

ONTARIO ENERGY BOARD

IN THE MATTER OF the Ontario Energy Board Act, 1998, S.O.1998,
c.15, Sched. B (the "OEB Act")

AND IN THE MATTER OF section 99 (1) of the OEB Act

AND IN THE MATTER OF an Application by Hydro One Networks Inc.
for authority to expropriate land for the purpose of constructing and
operating a 230 kilovolt double circuit transmission line between the
municipality of Shuniah, Ontario and the town of Atikokan, Ontario.

**REPLY SUBMISSION
HYDRO ONE NETWORKS INC.**

April 11, 2025

INTRODUCTION

1. In accordance with Procedural Order No. 3 dated March 20, 2025, Hydro One provides reply submissions to those received from Ontario Energy Board Staff (“OEB Staff” or “Staff”) and Mr. Kurt Krause.
2. Letters of comment were also received from Ms. Joanne Drew and Mr. Ted Jedruch, dated March 10 and 13, 2025. On March 17, 2025, Hydro One responded to these comments and makes no further submissions.
3. This submission is organized as follows:
 - 1.0 Preliminary Matters – Updates to the Application
 - 2.0 Response to Submissions from OEB Staff
 - 3.0 Response to Submissions from Mr. Kurt Krause
 - 4.0 Conclusions

1.0 PRELIMINARY MATTERS – UPDATES TO THE APPLICATION

4. Efforts to negotiate and obtain voluntary land acquisition agreements with landowners originally described in Hydro One’s pre-filed evidence and its Appendices 4 and 5 to that evidence, have continued since the filing of this application. Hydro One is pleased to report that agreements have now been reached, and/or transactions have now closed, in respect of the following 18 land parcels originally listed in Appendix 4, and identified by the column “*Hydro One File No.*” reference found in that Appendix as: TB17, TB20, TB22, TB23, TB24, TB58, TB75, TB76, TB79, TB96, TB112, TB128, TB152, TB158, AT03, AT18, AT19, and AT20. Given these circumstances, Hydro One is filing revised redacted and unredacted versions of Appendix 4 and Appendix 5 (due to the confidentiality of the personal information) which remove these properties from the relief Hydro One seeks in this application.

5. Hydro One is also pleased to report that a voluntary agreement has now also been reached with Mr. Krause. As this transaction has not yet closed, Hydro One is continuing to include Mr. Krause's property interests as part of the relief sought in this application, consistent with other similarly situated landowners.
6. Hydro One intends to continue its efforts to reach voluntary land acquisition agreements with all remaining affected landowners. Should such outcomes be achieved and the transactions close without delay, Hydro One will rely on the agreements reached for the acquired land rights and will not rely on the relief that may be granted in this application.¹

2.0 RESPONSE TO OEB STAFF SUBMISSIONS

7. OEB Staff correctly state that the test used to assess whether relief requested pursuant to section 99 is, "if the OEB is of the opinion that the expropriation of land is in the public interest, it may make an order authorizing the applicant to expropriate the land."² OEB Staff also repeat earlier Board determinations that compensation matters related to the subject lands fall outside the scope of the OEB's jurisdiction. Instead, these matters are addressed in accordance with the *Expropriations Act* RSO 1990 c. E. E26 and, if required, resolved by the Ontario Land Tribunal.³ Hydro One agrees.

Issue List – Issues 1 and 2

8. OEB Staff have concluded that the requested authority to expropriate interests in the subject lands is in the public interest and should be granted by the OEB.⁴ Hydro One agrees.

¹ See Hydro One's Response to OEB Staff Interrogatory - 02(a).

² EB-2024-0319, OEB Staff Submission, dated March 28, 2025, at page 4.

³ Ibid.

⁴ EB-2024-0319, OEB Staff Submission, dated March 28, 2025 at page 1.

9. In its assessment of the public interest standard, OEB Staff address Issues 1 and 2 of the Issues List. These focus on a central theme: the nature of the land rights contemplated to be made subject to an expropriation authorization. There are two considerations: (a) whether the subject land rights are demonstrated to be necessary to complete the Waasigan Project and (b) whether the expropriation authorization applies to a minimal taking of property interests, both in terms of the size of property and the nature of the land rights.

10. Regarding the first aspect, Hydro One finds the summary found under the section titled *Conclusion on Issue 1*, at page 7 of OEB Staff's Submission, to accurately describe why the requested granting of expropriation authority pertains to land interests necessary to complete Phase 1 of the Waasigan Project. Hydro One has no further additions to make regarding Issue 1.

11. Regarding Issue 2, the minimal nature of the proposed taking, Hydro One agrees with OEB Staff's submissions as found at pages 8-9 of its Submission. The evidence in this proceeding demonstrates that Hydro One has requested a minimum quantity of land (i.e. size of the taking) as well as minimal rights (i.e. easement interests) that are required to safely and reliably complete construction and then operate and maintain the Project over its expected useful life.

Issue List 3

12. Issue 3 to the Issues List concerns what, if any, conditions should be attached to any Order granted by the Board. Hydro One and OEB Staff's views depart on only two of the conditions proposed by OEB Staff.⁵

⁵ OEB Staff's proposed conditions and Hydro One's responses to these are found at Exhibit I, Tab 1, Schedule 5, dated March 5, 2025.

Draft Condition 2

13. OEB Staff's proposed Condition 2 imposes additional notification requirements to the ones Hydro One has planned and is already using on areas of the Project where construction has already commenced. OEB Staff's proposal materially alters the method and frequency of notifications given and the introduction of a 48-hour delay period between the time when the prescribed notices are given and when Hydro One may then access the property interests obtained by way of the requested expropriation authorization. Conversely, these requirements would not apply to land interests Hydro One has acquired by voluntary agreement.
14. Hydro One respectfully submits the need and justification for these additional requirements has not been demonstrated. More specifically, the question why two different notification processes are required, and based on how Hydro One has lawfully obtained the right of way interests required from the Project, has not been explained.
15. Hydro One's opposition to OEB Staff's approach is also based on the following reasons;
16. First, Hydro One's landowner engagement and outreach program has been designed to align with the commitments made in the Project's Environmental Assessment. The initial entry notification approach is currently being used and addresses these commitments. In so doing, Hydro One submits there is value in allowing it to continue to adopt a consistent and uniform approach to notification, irrespective of how Hydro One has ultimately acquired land rights required for the Project.
17. Hydro One's "initial entry" notification approach is intended to be more than just a brief phone call or a text communication advising landowners as to the time on which Hydro One will access its permanent right of way interests. The initial entry notification approach is used as an important opportunity for Hydro One and its EPC Contractor to offer to meet with the adjacent landowner(s) prior to construction so that the specific construction program and expected timing of the planned construction on the acquired right of way parcel may be

discussed. This approach promotes an overall understanding of the required construction activities, their timing, and the opportunity to dialogue and address questions that landowners may have regarding these activities.

18. Hydro One's approach is based on prior project construction practices. In its experience, uniform notification practices promote consistent communication approaches, regardless of what method was used to lawfully obtain the required land interests. The initial entry notification approach has not been the subject-matter of controversy in Hydro One's past activities, or with landowners on areas where this Project's construction activities have already commenced. The underlying reasons for deviating away from a standardized approach and requiring Hydro One to adopt a significantly more restrictive method of access – only on lands lawfully obtained by way of expropriation authorization - are not clear. Evidence supporting OEB Staff's approach has not been placed before the Board in this proceeding.⁶

19. Second, OEB Staff's suggested approach, in Hydro One's view, is also likely to increase the risk of construction delays and cost overruns, as a consequence of imposing a 48-hour delay period between the time Hydro One provides both written and oral notice to the landowner and when Hydro One or its contractors may be permitted to access the Hydro One right of way. Imposing a 48-hour delay period would restrict the flexibility Hydro One and its EPC Contractor would otherwise have in order to complete construction activities in a timely and continuous manner. Greater risks could result in construction sequencing changes that typically arise with site specific conditions. For example, if construction activities are contemplated in order to address a forecast weather event, those efforts may not be possible if Hydro One was required to await a 48-hour delay before accessing the right of way.

