutker and Tuns submitted that as the Minister had seen fit to issue a directive to the Board to implement measures concerning stray voltage, the Board should hear further evidence and argument with respect to the effect of stray voltage.

Alternatively, counsel for Streutker and Tuns requested the Board "require Hydro One to initiate the process of selecting a route having regard to the Minister's Directive and the Order in Council".

Counsel for Hydro One submitted that the Directive has no relevance or applicability to the proceeding as the issue before the Board is whether the expropriations sought are in the public interest, and not the quality of service of electricity to farm customers,.

Alternatively, if the Board does determine this proceeding involves electricity service to farm customers, any consideration of stray voltage is premature as there is no evidence that there will be stray voltage when the transmission line is built and is operational, and no evidence that such stray voltage could not be mitigated, if it occurred.

Counsel for Toyota supported the submissions made by Hydro One.

In reply, counsel for Streutker and Tuns submitted that the Directive relates to the construction of the transmission line "which should not unduly impact the operation of the Streutker farm" and that any damage to the Streutker dairy operation should be considered immediately.

The Board has considered the Directive. Section 99(5) of the Act requires the Board to form an opinion as to whether it is in the public interest to expropriate certain lands. The Board finds that the Directive is not relevant to the forming of such an opinion and declines to order the reopening of the hearing. The Board notes that while the measures referred to in the Directive have yet to be determined or implemented, once implemented the measures will apply to all farm operations in the Province, including those of the Intervenors, in the event that stray voltage does prove to be a problem.

The Lands to be Expropriated

In his closing submissions, counsel for Streutker and Tuns asked that the Board order the expropriation of the entirety of the Streutker property and the fee of the Tuns property, if it did not order the Applicant to explore the use of an anaerobic digester as an alternative source of supply.

The Board agrees with the Applicant that in the majority of cases the best footprint is the smallest footprint. The Applicant led evidence that established the amount of land required for the temporary and permanent easements on which the transmission line and related structures would be placed. Beyond filing documents to establish that they had offered to sell the entirety of their land to the Applicant, the landowners led no evidence that the expropriation of a greater amount of land than that required by the Applicant was necessary.

The Board finds that the temporary and permanent easements sought by the Applicant are necessary to the construction, operation and maintenance of the transmission line and related structures, and are adequate in size for those purposes.

With respect to the *Dell* case cited by counsel for Streutker and Tuns, the Board finds that while there is inevitably an interference with private property rights when expropriation occurs, the Applicant has pursued the appropriate process in determining the route, and has made efforts to minimize the disruption to the farm operations by requesting easements that are no larger than necessary. As noted previously, any inconvenience affecting commercial farm operations can be compensated for financially.

The Board finds that the landowners have been treated fairly throughout the expropriation process. They were notified of the route selection process and had an opportunity to participate in it; similarly, they were properly notified of and participated in this hearing. While the landowners may disagree with the route selected and the decision to issue an order expropriating certain of their lands, the Board is satisfied that the processes which led up to those decisions were fair.

Conclusion

In the Board's opinion, in this case the broader public interest of securing a reliable supply of power for the Toyota plant outweighs the private interests of the landowners affected by the easements requested by the Applicant. The Board is of the opinion that the expropriation of the lands is in the public interest and will make an order authorizing the expropriations.

THE BOARD ORDERS THAT:

1. The Applicant is permitted to expropriate from the landowners Streutker, Tuns, Forster and Ede the lands necessary for the permanent and temporary easements required by the Applicant and described in Plans 41R-7941, 41R-7942, and 41R-7943, which were filed as part of the Application and which were deposited with the Land Registrar for the Registry Division of Oxford (No. 41) on December 19, 2006,

2. Parties that were found eligible for an award of costs in this proceeding shall submit their cost claims by **August 10, 2007**. A copy of the cost claim must be filed with the Board Secretary and one copy is to be served on Hydro One. The cost claims must be done in accordance with section 10 of the Board's *Practice Direction on Cost Awards*.

3. Hydro One shall have until **August 24, 2007** to object to any aspect of the costs claimed. A copy of the objection must be filed with the Board Secretary and one copy must be served on the party against whose claim the objection is being made.

4. The party whose cost claim was objected to will have until **August 31, 2007** to make a reply submission as to why its cost claim should be allowed. Again, a copy of the submission must be filed with the Board Secretary and one copy is to be served on Hydro One.

5. Hydro One shall pay the Board’s costs of the proceeding immediately upon receipt of the Board’s invoice.

DATED at Toronto, July 19, 2007

ONTARIO ENERGY BOARD

Original Signed By

Peter H. O’Dell
Assistant Board Secretary

Tab 9

Ontario Energy Board | Commission de l'énergie de l'Ontario

DECISION AND ORDER

EB-2019-0127

UPPER CANADA TRANSMISSION, INC. OPERATING AS NEXTBRIDGE INFRASTRUCUTRE, LP (NEXTBRIDGE)

East West Tie Project Expropriation Application

BEFORE: Michael Janigan
Presiding Member

Emad Elsayed
Member

Cathy Spoel
Member

September 12, 2019 (Corrected December 3, 2019)

TABLE OF CONTENTS

1 INTRODUCTION AND SUMMARY

On April 17, 2019, Upper Canada Transmission Inc., operating as NextBridge Infrastructure, LP (NextBridge) applied to the Ontario Energy Board (OEB) under section 99 of the *Ontario Energy Board Act, 1998* (OEB Act)[1] for an order granting authority to expropriate interests in 23 parcels of land to construct a 450 kilometre 230 kV transmission line in northwestern Ontario (East West Tie (EWT) Project). On June 10, 2019, NextBridge amended its application advising that, since the filing of the application with the OEB, it had negotiated agreements in relation to 10 parcels of land and so that it is now requesting authority to expropriate interests in 13 parcels of land owned by seven landowners, rather than 23 parcels of land. NextBridge continues to pursue voluntary agreements with those landowners.[2] On August 9, 2019 in its Argument-in-Chief, NextBridge informed the OEB that it has reached an agreement with one additional landowner, and that it now seeks the authority to appropriate interests in land on 12 properties owned by six registered owners.

