



EB-2014-0152

IN THE MATTER 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., pursuant to section 99 of the Act, for authority to expropriate interest in certain lands for the purpose of constructing and operating a new 500 kilovolt double circuit transmission line known as the Bruce to Milton Transmission Reinforcement Project;

AND IN THE MATTER OF a Motion by Walter and Helen Kowal pursuant to the Ontario Energy Board's *Rules of Practice and Procedure* for Leave to bring a Motion for a review by the Board of its Decision in EB-2010-0023 dated March 15, 2011.

**DECISION ON THE APPLICATION FOR LEAVE
TO BRING A MOTION TO REVIEW AND VARY AND
PROCEDURAL ORDER NO. 2**

June 26, 2014

On April 2, 2014 Walter and Helen Kowal (the "Applicants") filed a Notice of Motion (the "Motion") with the Board requesting that the Board grant leave to bring the Motion, that the Board review and vary its Decision and Order in the EB-2010-0023 proceeding and that the Board extend the time for bringing the Motion. The Motion has been assigned Board File No. EB-2014-0152.

On March 15, 2011, the Board issued its Decision and Order (EB-2010-0023) (the "Decision") in relation to an application by Hydro One Networks Inc. ("HONI"), pursuant to section 99 of the *Ontario Energy Board Act, 1998* for authority to expropriate interests

in certain lands for the purpose of constructing and operating a new 500 kilovolt double circuit transmission line known as the Bruce to Milton Transmission Reinforcement Project.

In the Decision the Board granted HONI the authority to expropriate several permanent easements and several full parcels of land including the lands legally described as part of Lot 15, Concession 3, Township of Proton; designated as Parts 2,3,4 and 5 on Reference Plan 16R-9813 owned by the Applicants (the "Land").

On April 2, 2014 the Applicants filed a motion seeking a review of the Decision. The Applicants claim that they were unaware that the proceeding leading to the Decision could result in the expropriation of the full parcel of Land, and that it was more recently when HONI sought to enforce the Decision that they became aware of the impact of it.

The Board issued a Notice of Motion and Procedural Order No. 1 ("Notice") on April 28, 2014 directing the Applicants to serve the Notice and the Motion on HONI. The Notice also requested submissions on the following:

1. Should an extension of time as set out in the Board's *Rules of Practice and Procedure* (the "Rules") for bringing the Motion be granted?
2. If an extension of time is granted, has the threshold test been met such that the Board should hear the Motion on its merits?

HONI and Board Staff filed submissions objecting to an extension of time for bringing the Motion and stated that the Motion does not satisfy any of the grounds upon which a motion may be raised with the Board as set out under Rule 22.01(a) of the Rules.

HONI's position is that the Applicants were or should have been aware of the potential outcome and had every opportunity to participate in the proceeding that led to the Decision, and that the Board should not entertain a Motion to Review so long after the fact.

Extension of Time to Bring the Motion

While considerable time has elapsed since the Decision, the Board finds it is appropriate in this case to extend the time to bring the Motion. The Decision involves expropriation. Given the length of time after the decision was issued for the expropriation to take effect, it is understandable that the Applicants did not become

aware of the full parcel taking until well after the twenty day period to bring a motion to review. The Applicants state that they only became aware of the significance of the Board's Decision on their land when it came time for the expropriation to be implemented.

The Board also finds that the request for review only applies to the land rights of the Applicants and HONI and does not affect the rights of any other party. As HONI is still in the process of implementing the expropriations, the delay in bringing the motion should not affect its interests. The Board therefore finds that there will be no material negative impact on HONI or any other party by hearing this Motion at this time.

The Threshold Test

The Board finds that the the threshold test been met and that the Board will hear the Motion on its merits. The Applicants submit that there was a misunderstanding with respect to HONI's intention to take a partial easement or full parcel of their land during the original expropriation hearing. The Applicants further submit that had they known that HONI was intending to take a full parcel, they would have actively participated in the hearing. The Board's view is that expropriation of land is a serious matter for the landowner. A misunderstanding about the nature of the interest being sought or the extent of land required is a matter that should, at this stage, be resolved in favour of proceeding with a hearing on the merits.

The Board considers it necessary to make provision for the following matters related to this proceeding. Please be aware that this order may be amended, and further orders may be issued from time to time.

THE BOARD ORDERS THAT:

1. Each party shall file with the Board and serve to the other party any additional materials that it intends to rely upon at the hearing by **July 7, 2014**.
2. An oral hearing will be held beginning at 9:30 a.m. in the Board's North Hearing Room on **July 10, 2014**.

All filings to the Board must quote the file number, EB-2014-0152, be made through the Board's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax

number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca. If the web portal is not available you may email your document to the address below.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

ADDRESS

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
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Attention: Board Secretary

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Tel: 1-888-632-6273 (toll free)
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DATED at Toronto, June 26, 2014

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary