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Vice President, Stakeholder Relations

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Mr. Christopher Goode
Ministry of Energy, Northern Development and Mines
Energy Networks and Indigenous Policy Branch
6th Floor, 77 Grenville Street
Toronto, Ontario M7A 2C1

Re: ERO Posting 019-1371

Dear Mr. Goode:

Thank you for the opportunity to provide comments on ERO Posting 019-1371, Early Access to Land for Environmental Studies on Transmission Projects.

Hydro One Networks Inc. ("Hydro One") is Ontario's largest electricity transmission provider, serving almost the entire Province. In 2019, Hydro One invested more than \$1 billion in its transmission network, providing a safe and reliable system, which is essential to supporting a strong and successful Ontario.

Hydro One welcomes modifications to early access to land provisions that will facilitate the execution of more comprehensive environmental and other technical studies when they are needed, which is at the planning stage of a project, not at the much later date of a section 92 application to the Ontario Energy Board ("OEB"), thus resulting in improved outcomes such as higher quality environmental assessments. The proposed changes to the *Ontario Energy Board Act, 1998* ("the Act") would improve project schedules and provide cost certainty, resulting in faster completion of transmission projects and revenue requirement savings that can be shared with ratepayers.

For context, environmental and other technical studies are often required to characterize existing conditions within the study area, and may include natural, cultural heritage, socio-economic, and technical (e.g., constructability) conditions to inform evaluation decisions and result in route selection. Hydro One confirms land access rights/permission prior to undertaking any fieldwork. When working on easement lands within an existing right-of-way (ROW), Hydro One reviews existing easements and determines whether the existing access rights are broad enough to enable Hydro One to conduct the necessary activities. If not, Hydro One reaches out to property owners to notify them of the fieldwork and to try to negotiate temporary early access agreements that will permit Hydro One to enter to conduct those activities. Similarly, Hydro One must seek temporary access agreements when working outside an existing ROW or in areas where Hydro One does not have any land rights. The attempts to negotiate and obtain voluntary access agreements can involve hundreds of property owners, resulting in lengthy delays and additional costs, and the attempts are not always successful.

The current situation, therefore, is that property owners have the ability to restrict or deny Hydro One from carrying out the necessary studies, if Hydro One does not already have the required access rights.

This can lead to gaps in technical information, thus compromising the quality of data used to characterize a study area and the environmental assessment alternative evaluation process.

Section 98 of the Act provides a means of obtaining the right to enter land but relies on the precondition that the transmitter must have submitted a section 92 application for leave to construct, expand or reinforce an electricity transmission line. That precondition is frequently an insurmountable obstacle, because a transmitter requires the right to enter land considerably well in advance of the filing of a section 92 application, to enable environmental and other technical studies. For example, the OEB strongly prefers section 92 applicants to specify only one preferred route, whereas it is the environmental assessment, conducted prior to submitting a section 92 application, that results in the selection of that preferred route. In addition, there are projects where early access to land to complete the said studies is required even when there is no need to apply for section 92 leave to construct. Therefore, as stated above, Hydro One's only recourse, absent the limited circumstances in which an application to the OEB for an exemption can be made and then followed by another application under section 98(1.1), is to negotiate with landowners in an attempt to obtain voluntary early access agreements. Unfortunately, this can result in variable outcomes, project delays, and additional costs and which cannot be obtained in all cases.

Hydro One recognizes the need to balance a landowner's right to have a say regarding activities on their property with the ability to conduct necessary environmental and other technical studies in support of maintaining and developing critical transmission infrastructure.

In striking this balance, Hydro One notes that there is a difference between:

- i) landowners with existing transmission assets installed on their property and having an easement agreement in place (whether that agreement allows Hydro One to conduct the newly desired activities or not); and
- ii) landowners with no transmission assets installed on their property and therefore not having already entered into an easement agreement with Hydro One.

Furthermore, Hydro One acknowledges that the level of disturbance associated with the contemplated environmental or other technical studies may influence a landowner's decision.

The following sets out Hydro One's suggestions as to when OEB approval of early access to land should and should not be required.

Occasions where OEB approval of early access to land **would be** required:

- 1) Environmental and other technical studies needed to support greenfield development of new transmission lines (i.e., no existing ROW, easement agreement, or assets), where such studies will result in ground disturbance; or
- 2) Where a landowner has objected to the notification by bringing forward concerns or considerations warranting further review (e.g., demonstrating that the early access to land would result in a negative impact on the landowner or their property).

Occasions where OEB approval of early access to land **would not be** required:

- 1) Environmental and other technical studies needed to support maintenance, refurbishment, upgrades, additions, replacements, or removals of an existing transmission line (i.e., existing ROW, easement agreement, or assets); or

- 2) Where a landowner has not objected to the notification by bringing forward concerns or considerations warranting further review (e.g., demonstrating that the access to land would have a negative impact on the landowner or their property).