NextBridge seeks the authority to expropriate three types of interests in land[3]:

i. Permanent Transmission Line Easements – required for construction and ongoing operation and maintenance of the EWT Project.

ii. Permanent Road Use Easements – required for access during construction and to maintain and operate the EWT Project.

iii. Temporary Road Use Easements – required for temporary road use and access during construction of the EWT Project. The term of the temporary rights sought is for either four or seven years.

Construction of the EWT Project was approved by the OEB on February 11, 2019 pursuant to section 92 of the OEB Act in a leave to construct (LTC) proceeding.[4]

NextBridge indicated that it planned to start construction of the EWT Project in June 2019 and that it requires access to the subject lands by December 2019.

[1] S.O. 1998, c.15, Sched. B
[2] NextBridge's Response to OEB staff IR No. 1 b) (EB-2019-0127)
[3] NextBridge Application (EB-2019-0127) Exhibit A, Tab 1, Schedule 2, paragraph 10, pages 3-4 ; Exhibit A, Tab 2, Appendices B,C,D,E Description of Rights Sought
[4] EB-2017-0182

The OEB finds that the requested expropriation is in the public interest and grants to NextBridge the authority to expropriate the interests in land described in Schedule "A" of this Decision and Order.

2 THE PROCESS

The OEB issued its Notice of Hearing (Notice) on May 28, 2019, and directed NextBridge to serve the Notice, the application and relevant evidence on current registered property owners, encumbrancers and those with any interest in the lands directly affected by the expropriation application.

By letter dated May 28, 2019, the OEB notified all intervenors in the EWT Project LTC proceeding and all First Nation and Métis communities that were consulted in relation to the EWT Project of the filing of the expropriation application. None of the affected properties are on First Nations reserves.

Based on a title search, NextBridge determined that it was required to serve seven registered property owners and 49 encumbrancers. By letter dated July 16, 2019, NextBridge advised the OEB that it had served all but one property owner and 10 encumbrancers. The unserved landowner owns a property identified as F-4 in the Amended Expropriation Application (see Schedule “A” to this Decision and Order). NextBridge advised that, on that property, it requires a Temporary Road Easement over an area of approximately 5,692 m^2 and that this property will be liable to be forfeited and vested in the Crown on December 1, 2019. NextBridge intends to acquire a Temporary Road Easement for the property through the current expropriation proceeding as the property continues to be registered in the name of the landowner. If that property is forfeited and vested in the Crown, NextBridge will contact the Crown to determine the appropriate reservation of rights. With regard to the 10 unserved encumbrancers, NextBridge provided a detailed explanation of the circumstances that prevented service.[5]

There are no intervenors in this proceeding. No party requested an oral hearing.

The OEB issued Procedural Order No. 1, on July 23, 2019, setting the schedule for written discovery through interrogatories and for submissions. The written interrogatories process was completed on August 6, 2019. NextBridge filed its Argument-in-Chief on August 9, 2019 and OEB staff filed its submission on August 13, 2019. NextBridge did not file a reply submission but responded by letter on August 20, 2019 indicating that it has no issue with the OEB staff submission including the proposed draft conditions.

[5] NextBridge’s Letter to the OEB dated July 16, 2019, page 2

3 PUBLIC INTEREST CONSIDERATIONS

The OEB's power to grant an applicant authority to expropriate land is derived from section 99 of the OEB Act, which is set out in Schedule "B" to this Decision and Order. Under this section, any person who has been granted leave by the OEB to construct certain 'works' under section 90 (natural gas) or section 92 (electricity) of the OEB Act may apply for authority to expropriate land for such works[6].

Compensation issues do not fall within the OEB's jurisdiction under section 99 of the OEB Act and are addressed in accordance with the *Expropriations Act* (Expropriations Act)[7] and, if required, are resolved by the Board of Negotiations[8]. If the OEB grants authority to expropriate land, the applicant would follow the process set out in the Expropriations Act to determine the amount of compensation to be paid.

Subsection 99(5) of the OEB Act establishes the test for approving an application brought under subsection 99(1) and states that, if 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.

The OEB applied the following public interest considerations in reviewing this application:

1. Is the proposed expropriation in the public interest?
2. Are the specific interests in the lands requested for expropriation appropriate?
3. Has NextBridge taken reasonable steps to minimize the impact of the proposed expropriation on the subject properties?
4. Is NextBridge's decommissioning and abandonment plan appropriate and reasonable?

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[6] Section 99 of the OEB Act falls under Part VI of the Act and sets out the requirements for leave to construct, expropriation and related matters. A "work" is defined in this part of the OEB Act as a hydrocarbon line, electricity distribution line, electricity transmission line, interconnection or station.
[7] *R.S.O. 1990. C. E 26*
[8] This role was formerly played by the Ontario Municipal Board. The Board of Negotiation (BON) is an informal tribunal that mediates settlements for compensation when property is expropriated. If no settlement is reached during the BON process, either party may file an appeal with the Local Planning Appeal Tribunal (LPAT), an adjudicative tribunal that hears cases in relation to a range of land use matters, or through civil proceedings. The LPAT is part of the Environment and Land Division (ELD) of Tribunals Ontario.

5. Has the impact of the proposed expropriation on the landowner been minimized?

6. What conditions, if any, should be attached to the OEB's Order?

Is the proposed expropriation in the public interest?

Under section 96(1) of the OEB Act, leave to construct is granted if the OEB is of the opinion that the project is in the public interest. Pursuant to section 96(2) of the OEB Act, in the case of the EWT Project, the interests of consumers with respect to prices and the reliability and quality of electricity service were already considered by the OEB in assessing whether the EWT Project is in the public interest.

