



Ontario
Energy
Board | Commission
de l'énergie
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DECISION AND ORDER

EB-2024-0142

HYDRO ONE NETWORKS INC.

**Application for approval to expropriate certain lands near City of
Port Colborne**

BEFORE: Patrick Moran
Presiding Commissioner

Robert Dodds
Commissioner

Shahrzad Rahbar
Commissioner

October 27, 2026



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1 OVERVIEW

This is a Decision and Order of the Ontario Energy Board on an application by Hydro One Networks Inc. seeking an order under section 99 of the *Ontario Energy Board Act, 1998* (OEB Act) granting the expropriation of interests in certain lands near the City of Port Colborne (Subject Lands). Hydro One stated that the expropriation is needed so that it may continue to operate and maintain existing transmission facilities that are located on the Subject Lands.

As set out in further detail below, the application is denied on the basis that Hydro One already has all the continuing rights it needs to operate and maintain the transmission lines on the Subject Lands.

2 CONTEXT AND PROCESS

Hydro One operates 115 kV transmission lines and facilities identified as the C2P and A6C transmission lines (Existing Transmission Lines). The Existing Transmission Lines are part of the IESO-controlled transmission system and are located adjacent to the Welland Canal near the City of Port Colborne.

The Existing Transmission Lines deliver power from the Sir Adam Beck No. 1 and No. 2 Generating Stations in Niagara Falls, Ontario, to large industrial customers in Welland and Port Colborne, Ontario, as well as supplying local electricity distribution companies that provide power to 37,000 residential and commercial customers in the area. A portion of the Existing Transmission Lines pass through lands that are currently owned by Nyon Oil Inc. and 1170367 Ontario Inc. (collectively Nyon); these are the Subject Lands for which Hydro One is seeking expropriation in this proceeding.

Hydro One filed the application on December 16, 2024, for an order under section 99 of the OEB Act for authority to expropriate certain interests in the Subject Lands on which the Existing Transmission Lines are situated so that it may continue to operate the Existing Transmission Lines.

The OEB issued a Notice of Hearing on April 9, 2025. In accordance with the OEB's Letter of Direction, Hydro One served the Notice on the current registered property owners and encumbrancers with lands or interest in the lands directly affected by the proposed expropriation application.

On May 15, 2025, Nyon applied for intervention status and cost eligibility. No objection was received from Hydro One. No other party applied for intervention status.

In Procedural Order No. 1, issued on May 28, 2025, the OEB approved Nyon as intervenors and granted them eligibility to apply for cost awards under the OEB's [Practice Direction on Cost Awards](#).

On June 4, 2025, Nyon filed a [Notice of Constitutional Question](#) with the OEB, and on June 11, 2025, served it on the Attorney General of Ontario and the Attorney General of Canada, in accordance with Rule 36 of the OEB Rules of Practice and Procedure. The Attorney General of Ontario and the Attorney General of Canada did not intervene in this proceeding.

In accordance with Procedural Order No. 1, Nyon filed evidence with the OEB on June 6, 2025, with amended evidence filed on June 9, 2025. Hydro One submitted responses

to interrogatories on June 25, 2025, and Nyon submitted responses to interrogatories on July 4, 2025.

Procedural Order No. 2, issued on July 16, 2025, established timelines for written submissions and outlined key issues related to the application. Hydro One submitted its Argument-in-Chief on July 25, 2025, Nyon filed its argument on August 8, 2025, and Hydro One submitted its reply submission on August 22, 2025.

On September 5, 2025, Nyon filed a letter requesting that the OEB strike certain portions of Hydro One's reply submission on grounds that those portions introduced new theories and arguments that were not set out in Hydro One's argument-in-chief; in the alternative, Nyon requested that the OEB grant it leave to submit a surreply. Nyon filed its proposed surreply as Appendix A to its letter.

In Procedural Order No. 3 on September 12, 2025, the OEB noted that Nyon filed their surreply with the OEB in their request letter. Without making any findings regarding whether Hydro One's reply argument was improper, the OEB allowed Hydro One to file a reply to Nyon's surreply, in the event it chose to do so. On September 18, 2025, Hydro One filed a letter with the OEB stating that it was relying on the arguments in its argument-in-chief and reply argument and would not be submitting any further reply.

On November 20, 2025, the OEB issued Procedural Order No. 4, in which the OEB sought clarification from parties whether the Application had detailed all the infrastructure of concern in the proceeding, including details regarding a feeder line (Feeder Line) and what customers were served by the Feeder Line. On November 28, 2025, Hydro One submitted a response to the OEB's questions and on December 5, 2025 Nyon stated that they would not be filing a reply to Hydro One's submission.

Nyon submitted a letter to the OEB on February 27, 2026, requesting the OEB convene a settlement conference for the proceeding. On March 6, 2026, the OEB denied Nyon's request.

3 DECISION

Introduction

Hydro One owns and operates the Existing Transmission Lines, which extend from the Allanburg or Crowland Transformer Station to the Port Colborne Transformer Station. The lines were originally constructed by Ontario Hydro (Hydro One's predecessor) in the early 1900's and were relocated at the direction of the St. Lawrence Seaway Authority in the 1960s and 1970s as part of a project to realign the Welland Canal.

The lands on which the Existing Transmission Lines reside has undergone a series of ownership changes over the years, with Nyon being the owner of the Subject Lands since May 2015. In September 2015 Nyon issued a letter to Hydro One stating that Hydro One does not have the rights to occupy the Subject Lands and served Hydro One with a Notice to Pay or Quit and a Notice to Remove.¹ Nyon also asserts an ownership right to the Existing Transmission Lines themselves as it contends that the ownership of the lines was affixed to the lands and transferred with the original expropriation of the lands by the St. Lawrence Seaway Authority. Hydro One has stated that at all material times it has maintained ownership and control of the Existing Transmission Lines and that no previous landowner has asserted ownership rights.

Hydro One is seeking authority under section 99 of the OEB Act to expropriate interests in the Subject Lands to allow it to continue operating and maintaining the Existing Transmission Lines. In order to determine whether to grant or deny Hydro One this requested expropriation authority the parties have presented information and argument related to the OEB's jurisdiction in hearing this application, the ownership of the Existing Transmission Lines, and the current status of the easements and other rights relating to the Existing Transmission Lines.

Jurisdiction

Hydro One and Nyon have presented opposing views on the scope of the OEB's jurisdiction as it relates to the interpretation of section 99(1).

Hydro One argues that the OEB has jurisdiction to hear and determine its application for authority to expropriate land under section 99(1) of the OEB Act. This section allows "any person who has leave under this Part or a predecessor of this Part" to apply for expropriation authority. Hydro One contends that its transmission infrastructure was

¹ Hydro One's Evidence – Appendix 2F

constructed under predecessor legislation, including the *Power Commission Act* and *Power Corporation Act, 1990*, which authorized the construction of transmission lines through Orders in Council issued by the Lieutenant Governor in Council.

Hydro One emphasizes that the phrase “a predecessor of this Part” was deliberately chosen by the Legislature to include historical approval regimes. It cites the OEB’s Decision in Enbridge Gas Distribution Inc.’s application for expropriation², where the OEB authorized expropriation for infrastructure constructed before the enactment of the current OEB Act. Hydro One argues that this precedent supports its eligibility to apply under section 99(1).

For the segments rebuilt between 1967 and 1973 pursuant to the Seaway relocation program, Hydro One asserts that Orders in Council under the *Power Commission Act* constituted leave to construct, and as such constitute leave under a predecessor to the relevant Part of the current OEB Act.

Nyon submitted that Hydro One cannot meet the statutory eligibility requirements of section 99 of the OEB Act, and therefore the OEB lacks jurisdiction to grant the expropriation authority it seeks. Section 99(1) provides that only a person “who has leave under this Part or a predecessor of this Part” may apply to expropriate land for a “work.” Because “work” is defined in section 89 to include an electricity transmission line, Nyon argues that Hydro One must demonstrate it, or a predecessor, obtained leave to construct the Existing Transmission Lines under Part VI of the OEB Act or a true predecessor Part.

Nyon submits that Hydro One has produced no Order in Council or other instrument evidencing leave and that the easement recitals Hydro One relies upon reference powers under the *Power Commission Act* and does not establish that leave to construct was ever granted. The sole easement touching the relevant lands, the Phillips Easement, covers only three towers north of Concession 3 and cannot stand in for leave authorizing the entire line. In Nyon’s submission, Hydro One has therefore failed to meet its onus of proving historic leave for the A6C segment, and the OEB lacks jurisdiction to consider expropriation with respect to that portion of the facilities.

Nyon disputes the claim that the Orders in Council under the *Power Commission Act* constituted leave to construct on multiple grounds. First, Nyon claims that Hydro One has not produced the Orders in Council it says existed and admits it does not currently

² EB-2011-0391

have them. Second, the only Order in Council in the record is dated 1976. The A6C and C2P relocations finished no later than 1973. An Order in Council issued after the fact cannot retroactively constitute leave to construct those works. Third, the scope of the 1976 Order in Council was confined to Lots 17 and 18, Concession 5. The disputed lines traverse Concession 4 and Lot 19 as well, so the authorization is geographically incomplete. Fourth, Orders in Council issued under the *Power Commission Act* are not equivalent to “leave under this Part or a predecessor of this Part.” Nyon argues that the Legislature’s choice of words—limiting eligibility to leave under Part VI or its predecessor—was deliberate. It does not sweep in every authorization under other, unrelated parts of earlier statutes.

Nyon concludes that because Hydro One has not established that it obtained leave under Part VI or a true predecessor, the OEB lacks jurisdiction to grant the expropriation authority sought.

Hydro One responds to Nyon’s arguments by stating that the OEB has jurisdiction to both determine the issue of ownership of the existing transmission infrastructure as well as to grant the expropriation sought. Hydro One argues that pursuant to section 19(1) of the OEB Act the OEB has clear authority to decide all questions of law and fact in all matters within its jurisdiction. As such it can decide any question of fact or of law arising during an application for authority to expropriate, including questions of ownership of infrastructure property. Hydro One also cites section 57 of the OEB Act, which grants the OEB the authority to license persons who own transmission infrastructure in Ontario.

Hydro One argues that Nyon’s interpretation of section 99(1) of the OEB Act is incorrect, particularly its understanding of the phrase “a predecessor of this Part”. To this end, Hydro One states that Nyon’s interpretation of section 99(1) is inconsistent with the OEB’s Decision in the Enbridge Gas Distribution Inc. Decision where the OEB granted Enbridge expropriation authority over lands, finding it to be in the public interest and necessary to maintain natural gas pipelines built in the 1970s.³ Hydro One states that if Nyon’s interpretation of section 99(1) is accepted, it would mean that the OEB would only be able to intervene to protect the public interest for transmission infrastructure constructed after 1990 and the implementation of the *1990 OEB Act*.

³ EB-2011-0391

Ownership of the Existing Transmission Lines

Hydro One asserts that it owns the Existing Transmission Lines based on historical construction, continuous operation, and maintenance. It constructed the original lines in the 1920s and 1930s under statutory authority and maintained them through various agreements, including the Master Agreement (1969)⁴, Supplemental Agreement (1976)⁵, and License Agreement (1977)⁶ between the St. Lawrence Seaway Authority and Hydro One. These agreements, Hydro One argues, confirm its ownership and operational rights.

Hydro One states that Ontario Hydro (Hydro One's predecessor) built the original Existing Transmission Lines across the lands prior to the 1965 federal expropriation. Hydro One treats the 1969 Master Agreement as contemporaneous confirmation by the St. Lawrence Seaway Authority that Ontario Hydro owned the lines then in place and would continue to own the relocated facilities. The drafting repeatedly describes the facilities as Ontario Hydro's property and obligations using ownership-affirming possessives.

Hydro One links the Master Agreement to the 1976 Supplemental Agreement, which describes the facilities as the Company's "power transmission lines and electricity supply facilities" and states that, "in lieu of all rights and privileges heretofore enjoyed," the St. Lawrence Seaway Authority would grant the Company, "free of rental and in perpetuity," the right and privilege to maintain, operate and renew the relocated lines across the realigned canal. Section 1 of the Supplemental Agreement grants those ongoing rights, while Section 3 obliges the St. Lawrence Seaway Authority to give notice to Ontario Hydro prior to any transfer and to notify transferees of Ontario Hydro's rights—language Hydro One says is incompatible with any notion that the St. Lawrence Seaway Authority owned the facilities.⁷

Hydro One relies on section 45 of the *Power Commission Act*, and its predecessor, which state that Ontario Hydro's works would not become part of the realty upon affixation unless otherwise agreed in writing. Nyon contends that this provision cannot prevent vesting under the federal expropriation regime under the *Expropriation Act* and the *Seaway Act*. Nyon submits that it is impossible to comply with both schemes simultaneously, as the federal statutes aim to expropriate property without exception,

⁴ Hydro One's Evidence – Appendix 2D, pp. 7-10

⁵ Hydro One's Evidence – Appendix 2D, pp. 3-6

⁶ Hydro One's Evidence – Appendix 2E, pp. 2-6

⁷ Hydro One's Evidence – Appendix 2D, pp. 2-5

and the provincial statute prevents certain property affixed to those lands from being expropriated. Nyon also argues that applying section 45 of the *Power Commission Act* would frustrate the purpose of the federal scheme, which was to ensure that the St. Lawrence Seaway Authority acquired complete ownership and control of the corridor to carry out navigation, flood protection, and associated relocations.

Therefore, Nyon submits, the 1965 and 1968 expropriations under the *St. Lawrence Seaway Authority Act* and the federal *Expropriation Act* vested ownership of the lands, together with any affixed fixtures, in the federal Crown. Section 3(4) of the *Seaway Act* provides that property acquired by the St. Lawrence Seaway Authority “is the property of Her Majesty.” Because the A6C segment south of Concession 5 was affixed to the lands at the time, Nyon argues that ownership passed to the federal Crown.

Nyon submits that the portions of the Existing Transmission Lines that were wholly rebuilt in the 1967–1973 relocation program belong to Nyon through the St. Lawrence Seaway Authority chain of title. Given that the St. Lawrence Seaway Authority paid for the reconstruction of the Existing Transmission Lines, absent any evidence, it presumably owned them and said ownership subsequently flowed down to Nyon.

Nyon’s position is that the 1977 Licence granted by the St. Lawrence Seaway Authority to Ontario Hydro did not transfer ownership of any facilities but only created a permission to erect and operate a new line across Seaway lands, subject to termination and vesting conditions. The Licence expressly stated that it was terminable “at any time” on written notice by the licensor, and section 11 provided that “all works of the Licensee not removed shall vest in the Licensor without any right of compensation” upon termination.⁸ Nyon argues that this clause encompasses all facilities erected under the Licence and reflects a contractual mechanism by which ownership would default to the licensor once the licence ended.

Hydro One disputes that the St. Lawrence Seaway Authority expropriated the Existing Transmission Lines, noting that just because the St. Lawrence Seaway Authority expropriated the lands, it does not mean that it also expropriated the infrastructure on it, even if it could have done so (a point that Hydro One does not concede). Hydro One also notes that the Master Agreement and Supplemental Agreement are both silent on the St. Lawrence Seaway Authority having any ownership of the Existing Transmission Lines. Addressing the question of the St. Lawrence Seaway Authority having paid for the relocation and restoration of the transmission lines, Hydro One argues that it does

⁸ Nyon Submission, August 8, 2025, pp. 38

not mean that the St. Lawrence Seaway Authority owned them, but rather that it needed them relocated for its canal realignment work and covered the cost of doing so. Hydro One also notes that the betterment of the lines was paid for by the Commission (i.e., Hydro One's predecessor) as an argument in favour of its ownership.

Hydro One argues that Nyon has failed to present a coherent theory of ownership, evidence of a transfer of title, or any evidence of conduct consistent with ownership of transmission lines. In contrast, Hydro One has continuously operated, maintained, and invested in the infrastructure, and is the only licensed transmitter authorized to do so. Hydro One concludes that Nyon's claim lacks both legal and factual foundation, and that ownership of the transmission facilities rests with Hydro One. Nyon rejects Hydro One's suggestion that historical expropriations by the St. Lawrence Seaway Authority excluded transmission infrastructure, asserting that no such limitation appears in the relevant legislative instruments or agreements.

Current Status of the Easements and Other Rights

Hydro One acknowledges that the original easements were extinguished upon federal expropriation but argues that they were replaced by the 1969 Master Agreement and the 1976 Supplemental Agreement with the St. Lawrence Seaway Authority, as well as license agreements, which granted Hydro One rights to operate and maintain the infrastructure. Hydro One contends that these agreements remain in effect and that it has continued to act under them. Those instruments recognize Hydro One's ownership of "its power lines and electricity supply facilities," grant perpetual, rent-free rights to "maintain, operate and/or renew" the relocated works across the realigned canal and "equivalent lands," and impose notice obligations on the grantor to advise Hydro One before any transfer and to notify transferees of Hydro One's rights.

Hydro One also argues that there is a litigation or termination risk created by Nyon's conduct. If Nyon were to succeed in terminating or otherwise invalidating the Master and Supplemental Agreements (or the applicable licences), Hydro One's land rights, and the continued, compliant operation of these IESO-grid assets would be jeopardized. On that basis, Hydro One asks the OEB to authorize expropriation of the easement interests, so that the lines can continue to be operated and maintained in accordance with the Transmission System Code.

Nyon submits that Hydro One's original easements do not survive the St. Lawrence Seaway Authority expropriations. The key example is the 1929 Phillips Easement, which Hydro One cites as a continuing right of way. Nyon argues that under both the *Expropriations Act* and the federal vesting provisions in the *St. Lawrence Seaway*

Authority Act, expropriation vests title free and clear of encumbrances unless specific preservation language is included. No such preservation language is found here.

Nyon further notes Hydro One has acknowledged that the Phillips Easement was “replaced” by the St. Lawrence Seaway Authority agreements.⁹ In Nyon’s view, the fact that the Phillips Easement remains on title reflects only a registrar’s oversight, not a substantive continuation of rights. Once the federal Crown expropriated the lands, pre-existing easements, including the Phillips instrument, were extinguished by operation of law.

Accordingly, Nyon submits that Hydro One cannot ground its application in the persistence of original easements, as they no longer exist.

Hydro One has argued that extinguished rights were replaced by a suite of later arrangements, namely the 1969 Master Agreement, the 1976 Supplemental Agreement, and the 1977 Licence, and that these instruments continue to support its ownership today. Nyon submits that it terminated the agreements. On September 22, 2015, Nyon delivered notices to Hydro One terminating all remaining licence arrangements and demanding removal of facilities or payment for occupation. Nyon also issued further notices asserting trespass.¹⁰ Under the terms of the 1977 Licence, unremoved works vest in the licensor upon termination, and Nyon argues that the same principle governs the other agreements. Hydro One did not remove the works. As a result, even if the agreements had once conferred rights, those rights no longer exist.

Hydro One expresses concern that Nyon’s attempts to terminate these agreements create legal uncertainty and pose a risk to the continued operation of the transmission lines. Hydro One maintains that even if the agreements were deemed terminated, it retains statutory rights under section 40 of the *Electricity Act* to access the lands for maintenance and operation. Therefore, Hydro One seeks expropriation authority to secure its rights and ensure compliance with regulatory obligations.

Nyon argues that Hydro One’s current request contradicts its prior demands and lacks evidentiary support. They maintain that the reduced easement would render portions of their land unusable, resulting in an unjust outcome.

⁹ Nyon Submission, August 8, 2025, pp. 52-53

¹⁰ Hydro One’s Evidence – Appendix 2F, pp. 1-5

Findings

Hydro One, an OEB-licenced transmitter, is applying for authority to expropriate easements over the land on which certain transmission lines were constructed in their current location in the 1960s and 1970s by Ontario Hydro, the predecessor to Hydro One.

This is an unusual application, as typically, an expropriation application is made after a transmitter has applied for and received leave to construct from the OEB, but before the transmission facilities are actually constructed, to address the situation where a landowner is not willing to voluntarily enter an agreement to grant the required easement rights.