There are two reasons why transmitters have almost never used section 98. Firstly, early access to land is almost always required well in advance of submission of a section 92 application to the OEB, because of the need to conduct environmental and other technical studies. Secondly, even if a transmitter has filed a section 92 application, the required application process to the OEB for early access can be lengthy and cumbersome, involving a hearing and all the submissions, evidence and lengthy timelines encompassed by a hearing. Hydro One therefore believes that it is important not to replace one unused legislative section with an amended section that still requires, in all circumstances, OEB approval for early access to land. For that reason, it is proposed that OEB approval with respect to early access to land be limited to those occasions specified above; and it is recommended that where OEB approval is still required, that process be streamlined in order to preclude the need for a full, complex application process with lengthy timelines. Otherwise, transmitters will have no choice but to return to relying on attempting to obtain voluntary access agreements, as is the present case.

The changes proposed to section 98 are of equal benefit to all transmitters. Any risk to landowners introduced by having more than one transmission proponent wanting to execute such studies would require other amendments to the Act or to another statute or their respective regulations.

Hydro One therefore recommends the below-highlighted amendments to section 98 of the Act as a mechanism to allow the OEB to grant earlier access to land to transmission project proponents for the purpose of conducting environmental and other technical studies.

Right to enter land

98 (1) The following persons may enter on land at the intended location of any part of a proposed work and may make such surveys and examinations as are necessary for fixing the site of the work:

1. Any person who has leave under this Part or a predecessor of this Part to construct the work.
2. Any person who is exempted under section 95 from the requirement to obtain leave to construct the work.
3. Where the proposed work is the expansion or reinforcement of a transmission or distribution system, any person who is required by the Board, pursuant to a condition of the person's licence, to expand or reinforce the transmission or distribution system.
4. The officers, employees and agents of a person described in paragraph 1, 2, or 3.

Interim order

(1.1) The Board may, upon application, issue an interim order authorizing a person and the officers, employees and agents of that person to enter on land at the intended location of any part of a proposed work and to make such surveys and examinations as are necessary for fixing the site of the work and as are specified in the order if,

- (a) the person has applied for leave under section 90 or 92 and has complied with section 94;

- (b) the person has applied to the Board for an exemption under section 95; or
- (c) the Board has commenced a proceeding to determine whether to require the person, pursuant to a condition of the person's licence, to expand or reinforce a transmission or distribution system.

98 (2) Transmitters and their respective officers, employees and agents may, after providing landowners with 14 days' notice, enter on land to conduct environmental and other technical studies where the foregoing activities are:

- (a) in furtherance of an environmental assessment pursuant to the *Environmental Assessment Act*;
- (b) to enable them to comply with environmental laws and regulations applicable to transmitters; or
- (c) to determine appropriateness of site conditions for installation of transmission assets;

where the studies are required to support maintenance, refurbishment, upgrades, additions, replacements, or removals to an existing transmission line.

98 (3) Entry pursuant to subsection (2) shall not be permitted where the landowner has objected to the entry by providing the transmitter with material grounds that demonstrate harm to the landowner that warrants special consideration by the transmitter.

98 (4) The Board may, upon application, issue an interim order authorizing transmitters and their officers, employees and agents to enter on land to conduct environmental and other technical studies where the foregoing activities are:

- (a) in furtherance of an environmental assessment pursuant to the *Environmental Assessment Act*;
- (c) to enable them to comply with environmental laws and regulations applicable to transmitters; or
- (d) to determine appropriateness of site conditions for installation of transmission assets;

when the studies are required to support greenfield development of new transmission lines where the transmitter has no existing land rights or when the landowner has met the objection criteria in subsection (3).

Damages

98 (5) Any damages resulting from an entry onto land carried out under subsections (1) or (2) or pursuant to an order under subsection (1.1) or subsection (4) shall be determined by agreement or, failing agreement, in the manner set out in section 100.

The proposed changes would ensure that Hydro One is able to access land to complete all pre-construction environmental and technical studies without delay and increase the quality of environmental assessments. Early access for these purposes will allow for projects to be planned efficiently and will result in improvements to project schedules and cost certainty. Lengthy, and often unsuccessful, attempts to obtain voluntary early access agreements would be unnecessary. Property owners would be protected by the provision that 14 days' notice would be provided by the transmitter, by the provision requiring an application to the OEB where the landowner has objected by providing material grounds warranting a further review, and by the already-existing subsection 98(5) that addresses the matter of any damages resulting from the entry.

Please do not hesitate to contact me if you have any questions or would like to discuss our recommendations in greater detail.

Best Regards,

A handwritten signature in black ink, appearing to read "Dan Levitan", with a stylized flourish at the end.

Daniel Levitan