NextBridge applied on July 31, 2017 under section 92 of the OEB Act for leave to construct the EWT Project.[9] On February 11, 2019, the OEB issued its decision as follows:

- The OEB granted leave to construct approval to NextBridge for the EWT Project, and found that the EWT Project is in the public interest with respect to prices and the reliability and quality of electricity service.[10]

- The OEB approved the form of land easement agreements that have been or will be offered by NextBridge to directly affected landowners for the purposes of section 97 of the OEB Act.[11]

NextBridge stated that it had offered the agreements in the form approved by the OEB to the registered landowners whose land is subject to this expropriation application[12].

[9] NextBridge's application was assigned OEB File No. EB-2017-0182 and was heard in a combined proceeding together with Hydro One Networks Inc. Stations Upgrades s. 92 Application (EB-2017-0194) and Hydro One Networks Inc. section 92 application for leave to construct a transmission line between the same two points as NextBridge's EWT Project (referred to as the Lake Superior Link Project (EB-2017-0364).
[10] Section 96(2) of the Act also includes the promotion of the use of renewable energy sources as an issue to be considered, where applicable. The promotion of the use of renewable energy sources was not relevant in this case.
[11] OEB Decision and Order, EB-2017-0182/EB-2017-0194/EB-2017-0364, February 11, 2019, page 9
[12] NextBridge's Response to IR No. 3 a) (EB-2019-0127)

Both OEB staff and NextBridge submitted that it is in the public interest that the OEB grant NextBridge authority to expropriate the interests in land, as requested by NextBridge.

OEB Findings

The OEB finds that the proposed expropriation is in the public interest based on the following reasons:

- The OEB approved the EWT Project and found that construction and operation of the EWT Project is in the public interest.
- The OEB is satisfied that the public interest with respect to the EWT Project was fully examined during the LTC approval proceeding.
- The EWT Project may be completed only if all necessary land rights for construction and operation of the EWT Project are acquired by NextBridge.

The OEB notes that NextBridge has acquired the majority of land rights and interest in land along the 450 kilometre OEB-approved route of the EWT Project and that it demonstrated reasonable and multiple efforts to notify the landowners and encumbrancers affected by this expropriation application. The OEB is satisfied that NextBridge confirmed that it has offered the agreements in the form approved by the OEB to the registered landowners whose land is subject to this expropriation application.

Are the specific interests in the lands requested for expropriation appropriate?

The OEB's Order granting LTC the EWT Project states:

> NextBridge is granted leave pursuant to section 92 of the Act to construct 450 km of new transmission line that will run for 235 km from Lakehead TS to Marathon TS, continuing for approximately 215 km from Marathon TS to Wawa TS. For a map depicting the line route proposed in the NextBridge-EWT Project application, see Schedule A. [13]

[13] Decision and Order, EB-2017-0182/EB-2017-0194/EB-2017-0364, February 11, 2019, page 12

The locations of the specific interests in the properties for which NextBridge seeks authority to expropriate are within the approved route of the EWT Project transmission line. NextBridge's evidence in this application includes aerial maps and survey drawings for each property and location of the area of the interest in lands on each of the 12 properties.[14]

OEB Findings

The OEB finds that the locations of the requested Permanent Easements and Permanent and Temporary Road Use Easements are appropriate as these are within the OEB approved EWT Project route.

Has NextBridge taken reasonable steps to minimize the impact of the proposed expropriation on the subject properties?

For the Permanent Transmission Line Easements, the average Right-of-Way (ROW) width of approximately 64 metres of permanent easement was determined in order to accommodate topographic features and provide flexibility in final structure placement, as well as consideration of the design of the structures, the span between structures, and the sag of the conductor. NextBridge stated that it determined the ROW width in accordance with current standards and technical requirements.[15]

The dimensions of the Permanent and Temporary Road Use Easements for the construction of new access roads were determined based on the access requirements for the Project, such as the width required to accommodate vehicular traffic and turning radius. In order to determine the dimensions of the road easements, NextBridge used the Ministry of Natural Resources and Forestry Guidelines for Access Roads, including the Environmental Guidelines for Access Roads and Water Crossings document (MNR 1990).[16] NextBridge also noted that in order to minimize impacts, it will use the existing

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[14] NextBridge Application (EB-2019-0127) Exhibit A Tab 2, Schedule 1, Appendix F, Property Descriptions, pages 1-87
[15] NextBridge referenced in its Response to IR No. 4 b) (EB-2019-0127) that it determined the width of the ROW in accordance with CSA 22.3 No. 1-15 (Canadian Standards Association, June 2015), CSA 22.3 No. 60826-10 (Canadian Standards Association, December 2010), NERC FAC-003-4, (North American Electric Reliability Corporation, Transmission Vegetation Management, April 2016), ANSI Vegetation Management Standard Z133 – Safety Requirements for Arboricultural Operations, and the OEB Minimum Technical Requirements.
[16] NextBridge's Response to IR No. 4 b) (EB-2019-0127)

roads to the extent possible and that it is finalizing agreements to use Hydro One roads and ROWs.

With regard to the different terms of Temporary Road Use Agreements on different parcels of land, NextBridge explained that it requires a four-year term on a number of parcels as the construction is estimated to last two years and it needs an additional two years for post construction monitoring and restoration. NextBridge further explained that it requires seven-year Temporary Road Use Easements on parcels where species at risk permits are required pursuant to the *Endangered Species Act*, *2007*.[17] According to NextBridge, these permits will require monitoring for five years after construction is completed, resulting in a requirement for a seven-year access period.

To minimize environmental impacts on the affected properties, NextBridge has committed to apply the mitigation strategies specified in its Environmental Assessment report approved by the Ministry of Environment, Conservation and Parks (EA Report).[18]

NextBridge confirmed that the post construction inspection and maintenance of the transmission line will be done in accordance with NextBridge's EA Report and with applicable reliability standards, including standards by the North American Electric Reliability Corporation (NERC) and the Independent Electricity System Operator (IESO). During operation of the transmission line, NextBridge will inspect the line annually by helicopter and will have to access the easements every three years for ground inspection and vegetation management.[19]

OEB Findings

The OEB finds that the requested permanent and temporary easement area dimensions, locations and terms are appropriate in the circumstances. The OEB finds that NextBridge has minimized the size of the requested easements following the applicable standards and guidance in order to reduce the impact on the affected properties. The OEB notes that NextBridge has committed to implement mitigation strategies outlined in the EA Report to minimize environmental impacts on the affected properties.