In the present case, Ontario Hydro originally constructed transmission lines in the early 1900s to transmit electricity from Niagara Falls to Welland and Port Colborne. Those transmission lines were constructed on lands over which Ontario Hydro had registered easement rights.

In the 1960s, the St. Lawrence Seaway Authority expropriated land to implement a realignment of the Welland Canal. As part of the realignment project, the St. Lawrence Seaway Authority required Ontario Hydro to relocate some of the original transmission lines. The relocated transmission lines are known as the C2P and A6C transmission lines (and are referred to in this decision as the Existing Transmission Lines). The St. Lawrence Seaway Authority agreed to compensate Ontario Hydro for the cost to relocate the transmission lines, with Ontario Hydro covering the cost of any improvements it made when constructing the relocated transmission lines.

It is undisputed that the Existing Transmission Lines have been continuously operated and maintained by Ontario Hydro, and subsequently its successor, Hydro One, to the present day. The essence of the dispute before the OEB is the status of Hydro One's ownership of those parts of the Existing Transmission Lines located on land currently owned by Nyon, and Hydro One's right to access that land to operate and maintain those facilities on that land.

The central issues to be determined in this proceeding are:

1. Who owns the Existing Transmission Lines; and
2. If Hydro One owns the Existing Transmission Lines, does Hydro One require authority to expropriate easements to continue operating and maintaining those facilities

For the reasons that follow, the OEB finds:

- (a) The OEB has jurisdiction to decide Hydro One's application.
- (b) The OEB concludes that the Existing Transmission Lines are owned by Hydro One, and have been owned, operated and maintained at all material times by Hydro One and its predecessor, Ontario Hydro.
- (c) The OEB confirms that Hydro One has continuing easement rights established by the 1969 and 1976 agreements between the St. Lawrence Seaway Authority and Ontario Hydro. Hydro One and its predecessor have exercised those rights continuously since the relocation and construction of those parts of the Existing Transmission Lines addressed by the 1969 and 1976 agreements to the present day.
- (d) The OEB confirms that Hydro One has continuing easement rights over the land that was subject to the licence agreement between the St. Lawrence Seaway Authority and Ontario Hydro to inspect, maintain, repair, alter, remove, replace or disconnect wires or other facilities relating to the portion of the Existing Transmission Lines located on that land.

A. The OEB has Jurisdiction to Decide Hydro One's Application

Section 99 of the OEB Act provides as follows:

- (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.

The OEB's jurisdiction to grant leave to construct was only established in 1998. Therefore, the question is whether leave to construct the Existing Transmission Lines was granted under a predecessor to Part VI of the OEB Act. From 1907 to 1998, Ontario Hydro was subject to the *Power Commission Act* which included the following provision at the time of the construction of the Existing Transmission Lines:

24. (2) In particular, but without limiting the generality of subsection 1, the Lieutenant General in Council, upon the recommendation of the Commission, may authorize the Commission to,

- (a) acquire by purchase, lease or otherwise, land, waters, water privileges, water powers, buildings and works used for, or adapted or useful for, or capable of being used or made useful for generating, transforming, transmitting-, distributing or selling power; enter upon, take possession of, expropriate, acquire and use any such land, waters, water privileges, water powers, buildings and works without the consent of the owner thereof, or of any person in any manner entitled to any right, title, interest, claim or demand thereto or therein; and have and hold them however acquired or obtained, and develop, utilize, use, maintain, operate and improve them for any of the purposes of this Act

A plain reading of those provisions, consistent with a purposive approach to their interpretation, establishes that the *Power Commission Act* was a predecessor to the OEB Act in relation to Part VI of the OEB Act at the time of the original acquisition of easements that were registered when the original transmission facilities were constructed.

Regardless, when the St. Lawrence Seaway Authority expropriated the Subject Lands and required the relocation of the transmission facilities, the Province would not have had any constitutional authority to act in relation to the relocation of the transmission facilities, given Canada's exclusive jurisdiction over Canals.¹¹ Presumably, that is why the 1969 and 1976 agreements and the 1977 licence agreement were entered into between the St. Lawrence Seaway Authority and Ontario Hydro. Those agreements established rights that are consistent with what would have been the result if the federal expropriation had never happened and Ontario Hydro had proceeded with the relocation under the *Power Commission Act*. In these circumstances, the exercise of jurisdiction by the St. Lawrence Seaway Authority is sufficient to meet the "predecessor to this Part" requirement.

Once the land was sold to the City of Port Colborne, the Province's constitutional authority was immediately restored, and at all times going forward from there, Ontario

¹¹ Constitution Act, 1867, s. 91, para. 10 and s. 92, para. 10(a)

Hydro, and subsequently Hydro One as its successor, continued under the Province's jurisdiction, and is therefore subject to expropriation under the OEB Act.

The OEB concludes that it does have jurisdiction to consider Hydro One's application under section 99 of the OEB Act.

B. Hydro One owns the Existing Transmission Lines

The OEB has jurisdiction to determine the ownership of the Existing Transmission Lines. Under section 57 of the OEB Act, the OEB has jurisdiction to issue licences to, among others, the **owners and operators** of transmission systems. The OEB has issued a licence to Hydro One. That licence has a schedule that includes the Existing Transmission Lines. The ownership of the transmission facilities is a question of law and fact. Section 19(1) provides that "The Board has in all matters within its jurisdiction authority to hear and determine all questions of law and of fact." On that basis the OEB has the statutory authority to determine the ownership of the Existing Transmission Lines for the purposes of this proceeding.