20. Third, the practical consequences of Hydro One no longer applying a uniform "initial entry" approach, irrespective of how the method in which Hydro One has acquired the lands required to complete the Project, is likely to lead to landowner concerns, confusion and frustrations as to why different practices are being applied. In the extreme, and to address the need to

⁶ EB-2024-0319, OEB Staff Submission, dated March 28, 2025 at pages 9-11.

maintain construction access and flexibility, OEB Staff's approach would likely result in Hydro One having to provide greater notifications – in order to maintain access - but only to find that in some circumstances there maybe days of non-attendance through no fault of Hydro One or its EPC contractor. The potential non-attendance after notification and then re-notification in closely-following periods thereafter, generated by the need to satisfy the nature of OEB Staff's suggested condition, would likely generate understandable confusion, frustration and notification overload for only those landowners for which expropriation was the means by which Project lands were acquired.

21. Fourth, OEB Staff refers to the NextBridge East West Tie Expropriation proceeding EB-2019-0127 in support of its proposal.⁷ However, Hydro One submits that material differences exist between the construction of the East West Tie Project and the Waasigan Project. The Board will recall that the East West Tie Project involved a new transmitter to the Province. The East West Tie Project was the first transmission project carried out by the new transmitter and the project resulted from a newly formulated competitive bid process.
22. These attributes do not arise in the present circumstances. Hydro One is a long-established OEB-regulated transmitter. It has an established history of successfully constructing new transmission projects in the Province. In none of Hydro One's previous applications seeking expropriation authorization has the Board required Hydro One to satisfy the form of condition proposed by OEB Staff. The need to deviate away from Hydro One's established practices, based on the similarity of circumstances involving the East West Tie Project, has not been demonstrated.
23. Finally, Hydro One notes that while OEB Staff proposed a condition similar to Draft Condition 2 in the East West Tie proceeding, the Board did not agree with OEB Staff's recommendation and ultimately imposed the following condition:

“NextBridge shall use all reasonable efforts to provide oral or written notice at the

⁷ EB-2024-0319, OEB Staff Submission, dated March 28, 2025 at page 9.

landowner preference to the landowners a minimum of 48 hours prior to the initial entry onto the land...⁸

24. The wording of the East West Tie Project's approved condition aligns with the approach proposed by Hydro One. Having Draft Condition 2 revised so that it reflects the approach approved by the Board in the East West Tie Project is acceptable to Hydro One.

Draft Condition 6

25. Draft Condition 6 contemplates requiring Hydro One and its EPC Contractor to produce and maintain records of the individual personnel attending and entering onto those portions of the right of way that were obtained by way of expropriation authorization. This information includes the time in which entry occurred and the precise location that Hydro One entered onto the right of way.

26. Hydro One, again, questions the reasons justifying the administration and implementation of a record keeping exercise that is only applicable for a subset of the Project's right of way lands i.e., those acquired by OEB expropriation authorization relief. In its response to OEB Staff Interrogatory 5, Hydro One explained that this type of record keeping requirement is not carried out in respect of right of way lands that have been acquired by way of voluntary agreement.

27. Hydro One submits that no unique concerns or reasons have been raised in this proceeding which justify different and additional record keeping requirements. The contemplated record keeping requirement are not matters relevant to Issues 1 and 2, namely, the nature of the subject land rights. Irrespective of how requisite land rights are obtained, these lawfully form part of Hydro One's Project right of way and access to that right of way should be administered in a consistent and uniform manner. If deviations are contemplated to these approaches, they

⁸ EB-2019-0127, NextBridge EWT Project Expropriation Application, Decision & Order – Schedule C, dated September 12, 2019.

should be based upon the identification of a legitimate concern and an explanation provided as to how the proposed condition is intended to mitigate the identified concern. Hydro One submits that these prerequisites have not been demonstrated in this proceeding. The fact that lands were required to be obtained by expropriation authorization versus through a voluntary agreement does not provide an adequate justification supporting the imposition of additional administration and record keeping approaches.

28. OEB Staff's submission also appears to be based on precedent; specifically that Draft Condition 6 was imposed in the circumstances of the East West Tie Project. In reply, Hydro One submits that simply because the Board found Draft Condition 6 was necessary in that case, does not provide a legitimate basis to impose the same condition in the present circumstances. As explained above, the circumstances involving the East West Tie Project were different and distinguishable from the present circumstances. Specific landowner concerns have not been raised in this proceeding that justify the approach advanced by OEB Staff.