[17] NextBridge's Response to IR No. 4 c) (EB-2019-0127)
[18] NextBridge's Response to IR No. 5 c) (EB-2019-0127)
[19] NextBridge's Response to IR No. 4 e) (EB-2019-0127)

Has the impact of the proposed expropriation on the landowners been minimized?

To minimize disruption to landowners and interest-holders during construction, NextBridge has stated that it would take a number of actions such as: advance notification of entering a property, having land agents on site as a point of contact during construction, mitigations to minimize disruption to coordinate scheduled work with landowners and interest-holders, restricting work hours to mitigate noise impacts, and minimizing noise through the use of mufflers on construction vehicles and equipment.

In addition, NextBridge will have environmental inspectors present during construction to ensure that appropriate mitigation measures are employed, including utilizing silt fences; installing swamp mats and geotextile fabric; bridging in wet/soft areas; and separating topsoil from subsoil during grading. NextBridge noted that during operation and maintenance, NextBridge will restrict the access for ground inspections and maintenance to every three years.[20]

OEB Findings

The OEB finds that NextBridge's plans of action to minimize the impact of the proposed expropriation on the landowners and tenants are reasonable and appropriate. The OEB is satisfied that NextBridge has taken steps to locate and determine the size of the requested easements such that the impacts of the proposed expropriation on the landowners are minimized.

Is NextBridge's decommissioning and abandonment plan appropriate and reasonable?

The forms of NextBridge's easement agreements approved by the OEB[21] include a clause related to decommissioning of the EWT Project [22]. The decommissioning clause sets out the general approach for restoration of the easement area during the process of decommissioning and states that, "…should the Province of Ontario or Canada

[20] NextBridge's Response to IR No. 5 i) and 5 ii) (EB-2019-0127)
[21] The approved forms adhere to the OEB's *Filing Requirements for Electricity Transmission Applications* (Chapter 4), Appendix A: Draft Form of Lease or Easement Agreement, pp. 28-30, July 31, 2014.
[22] NextBridge Evidence EB-2017-0182, Exhibit E, Tab 5, Schedule 1, Attachment 2 page 3, paragraph 12.

impose any regulatory or legislative decommissioning requirements greater than described above, the Grantee shall comply with the same".

OEB Findings

The OEB has no concerns with NextBridge's approach and submits that a more detailed decommissioning and abandonment plan may be premature at this time. The OEB finds that the decommissioning clause in the form of easement agreement offered to the affected landowners is sufficient, reasonable and appropriate at this time.

What conditions, if any, should be attached to the OEB's Order?

OEB staff proposed draft conditions of approval for NextBridge's review and comments. In response to interrogatories, NextBridge suggested a number of changes and amendments to these draft conditions[23]. OEB staff responded to NextBridge's comments and suggestions and created a modified set of conditions which are set out in OEB staff's submission. In its response to OEB staff's submission, NextBridge stated that it does not take any issue with the proposed draft conditions.

OEB Findings

The OEB approves the wording of the draft conditions in the OEB staff submission[24] and will order that these conditions be adhered to by NextBridge. The OEB's conditions of approval are attached in Schedule "C" to this Decision and Order.

[23] NextBridge Response to IR No. 6
[24] OEB Staff Submission (EB-2019-0127), August 13, 2019, Appendix A

4 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. NextBridge Infrastructure, LP is hereby authorized to expropriate the interests sought in the lands listed in Schedule “A” to this Decision and Order.

2. NextBridge Infrastructure, LP shall file, with the OEB, a final expropriation plan for OEB approval and endorsement as soon as practical.

3. The authorization granted to NextBridge Infrastructure, LP is subject to conditions attached in Schedule “C” to this Decision and Order.

4. NextBridge Infrastructure, LP shall pay the OEB’s costs incidental to this proceeding upon receipt of the OEB’s invoice.

DATED at Toronto September 12, 2019

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

DATED at Toronto December 3, 2019 (Corrected)

Original Signed By

Christine E. Long
Registrar and Board Secretary

SCHEDULE A

DECISION AND ORDER

UPPER CANADA TRANSMISSION, INC. OPERATING AS NEXTBRIDGE INFRASTRUCUTRE, LP

EB-2019-0127

SEPTEMBER 12, 2019

(CORRECTED DECEMBER 3, 2019)

Description of Land Subject to Expropriation and Interest Approved

SCHEDULE B

DECISION AND ORDER

UPPER CANADA TRANSMISSION, INC. OPERATING AS NEXTBRIDGE INFRASTRUCUTRE, LP

EB-2019-0127

SEPTEMBER 12, 2019

(CORRECTED DECEMBER 3, 2019)

ONTARIO ENERGY BOARD ACT, 1998, SECTIONS 99 AND 100

Expropriation

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). 1998, c. 15, Sched. B, s. 99 (1).

Hearing

(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. 1998, c. 15, Sched. B, s. 99 (2).

Information to be filed

(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. 1998, c. 15, Sched. B, s. 99 (3).

(4) Repealed: 2003, c. 3, s. 67.

Power to make order

(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. 1998, c. 15, Sched. B, s. 99 (5).

Section Amendments with date in force (d/m/y)

Determination of compensation

100 If compensation for damages is provided for in this Part and is not agreed upon, the procedures set out in clauses 26 (a) and (b) of the *Expropriations Act* apply to the determination of the compensation, and the compensation shall be determined under section 27 of that Act or by the Ontario Municipal Board. 1998, c. 15, Sched. B, s. 100.