More than a century ago, Hydro One's predecessor, Ontario Hydro, constructed transmission facilities to deliver power from the generating stations at Niagara Falls to Welland and Port Colborne. This is evidenced by the easements registered against the properties on which those facilities were located.¹² The ownership of those facilities and the operation and maintenance of those facilities on easements is not in issue.

More than half a century later, the St. Lawrence Seaway Authority expropriated land for the purpose of realigning the Welland Canal. Nyon asserts that the St. Lawrence Seaway Authority became the owner of the transmission lines located on the expropriated lands. The record does not support that assertion. At all material times, the actions of the St. Lawrence Seaway Authority were entirely consistent with Ontario Hydro's continued ownership and operation of the transmission lines. This is evidenced as follows:

- (a) To accommodate that project, the St. Lawrence Seaway Authority required Ontario Hydro to relocate its transmission lines and compensated Ontario Hydro for the cost to do so. The Existing Transmission Lines were the result of Ontario Hydro's response to the St. Lawrence Seaway Authority's requirement.

¹² Hydro One's Evidence – Appendix 2D

- (b) The St. Lawrence Seaway Authority agreed to compensate Ontario Hydro for the cost of constructing the Existing Transmission Lines on a like-for-like basis, with Ontario Hydro being responsible to cover the cost of any enhancements added by Ontario Hydro as part of relocating its facilities.¹³ Furthermore, the St. Lawrence Seaway Authority gave Ontario Hydro a perpetual right to enter onto the land where the Existing Transmission Lines were located for the purpose of operating and maintaining those facilities.
- (c) This was done under two agreements, a 1969 agreement and a 1976 supplementary agreement, In the 1969 agreement, the following language appears:

...

AND WHEREAS the Authority is relocating its channel between Port Robinson and Port Colborne and has expropriated lands on which **the Commission's power lines and electricity supply facilities are presently operated and maintained**

...

1.1 **The Commission** shall as soon as practicable survey and estimate the cost of relocating **its power lines and electricity supply facilities within the expropriated area...**

5. In lieu of all rights and privileges hitherto enjoyed by the Commission within the expropriated area the Authority shall grant free of rental to **the Commission** the right and privilege to maintain and operate **its power lines and electricity supply facilities** across the relocated channel and equivalent lands as more particularly set out in an agreement supplemental hereto

[emphasis added]

In the 1976 supplementary agreement, the following language appears:

AND WHEREAS the Authority has relocated its channel between Port Robinson and Port Colborne and has expropriated lands on

¹³ Hydro One's Evidence – Appendix 2D

which **the Company's power transmission lines and electricity supply facilities are operated and maintained**

AND WHEREAS it was deemed necessary to provide for the permanent relocation of certain of the said power lines and electricity supply facilities

1. The Authority hereby grants to the Company free of rental and in perpetuity, the right and privilege to maintain, operate and/or renew four 230 K.V. overhead power transmission line crossings on steel towers over the Welland Canal channel together with 115-230 K.V. lines on wooden poles on, over and/or across adjoining Welland Canal reserve land and two 27.6 K.V. cable crossings in ducts under the Welland Canal and overhead on wooden poles on, over and/or across adjoining Welland Canal reserve land easterly and westerly of the Welland Canal channel, the locations of which are more particularly described in Schedule "a" and at the locations shown by a red line on Plan W.C. 75-33 hereto annexed. **[emphasis added]**

The two agreements make it clear that the St. Lawrence Seaway Authority, having expropriated the land for its canal project, consistently interacted with Ontario Hydro on the basis that Ontario Hydro at all times continued to be the owner and operator of the transmission facilities on the expropriated land before and after they were relocated. There is nothing on the record to support the assertion by Nyon that the St. Lawrence Seaway Authority exercised its expropriation authority to acquire ownership of the transmission facilities. In fact, the opposite occurred. The St. Lawrence Seaway Authority required Ontario Hydro to relocate its transmission facilities and agreed to compensate Ontario Hydro for the cost Ontario Hydro incurred to do so. Furthermore, the St. Lawrence Seaway Authority granted Ontario Hydro the right and privilege to maintain and operate the transmission facilities located on the expropriated land, in perpetuity.

(d) Also in the 1976 agreement, the St. Lawrence Seaway Authority agreed as follows:

3. The Authority covenants and agrees that, prior to selling, transferring or disposing of the lands **on which the Company's rights and privileges are located**, it shall

- (a) give notice to the Company of such sale, transfer or disposition, and
- (b) give notice of the Company's rights and privileges to the person to whom the sale, transfer or disposition is proposed to be made. **[emphasis added]**

This is further evidence that the St. Lawrence Seaway Authority was proceeding on the basis that Ontario Hydro owned the transmission facilities and intended that Ontario Hydro would continue to have access to the land for the purpose of operating and maintaining those facilities in perpetuity, even if those lands were disposed of by the St. Lawrence Seaway Authority.