29. Further, Hydro One observes that with respect to the East West Tie Project, OEB Staff's justification for implementing Draft Condition 6 was based on "similar" proceedings, specifically EB-2007-0051.⁹

30. In EB-2007-0051, however, the matter at hand concerned Hydro One's request for an interim order allowing entry onto lands that were only contemplated to be required for a new transmission line. The relief sought was made in accordance with section 98 of the OEB Act and not section 99. At that time, the Bruce to Milton transmission project had not been granted leave to construct.¹⁰ The interim access order was intended to permit Hydro One entry onto specific lands which it did not own or have access rights to and for a limited and prescribed period. This type of access was requested so that Hydro One could collect information for purposes of its yet to be completed environmental assessment and to obtain detailed

⁹ EB-2019-0127, NextBridge EWT Project, OEB Staff Submission, dated August 13, 2019, at page 12.

¹⁰ See Ontario Energy Board Decision and Order EB-2007-0051 dated August 7, 2007 at page 2

information necessary to develop construction plans, detailed route determinations and land assembly requirements.

31. Hydro One submits the facts and circumstances arising in EB-2007-0051 are materially different and distinguishable from the present circumstances. In EB-2007-0051, the issues concerned objections from landowners to time limited access to lands not owned by Hydro One and for purposes of gathering pre-construction information. Leave to construct the Bruce to Milton Project had not been obtained.
32. In the present circumstances, the Board has granted leave to construct and Project construction is underway. The issues here do not relate to temporary access to lands not owned by Hydro One, but rather, access to the land comprising Hydro One's permanent right of way and for Project construction activities.
33. Imposing a record keeping requirement as part of relief sought and granted under section 98 of the OEB Act for temporary access onto third party lands appears to be a sensible and reasonable way to allay concerns raised by those affected landowners. In EB-2007-0051, these concerns were not insignificant. The issues prompted the Board to consider these concerns by way of an oral public hearing. The nature and magnitude of these concerns do not arise in the present circumstances. Hydro One therefore submits that underlying justification provided by OEB Staff, namely reliance on EB-2007-0051 and as this case was cited in the East West Tie Project, are factually distinguishable circumstances.
34. Finally, Hydro One observes that the cost to implement OEB Staff's record keeping system are not currently included in Hydro One's estimated Project costs. Adding any incremental costs of this sort unnecessarily imposes risks to Hydro One's budgeted costs, including its contingency budget. Hydro One submits that the public interest is not served by imposing avoidable Project construction costs. Additional administrative costs of this nature have not been reasonably demonstrated to promote the objectives of regulatory certainty, consistency, execution efficiency and cost reasonableness taking into account the specific circumstances of this Project and the relief that is sought.

35. For all of these reasons, Hydro One respectfully requests OEB Staff's proposed Draft Condition 6 is not included in any Order granted by the Board.

3.0 REPLY TO SUBMISSIONS FROM MR. KURT KRAUSE

36. As outlined above, Hydro One and Mr. Krause, have reached a voluntary land acquisition agreement. Given this significant and positive development, and that Mr. Krause's submissions were made prior to the parties achieving this outcome, Hydro One does not consider it necessary to provide additional reply to Mr. Krause's submissions. Hydro One submits that in the unlikely circumstance that the closing of this transaction is materially delayed or does not occur, Mr. Krause's lands should remain within the scope of the relief sought. This approach is, again, consistent with other similarly situated landowners and allows Hydro One to proceed with construction notwithstanding transaction closing risks.

4.0 CONCLUSION

37. Based on the above, Hydro One submits that the applied-for expropriation authorization relief should be approved and subject to the conditions set out in OEB Staff's submissions, but for Conditions 2 and 6.

38. Hydro One supports having Condition 2 revised to adopt (i) an "initial entry" notification approach (ii) removal of any ongoing notification process and (iii) removal of any delay period that would preclude Hydro One from timelier access to right of way lands lawfully obtained pursuant to the relief sought in this application.

39. Hydro One further submits that OEB Staff's Condition 6 has not been justified in the present circumstances and should therefore not be included in any order issued by the Board.

40. All of which is respectfully submitted on this 11th day of April, 2025.

HYDRO ONE NETWORKS INC.

By its counsel:

McCarthy Tétrault LLP

A handwritten signature in black ink, appearing to read "G. Nettleton", is written over a horizontal line.

Gordon M. Nettleton

Partner

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