SCHEDULE C

DECISION AND ORDER

UPPER CANADA TRANSMISSION, INC. OPERATING AS NEXTBRIDGE INFRASTRUCUTRE, LP

EB-2019-0127

SEPTEMBER 12, 2019

(CORRECTED DECEMBER 3, 2019)

NextBridge
East West Tie Project – Expropriation Application
Section 99 Order

1. NextBridge shall notify the OEB in writing in the event that, after this Decision and Order has been issued, a negotiated settlement is reached and expropriation is no longer necessary for any of the 12 properties that are the subject of this proceeding. This notice shall be filed with the OEB within ten days of the settlement.

2. NextBridge shall use all reasonable efforts to provide oral or written notice at the landowner preference to the landowners a minimum of 48 hours prior to the initial entry onto the land. In the event of an emergency, as determined by NextBridge, entry may take place prior to oral or written notice, but reasonable efforts will be made to notify the landowners of entry as soon as practicable.

3. Reasonable accommodation shall be made in NextBridge's schedule for landowner requests/concerns to ensure that transmission facilities' construction and associated activities do not interfere with landowner operations.

4. Upon providing NextBridge with reasonable prior notice, the landowners and tenants can be present to observe the transmission facilities' construction and associated activities subject to NextBridge's health, safety and security policies and procedures and the *Occupational Health and Safety Act, R.S.O. 1990, c.O.1*.

5. NextBridge shall keep records of the personnel attending its worksite and entering on lands, including the time in which entry and departure occurred.

6. NextBridge shall designate one of its employees as project manager who will be responsible for the fulfillment of these conditions, and shall provide the employee's name and contact information to the OEB and to the landowners and tenants as well clearly posted on the construction site. The project manager will be responsible for the fulfilment of the conditions of approval on the site.

7. NextBridge shall furnish the OEB's designated representative with all reasonable assistance for ascertaining whether NextBridge has complied with these conditions of approval.

The OEB's designated representative for the purpose of these Conditions of Approval shall be the OEB's Manager of Supply and Infrastructure (or the Manager of any OEB successor department that oversees leave to construct applications).

Tab 10

Philippe Adrien, Emilia Berardi, Paul Creador, Lorenzo Abel Vasquez and Lindy Wagner on their own behalf and on behalf of the other former employees of Rizzo & Rizzo Shoes Limited *Appellants*

v.

Zittrer, Siblin & Associates, Inc., Trustees in Bankruptcy of the Estate of Rizzo & Rizzo Shoes Limited *Respondent*

and

The Ministry of Labour for the Province of Ontario, Employment Standards Branch *Party*

INDEXED AS: RIZZO & RIZZO SHOES LTD. (RE)

File No.: 24711.

1997: October 16; 1998: January 22.

Present: Gonthier, Cory, McLachlin, Iacobucci and Major JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Employment law — Bankruptcy — Termination pay and severance available when employment terminated by the employer — Whether bankruptcy can be said to be termination by the employer — Employment Standards Act, R.S.O. 1980, c. 137, ss. 7(5), 40(1), (7), 40a — Employment Standards Amendment Act, 1981, S.O. 1981, c. 22, s. 2(3) — Bankruptcy Act, R.S.C., 1985, c. B-3, s. 121(1) — Interpretation Act, R.S.O. 1990, c. I.11, ss. 10, 17.

A bankrupt firm's employees lost their jobs when a receiving order was made with respect to the firm's property. All wages, salaries, commissions and vacation pay were paid to the date of the receiving order. The province's Ministry of Labour audited the firm's records to determine if any outstanding termination or severance pay was owing to former employees under the *Employment Standards Act* ("*ESA*") and delivered a proof of claim to the Trustee. The Trustee disallowed the claims on the ground that the bankruptcy of an employer does not constitute dismissal from employment and accordingly creates no entitlement to sever-

Philippe Adrien, Emilia Berardi, Paul Creador, Lorenzo Abel Vasquez et Lindy Wagner en leur propre nom et en celui des autres anciens employés de Rizzo & Rizzo Shoes Limited *Appelants*

c.

Zittrer, Siblin & Associates, Inc., syndic de faillite de Rizzo & Rizzo Shoes Limited *Intimée*

et

Le ministère du Travail de la province d'Ontario, Direction des normes d'emploi *Partie*

RÉPERTORIÉ: RIZZO & RIZZO SHOES LTD. (RE)

N° du greffe: 24711.

1997: 16 octobre; 1998: 22 janvier.

Présents: Les juges Gonthier, Cory, McLachlin, Iacobucci et Major.

EN APPEL DE LA COUR D'APPEL DE L'ONTARIO

Employeur et employé — Faillite — Indemnités de licenciement et de cessation d'emploi payables en cas de licenciement par l'employeur — Faillite peut-elle être assimilée au licenciement par l'employeur? — Loi sur les normes d'emploi, L.R.O. 1980, ch. 137, art. 7(5), 40(1), (7), 40a — Employment Standards Amendment Act, 1981, L.O. 1981, ch. 22, art. 2(3) — Loi sur la faillite, L.R.C. (1985), ch. B-3, art. 121(1) — Loi d'interprétation, L.R.O. 1990, ch. I.11, art. 10, 17.

Les employés d'une entreprise en faillite ont perdu leur emploi lorsqu'une ordonnance de séquestre a été rendue à l'égard des biens de l'entreprise. Tous les salaires, les traitements, toutes les commissions et les paies de vacances ont été versés jusqu'à la date de l'ordonnance de séquestre. Le ministère du Travail de la province a vérifié les dossiers de l'entreprise pour déterminer si des indemnités de licenciement ou de cessation d'emploi devaient encore être versées aux anciens employés en application de la *Loi sur les normes d'emploi* (la «*LNE*») et il a remis une preuve de réclamation au syndic. Ce dernier a rejeté les réclamations pour le the employee's service. This investment is the seniority that the employee builds up during his years of service. . . . Upon termination of the employment relationship, this investment of years of service is lost, and the employee must start to rebuild seniority at another place of work. The severance pay, based on length of service, is some compensation for this loss of investment.

sement étant liée directement à la durée du service de l'employé. Cet investissement est l'ancienneté que l'employé acquiert durant ses années de service [. . .] À la fin de la relation entre l'employeur et l'employé, cet investissement est perdu et l'employé doit recommencer à acquérir de l'ancienneté dans un autre lieu de travail. L'indemnité de cessation d'emploi, fondée sur les années de service, compense en quelque sorte cet investissement perdu.