This was further reflected in the two agreements of purchase and sale entered into between Canada Lands CLC Limited, the federal selling agency, and the City of Port Colborne. Both agreements included the following:

4. Notwithstanding the provisions of Paragraph 10, **the Purchaser agrees to accept title subject to** (i) all registered or unregistered agreements with municipalities and publicly or privately regulated utilities; (ii) **all registered or unregistered easements, rights, covenants and/or restrictions in favour of municipalities, publicly or privately regulated utilities or adjoining owners, or that otherwise run with the land....** and (iv) the Permitted Encumbrances set out in Schedule "C"... **[emphasis added]**

Schedule C to the May 10, 2005 agreement of purchase and sale listed the 1969 and 1976 agreements.

Nyon has not adduced any evidence to support the proposition that the City of Port Colborne acquired ownership of the transmission facilities when it acquired the land from Canada Lands. The two agreements of purchase and sale support the opposite conclusion that the transmission facilities were not part of the transactions. This further supports the proposition that the St. Lawrence Seaway Authority always acted on the basis that it did not own the transmission facilities on the expropriated lands and always engaged with Ontario Hydro as the owner of those facilities. Canada Lands could not sell what the federal Crown did not own nor did it offer to do so. Similarly, the City of Port Colborne could not acquire what was not being offered for sale. Accordingly, when Nyon acquired the land from the City of Port Colborne, it also did not and could not

acquire the transmission facilities located on that land, since they were not the City's to sell.

Nyon's position that it now owns those transmission facilities strains credulity. What purchaser of land, upon seeing transmission facilities located on land it is considering buying, would rationally conclude that it was acquiring those facilities? If Nyon thought it was acquiring operational transmission facilities, it certainly took none of the steps one would expect of an owner of transmission facilities. Nyon did not apply for a licence to own or operate a transmission system, required under section 57 of the OEB Act, nor did it seek to recover the cost of owning and operating a transmission system through rates approved under section 78 of the OEB Act, nor did it register as a market participant as required by the market rules promulgated by the Independent Electricity System Operator under the Electricity Act.

In conclusion, the St. Lawrence Seaway Authority expropriated land for the sole purpose of modifying the Welland Canal. At all times, the St. Lawrence Seaway Authority treated Ontario Hydro as the owner of the transmission facilities before and after the relocation of some of those facilities to accommodate the canal project. At all times subsequent to the sale of the lands where the transmission facilities are located, Hydro One continued at all times to operate and maintain the transmission facilities. Nyon has not established any basis to support its claim that it owns any part of the transmission facilities located on Nyon's land.

C. Hydro One has continuing easement rights to operate and maintain those parts of the transmission facilities located on the land that is subject to the 1969 and 1975 agreements between the St. Lawrence Seaway Authority and Ontario Hydro

Under the 1969 and 1975 agreements, the St. Lawrence Seaway Authority provided Ontario Hydro with rights that were essentially the same as the easement rights it had prior to the expropriation of the lands on which the transmission facilities lay and the relocation of those transmission facilities, on those lands covered by the agreements.

The 1969 agreement provided:

5. In lieu of all rights and privileges hitherto enjoyed by the Commission within the expropriated area the Authority shall grant free of rental to the Commission the right and privilege to maintain and operate its power lines and electricity supply facilities across

the relocated channel and equivalent lands as more particularly set out in an agreement supplemental hereto **[emphasis added]**

The 1976 agreement provided:

1. The Authority hereby grants to the Company free of rental and in perpetuity, the right and privilege to maintain, operate and/or renew four 230 K.V. overhead power transmission line crossings on steel towers over the Welland Canal channel together with 115-230 K.V. lines on wooden poles on, over and/or across adjoining Welland Canal reserve land and two 27.6 K.V. cable crossings in ducts under the Welland Canal and overhead on wooden poles on, over and/or across adjoining Welland Canal reserve land easterly and westerly of the Welland Canal channel, the locations of which are more particularly described in Schedule “a” and at the locations shown by a red line on Plan W.C. 75-33 hereto annexed. **[emphasis added]**

The description of the rights granted in the two agreements is consistent with what is typically seen in the granting of easement rights in connection with transmission lines: a right to enter land for a stated purpose, and the compensation due.

The agreements of purchase and sale, between Canada Lands and the City of Port Colborne, not only recognize registered easements that pre-existed the exercise of expropriation authority by the St. Lawrence Seaway Authority, they also recognize the rights granted under the 1969 and 1976 agreements between the St. Lawrence Seaway Authority and Ontario Hydro:

4. Notwithstanding the provisions of Paragraph 10, **the Purchaser agrees to accept title subject to (i) all registered or unregistered agreements with municipalities and publicly or privately regulated utilities; (ii) all registered or unregistered easements, rights, covenants and/or restrictions in favour of municipalities, publicly or privately regulated utilities or adjoining owners, or that otherwise run with the land.... and (iv) the Permitted Encumbrances set out in Schedule “C”... [emphasis added]**

The 1969 and 1976 agreements clearly fall within the categories of “all registered or unregistered agreements with municipalities and publicly or privately regulated utilities”

and “unregistered easements, rights, covenants and/or restrictions in favour of...publicly or privately regulated utilities...” and they are listed in Schedule “C”.¹⁴

At the time of the 2005 agreement of purchase and sale, Hydro One was the successor to Ontario Hydro as the owner and operator of Ontario Hydro’s transmission system, as a result of the restructuring of Ontario Hydro and the electricity system that took place under the *Electricity Act, 1998*.