In my opinion, the consequences or effects which result from the Court of Appeal's interpretation of ss. 40 and 40*a* of the *ESA* are incompatible with both the object of the Act and with the object of the termination and severance pay provisions themselves. It is a well established principle of statutory interpretation that the legislature does not intend to produce absurd consequences. According to Côté, *supra*, an interpretation can be considered absurd if it leads to ridiculous or frivolous consequences, if it is extremely unreasonable or inequitable, if it is illogical or incoherent, or if it is incompatible with other provisions or with the object of the legislative enactment (at pp. 378-80). Sullivan echoes these comments noting that a label of absurdity can be attached to interpretations which defeat the purpose of a statute or render some aspect of it pointless or futile (Sullivan, *Construction of Statutes*, *supra*, at p. 88).

À mon avis, les conséquences ou effets qui résultent de l'interprétation que la Cour d'appel a donnée des art. 40 et 40*a* de la *LNE* ne sont compatibles ni avec l'objet de la Loi ni avec l'objet des dispositions relatives à l'indemnité de licenciement et à l'indemnité de cessation d'emploi elles-mêmes. Selon un principe bien établi en matière d'interprétation législative, le législateur ne peut avoir voulu des conséquences absurdes. D'après Côté, *op. cit.*, on qualifiera d'absurde une interprétation qui mène à des conséquences ridicules ou futiles, si elle est extrêmement déraisonnable ou inéquitable, si elle est illogique ou incohérente, ou si elle est incompatible avec d'autres dispositions ou avec l'objet du texte législatif (aux pp. 430 à 432). Sullivan partage cet avis en faisant remarquer qu'on peut qualifier d'absurdes les interprétations qui vont à l'encontre de la fin d'une loi ou en rendent un aspect inutile ou futile (Sullivan, *Construction of Statutes*, *op. cit.*, à la p. 88). 27

The trial judge properly noted that, if the *ESA* termination and severance pay provisions do not apply in circumstances of bankruptcy, those employees "fortunate" enough to have been dismissed the day before a bankruptcy would be entitled to such payments, but those terminated on the day the bankruptcy becomes final would not be so entitled. In my view, the absurdity of this consequence is particularly evident in a unionized workplace where seniority is a factor in determining the order of lay-off. The more senior the employee, the larger the investment he or she has made in the employer and the greater the entitlement to termination and severance pay. However, it is the more senior personnel who are likely to be employed up

Le juge de première instance a noté à juste titre que, si les dispositions relatives à l'indemnité de licenciement et à l'indemnité de cessation d'emploi de la *LNE* ne s'appliquent pas en cas de faillite, les employés qui auraient eu la «chance» d'être congédiés la veille de la faillite auraient droit à ces indemnités, alors que ceux qui perdraient leur emploi le jour où la faillite devient définitive n'y auraient pas droit. À mon avis, l'absurdité de cette conséquence est particulièrement évidente dans les milieux syndiqués où les mises à pied se font selon l'ancienneté. Plus un employé a de l'ancienneté, plus il a investi dans l'entreprise de l'employeur et plus son droit à une indemnité de licenciement et à une indemnité de cessation d'emploi est fondé. Pourtant, c'est le personnel ayant le plus d'ancienneté qui risque de travailler 28

Tab 11

October 28, 1998

36th Parliament, 2nd Session

< Previous sitting day   Next sitting day >

L051B - Wed 28 Oct 1998 / Mer 28 Oct 1998 1

The House met at 1832.

ORDERS OF THE DAY

Mr Wayne Lessard (Windsor-Riverside): On a point of order, Mr Speaker: I don't think we have a quorum. Could you please check?

The Acting Speaker (Mr Gilles E. Morin): Would you please identify if we have a quorum.

Clerk at the Table (Ms Lisa Freedman): A quorum is not present, Speaker.

The Acting Speaker ordered the bells rung.

Clerk at the Table: A quorum is now present, Speaker.

The Acting Speaker: Minister.

ENERGY COMPETITION ACT, 1998 / LOI DE 1998 SUR LA CONCURRENCE DANS LE SECTEUR DE L'ÉNERGIE

Mr Wilson moved third reading of Bill 35, An Act to create jobs and protect consumers by promoting low-cost energy through competition, to protect the environment, to provide for pensions and to make related amendments to certain Acts / Projet de loi 35, Loi visant à créer des emplois et à protéger les consommateurs en favorisant le bas prix de l'énergie au moyen de la concurrence, protégeant l'environnement, traitant de pensions et apportant des modifications connexes à certaines lois.

Hon Jim Wilson (Minister of Energy, Science and Technology): It's been a year since I released our government's white paper on electricity reform, so it gives me great personal pleasure to preside over another significant milestone and introduce Bill 35, our Energy Competition Act, for third reading.

A competitive market would offer enormous benefits to all Ontarians by creating new jobs and an economy that is attractive to investors.

the environment and all the issues that revolved around that. We also had Mr Gilchrist there, who dealt with the municipal issues. Mr Jordan and Mr Preston were there. We had a number of different people who came in to help us throughout this committee, and we're very thankful to them. They did a wonderful job, and we thank them for all their help.

Mrs Barbara Fisher (Bruce): I am pleased to have the opportunity to speak in support of the third reading of Bill 35. The Energy Competition Act is long overdue in Ontario, and I think there's nobody in this House who will argue that point.

This legislation will ensure that the people of Ontario receive the kind of safe, affordable and reliable electricity that they demand and that they deserve. I believe that a competitive market will offer enormous benefits to all Ontarians. It will create new jobs and an economy that is attractive to investors, not just on a local basis but internationally as well. We have to renew that growth that we lost during the high increases to electricity prices in Ontario in the past decade. It is a proven fact that consumer prices have dropped in jurisdictions where electricity monopolies have been exposed to a competitive market. This has been the case in Great Britain, New Zealand and Argentina.