The *Electricity Act* established rights as follows:

40(1) A transmitter or distributor may, at reasonable times, enter land on which its transmission or distribution system is located,

(a) to inspect, maintain, repair, alter, remove, replace or disconnect wires or other facilities used to transmit or distribute electricity; or

(b) to install, inspect, read, calibrate, maintain, repair, alter, remove or replace a meter.

42.1 An easement in favour of a generator, transmitter or distributor for the purpose of generation, transmission or distribution does not have to be appurtenant or annexed to or for the benefit of any specific parcel of land to be valid.

These statutory rights support and further the rights that Hydro One inherited under the 1969 and 1976 agreements between the St. Lawrence Seaway Authority and Ontario Hydro.

Nyon has failed to establish that Hydro One’s rights to continue to operate and maintain the transmission facilities located on the lands covered by the 1969 and 1976 agreements have expired or been terminated. In summary, Hydro One continues to enjoy the rights that were established in the 1969 and 1976 agreements based on the following:

(a) the clear language in the agreements that the rights were in perpetuity;

(b) the clear agreement that purchase of any land from the St. Lawrence Seaway Authority would be subject to those rights;

¹⁴ Nyon’s Evidence – Appendix 8

- (c) the language in the purchase and sale agreements with the City of Port Colborne making the purchase subject to those rights; and
- (d) the absence of any right to terminate the rights in the 1969 and 1976 agreements;

as well as the statutory rights provided for by section 40(1) of the Electricity Act for existing transmission systems.

D. Hydro One has statutory easement rights for the transmission facilities located on the lands that were subject to the licence agreement

In addition to the transmission facilities on land covered by the 1969 and 1976 agreements, there are transmission facilities on land that is the subject of a licence agreement between the St. Lawrence Seaway Authority and Ontario Hydro. Some of that land is now owned by Nyon. Unlike the 1969 and 1976 agreements, the licence agreement does not grant perpetual rights. Instead, it provides for an annual payment from Ontario Hydro and the right of either party to the licence agreement to terminate the licence.

The purchase and sale agreement listed the licence as one of the unregistered utility agreements that the purchase was subject to. This contradicts Nyon's assertion that the licence expired upon the purchase of the land by the City of Port Colborne.

The licence is an agreement between the St. Lawrence Seaway Authority and Ontario Hydro and there is no evidence that it has been revoked by either party. Section 46(1) of the *Electricity Act* provides:

If, immediately before the repeal of section 48 of the *Power Corporation Act* under the *Energy Competition Act, 1998*, land was subject to a right referred to in subsection 48 (2) or (3) of the *Power Corporation Act*, **the land continues to be subject to the right until the right expires or until it is released by the holder of the right. [emphasis added]**

Section 48 of the *Power Corporation Act* provides:

48.-(1) In this section, " right" means any right, interest, way, privilege, permit or easement.

(2) Despite any other Act, where any right has been or is hereafter acquired by the Corporation, in, through, over, under, along, upon,

across or affecting any land, unless it is otherwise agreed, the land continues subject to the right for the term thereof and it is binding upon the owner at the time of acquisition and any subsequent owners of the land until expiration or release by the Corporation.

The licence clearly falls within the rights that are referred to in section 48 of the *Power Corporation Act*. Therefore, pursuant to section 46 of the *Electricity Act*, they continue. Hydro One has not released its rights under the licence and there is no evidence that the St. Lawrence Seaway Authority has either.

In addition to its rights under the licence, Hydro One is further protected by section 40 of the *Electricity Act*, for the same reasons articulated above regarding the 1969 and 1976 agreements.

4 CONCLUSION

The OEB denies Hydro One's application on the basis that it has all the continuing rights it needs in relation to the land on which its Existing Transmission Lines are located.

If the OEB had found otherwise, the OEB would have granted the relief sought by Hydro One. The Existing Transmission Lines have been part of the provincial transmission system delivering power from Ontario's generating stations to electricity customers since the 1960s. The ability to continue to operate the Existing Transmission Lines as part of that system is clearly necessary and in the public interest.

5 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Nyon shall file with the OEB and forward to Hydro One its cost claim in accordance with the OEB's *Practice Direction on Cost Awards* on or before **November 10, 2026**.
2. Hydro One shall file with the OEB and forward to Nyon any objections to the claimed cost of Nyon on or before **November 17, 2026**.
3. If Hydro One objects to Nyon's cost claim, Nyon shall file with the OEB and forward to Hydro One its responses, if any, to the objections to cost claim on or before **November 24, 2026**.
4. Hydro One shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

DATED at Toronto **October 27, 2026**

ONTARIO ENERGY BOARD

Ritchie
Murray

Ritchie Murray
Registrar

Digitally signed by Ritchie
Murray
Date: 2026.10.27
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