I'd like to dwell a little bit on the process that was used so that all Ontarians know that this is not something the government just dreamt up; this is something that has had a magnificent amount of community, local and, even broader than that, business input, consumer input, and it has been travelling throughout the province to have that type of input.

Bill 35 evolved from the general policy direction set out in the white paper released in 1997. That paper was entitled Direction for Change: Charting a Course for Competitive Electricity and Jobs in Ontario. The white paper was drafted with input from industry and consumer experts.

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The proposed legislation is also consistent with recommendations of the Market Design Committee, the select committee on Ontario hydro nuclear affairs, the Macdonald commission and the Minister's Electricity Transition Committee.

Weeks of public hearings in the late summer were held to hear and consider input from the public and interested stakeholders on the draft legislation. Several amendments to improve the legislation were made.

In a recent speech in Saskatchewan the president of the Power Workers Union, John Murphy, stated:

"We commend the Harris government for its consultative approach to electricity industry reform in Ontario, as well as for its decision not to break up Hydro's generating portfolio and privatize it, as some interests had been advising. I give the Ontario government a lot of credit for not only refusing to privatize these assets, but for also refusing to break them up. There is no doubt in my mind that the government did the right thing for Ontario."

I don't think there's anywhere in the province where this legislation has a higher impact than the riding I represent, Bruce. In representing those people, I also represent the interests of the Bruce nuclear power development site, of which eight of the 20 units that we talk about in this House when we relate to nuclear energy are involved. I have many constituents who continue to be concerned, and rightly so, with the recent changes in Ontario Hydro's power industry.

In July 1997, Ontario Hydro released the report of the independent integrated performance assessment, known as the IIPA, conducted by the nuclear performance advisory group. This report clearly outlined that there were significant problems as a result of poor management decisions in the past as they relate to Ontario Hydro's nuclear program.

From the report, Ontario Hydro prepared a plan to bring its nuclear program back to world-class standards. This plan, called the nuclear asset optimization plan, better known to us locally as NAOP, was presented to Ontario Hydro's board of directors in August 1997. The plan proposed the lay-up of seven of Ontario's 19 nuclear reactors in order to concentrate financial and human resources to the remaining 12.

In my community, this meant the lay-up of the remaining three units at Bruce A. Over 1,000 workers would be transferred to Bruce B or to the Pickering or Darlington sites. Earlier in 1997 the Bruce heavy water plant was closed, which also affected an additional 400 jobs.

In response to the release of the IIPA report, this government commissioned the select committee on Ontario Hydro's nuclear affairs, to which I was appointed. The committee's mandate was to review and report on the IIPA report, the recovery plan and the AECB's review of the independent assessment.

The committee received over 95 presentations and reviewed over 200 documents. The committee's final report included 39 recommendations, several of which address the expectation of competition in the electricity market. The white paper on electricity sector restructuring was released about two thirds of the way through the committee's mandate.

With regard to input, I want you to note that, as you've heard, many sources were available and many people wanted to be able to present. Unfortunately, you could never fit them all in. I think, however, most of them were supportive. Several submissions to the committee supported the introduction of competition into the electricity market.

I would like to provide a few examples of that. TransAlta submitted:

"The current nuclear difficulties being experienced by Hydro represent an opportunity for the province to take a positive step towards an electrical industry that will introduce prices set through competition."

The presentation by Energy Probe, which often differs with the opinions of Ontario Hydro, by the way, included these comments:

"Nuclear regulation needs to be strengthened. Make the transmission and distribution system subject to the Ontario Energy Board; that is, public regulation. The generation side would be open to market competition. We would consider privatizing all parts of the system including the transmission grid. The key is adequate public regulation. The analogy of successful deregulation of the gas markets is cited as an example of what can be achieved."

The consumers of electricity and natural gas were also extremely supportive of the government's proposal to eliminate Ontario Hydro's monopoly.

The Association of Major Power Consumers in Ontario stated:

"Competition and customer choice will provide a responsive, low-cost system. The monopoly should be dismantled and competition encouraged among many suppliers with light-handed regulation."

Finally, the Ontario Natural Gas Association submitted that, "In a competitive electricity system, all competing alternatives would be considered and the marketplace would determine the supply, demand and price."

There is an unprecedented level of support for the changes this bill proposes. Public opinion strongly endorses the idea that the status quo is not working.

With the passage of this bill, we will be able to bring full competition to Ontario's electricity sector and ensure a level playing field for all taking part in this new competitive market, and introduce reforms to natural gas legislation which would allow gas markets also to function more efficiently. As well, these proposed reforms will boost the economy by encouraging jobs and investment.

New products and services will stem from competition. This has been seen in the deregulation of the telecommunications industry. It will also open the door for new market players expanding their businesses and creating new jobs.

As a member for a rural riding, I am particularly interested in how electricity competition and Bill 35 will affect rural Ontario. I am pleased that this legislation is a positive initiative for rural Ontario in that it will assure service and continuing rate protection for customers who reside in rural and remote areas of the province.

The development of the legislation has been guided by the fairness and equity principles of the existing rural rate assistance program. Current customers in high-cost, sparsely populated areas of the province - that includes the north - will continue to receive current levels of support to limit rate differentials with urban areas. All customers will continue to pay for this assistance.

The legislation also provides flexibility to respond to changing demographics and local amalgamations, such as the ones that are happening in the riding I represent, Bruce, and more that will happen in the future.

On Monday, the Minister of Finance tabled the preliminary estimates of stranded debt of Ontario Hydro and the amounts to be assigned to the successor companies. It is not news that Ontario Hydro has accumulated significant debt over the past 100 years. This has been a concern of Ontario ratepayers for some time. The financial restructuring plan is intended to accomplish a number of goals: to keep electricity prices as low as possible; to put the new companies on a sound financial footing; to retain maximum value in the electricity sector until the stranded debt is retired; and to ensure that any residual stranded debt is recovered from the electricity sector and not the taxpayers.

Electricity consumers in Ontario are already paying rates to service existing debt within their electricity rates. With the introduction of competition, Ontario Hydro will no longer have a monopoly which allows it to impose these costs on electricity consumers.

The financial restructuring process has been designed to ensure that the debt can be serviced without an increase in electricity rates.

I would also like to address some of the environmental benefits of Bill 35. The introduction of a competitive electricity market is good for the environment. The government is committed to maintaining and enforcing strong limits on emissions and to meet our national and international commitments. The legislation allows for emission caps and trading, disclosure of emissions by generators and emission standards for those wanting to sell electricity in Ontario.

The Ontario Energy Board will also have an expanded role in electricity regulation. Time and time again in the hearing process or any of those processes that we talked about, this came out as one of the foremost factors.

Under the proposed rules, all transmitters, distributors, generators, purchasers and retailers of electricity would require a licence from the board. The licensee could be required to meet a number of conditions before a licence would be issued. Some of these are: following specified industry codes and technical and market rules; the need to meet performance standards and targets; and to provide reports concerning the source of electricity and emissions caused by its generation.

The board will be the independent regulator for the electricity sector with a mandate to protect consumers.

I welcome the changes and opportunities that this legislation will provide. I also believe that, for the good of the riding I represent, it probably is one of the last and only opportunities to allow a renewed Bruce site.

For too long, consumers have had too little choice and at too high a price. As we enter the 21st century, Ontario must be prepared to compete with the rest of the world in all endeavours, including the production and supply of electricity.

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Mr W. Leo Jordan (Lanark-Renfrew): It's a very special honour for me this evening to have a chance to speak on third reading of Bill 35.

Ontario's electrical industry, the present and the past: Over the past decade, the electricity cost advantage that made Ontario an attractive place to live and invest has been significantly eroded. Ontario rates rose by over 30% in the early 1990s and are now third-highest among the Canadian provinces. Electricity prices in Ontario have grown 54% faster than the consumer price index since 1986.

Tab 12

2ND SESSION, 36TH LEGISLATURE, ONTARIO
47 ELIZABETH II, 1998

Bill 35

An Act to create jobs and protect consumers by promoting low-cost energy through competition, to protect the environment, to provide for pensions and to make related amendments to certain Acts

The Hon. J. Wilson
Minister of Energy, Science and Technology

Government Bill

1st Reading	June 9, 1998
2nd Reading	June 25, 1998
3rd Reading	
Royal Assent	

(Reprinted as amended by the Resources Development Committee and as reported to the Legislative Assembly October 13, 1998)

(The provisions in this bill will be renumbered after 3rd Reading)

Printed by the Legislative Assembly of Ontario

2e SESSION, 36e LÉGISLATURE, ONTARIO
47 ELIZABETH II, 1998

Projet de loi 35

Loi visant à créer des emplois et à protéger les consommateurs en favorisant le bas prix de l’énergie au moyen de la concurrence, protégeant l’environnement, traitant de pensions et apportant des modifications connexes à certaines lois

L’honorable J. Wilson
Ministre de l’Énergie, des Sciences et de la Technologie

Projet de loi du gouvernement

1re lecture	9 juin 1998
2e lecture	25 juin 1998
3e lecture	
Sanction royale	

(Réimprimé tel qu’il a été modifié par le Comité du développement des ressources et rapporté à l’Assemblée législative le 13 octobre 1998)

(Les dispositions du présent projet de loi seront renumérotées après la 3e lecture)

Imprimé par l’Assemblée législative de l’Ontario

SCHEDULE B
ONTARIO ENERGY BOARD ACT, 1998

CONTENTS

PART I
GENERAL

Board objectives, electricity

1. The Board, in carrying out its responsibilities under this or any other Act in relation to electricity, shall be guided by the following objectives:

1. To facilitate competition in the generation and sale of electricity and to facilitate a smooth transition to competition.
2. To provide generators, retailers and consumers with non-discriminatory access to transmission and distribution systems in Ontario.
3. To protect the interests of consumers with respect to prices and the reliability and quality of electricity service.
4. To promote economic efficiency in the generation, transmission and distribution of electricity.
5. To facilitate the maintenance of a financially viable electricity industry.
6. To facilitate energy efficiency and the use of cleaner, more environmentally benign energy sources in a manner consistent with the policies of the Government of Ontario.

Board objectives, gas

2. The Board, in carrying out its responsibilities under this or any other Act in relation to gas, shall be guided by the following objectives:

ANNEXE B
LOI DE 1998 SUR LA COMMISSION DE L'ÉNERGIE DE L'ONTARIO

SOMMAIRE

PARTIE I
DISPOSITIONS GÉNÉRALES

Objectifs de la Commission : électricité

1. Lorsqu'elle s'acquitte des responsabilités que lui impose la présente loi ou une autre loi relativement à l'électricité, la Commission se laisse guider par les objectifs suivants :

1. Faciliter la concurrence dans la production et la vente d'électricité ainsi qu'une transition sans heurts en l'occurrence.
2. Assurer aux producteurs, aux détaillants et aux consommateurs un accès non discriminatoire aux réseaux de transport et de distribution situés en Ontario.
3. Protéger les intérêts des consommateurs en ce qui concerne les prix ainsi que la fiabilité et la qualité du service d'électricité.
4. Promouvoir l'efficience économique au niveau de la production, du transport et de la distribution d'électricité.
5. Faciliter le maintien d'une industrie de l'électricité qui soit financièrement viable.
6. Promouvoir l'efficacité énergétique et l'utilisation de sources d'énergie propres et écologiques d'une manière compatible avec les politiques du gouvernement de l'Ontario.

Objectifs de la Commission : gaz

2. Lorsqu'elle s'acquitte des responsabilités que lui impose la présente loi ou une autre loi relativement au gaz, la Commission se laisse guider par les objectifs suivants :