



**EB-2010-0023**

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

**AND IN THE MATTER OF** section 99 of the Act;

**AND IN THE MATTER OF** an application by Hydro One  
Networks Inc. 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** Notices of Motion brought by  
the Fallis Group of Intervenors and Eric K. Gillespie  
Professional Corp. representing Intervenor Mr. Robert  
Watson.

**BEFORE:** Ken Quesnelle  
Presiding Member

## **DECISION ON MOTIONS**

August 6, 2010

## INTRODUCTION

Hydro One Networks Inc. (“Hydro One”) has filed an application (the “Application”), dated February 26, 2010, 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 “OEB Act”) 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 (the “Project”) located between the Bruce Power Complex in Kincardine, Ontario and Hydro One’s switching station in Milton, Ontario. The Board has assigned File No. EB-2010-0023 to this application.

Hydro One was granted leave of the Board to construct the Project on September 15, 2008 pursuant to Board Decision EB-2007- 0050. The Project will be constructed adjacent to the existing transmission corridor extending from the Bruce Power Complex on the Lake Huron shore in the Municipality of Kincardine and will proceed in a south by south-east direction to Hydro One’s Milton Switching Station located south-east of the interchange of James Snow Parkway and Highway 401 in the Town of Milton

On March 16, 2010, the Board issued a Notice of Application (the “Notice”) for this proceeding. Hydro One served the Notice, the Application, and relevant pre-filed evidence on all affected landowners and other interested parties.

Through its Procedural Order No. 1, the Board invited submissions from the Applicant, intervenors and Board staff regarding the issues that should be considered in this proceeding and made provisions for an Issues Day hearing to hear submissions from parties regarding the issues to be considered in this case. Accordingly, the following parties filed submissions:

- Mr. Gordon M. Nettleton, Osler, Hoskin & Harcourt LLP, representing Hydro One;
- Mr. Peter T. Fallis, Fallis, Fallis & McMillan, representing client intervenors (the “Fallis Group”);
- Mr. Eric K. Gillespie, Eric K. Gillespie Prof Corp, representing Mr. Robert Watson;
- Mr. John D. Goudy, Cohen Highley LLP, representing Ms. Catherine Gale Walford;
- Mr. Ian Mathany, Borden Ladner Gervais LLP, representing client intervenors;

- Mr. Quinn M. Ross, The Ross Firm, representing client intervenors; and
- Board Staff

A number of the issues proposed by the Fallis Group in its May 13, 2010 submission related to “prematurity of the application” and “referral of issues to the court”. In order to allow the Issues Day proceeding to remain focused on the identification of issues to be considered during any evidentiary and argument hearing process held for the Application, the Board decided that the “prematurity of the application” and “referral of issues to the court” issues would be handled by way of a formal motion that would be filed after Issues Day. Accordingly, an Issues Day hearing was held on June 8, 2010, followed by Notices of Motion filed by the Fallis Group and Mr. Robert Watson and a Motions Day hearing was held on July 14, 2010.

A Decision regarding the issues to be considered in this case (EB-2009-0023) was issued on August 6, 2010.

This Decision addresses the Notices of Motion filed by the Fallis Group and by Mr. Robert Watson.

## **DESCRIPTION OF THE MOTIONS AND BOARD FINDINGS**

### **(A) The Motion on Robert Watson (“Watson Motion”)**

The Watson Motion seeks an order of the Board: (1) staying the proceeding until the completion of all proceedings pursuant to the *Consolidated Hearings Act*, (“CHA”) or, in the alternative, (2) an order permitting Mr. Watson (or any other intervenor) to adduce evidence and make submissions regarding the alterations to the preferred route of the Project based on the impacts to their lands and interests that have not previously been assessed.

#### **(i) Prematurity of the Section 99 Application**

The Watson Motion stated that Hydro One’s Application under Section 99 of the OEB Act is premature because:

- Hydro One has not obtained all necessary approvals, permits, licenses, certificates and easement rights as per Condition 1(4) in the Boards Decision and Order (EB-2007-0050) which granted Hydro One leave to construct the Project.

- Hydro One has not given any written notice of the Undertaking to the Hearings Registrar of the Environmental Hearing Board under s. 3(1) of the CHA.

The Watson Motion contends that the Project may require as many as five hearings and approvals that are covered by the CHA: a hearing before the Environmental Review Tribunal with respect to the Environmental Assessment, a hearing of inquiry pursuant to sections 6 and 7 of the *Expropriations Act*, a hearing for a development approval before the Niagara Escarpment Commission, a hearing before the Ontario Municipal Board for an approval under the *Ontario Planning and Development Act* with respect to one of the alternate proposed transmission corridor routes, and another hearing before the Environmental Review Tribunal for dewatering permits pursuant to the *Ontario Water Resources Act*.

Hydro One submitted that applications made pursuant to section 99 are not premature simply because the prerequisite section 92 approval is subject to outstanding conditions. Hydro One further submitted that “Condition 1(4) expressly obligates Hydro One to obtain all necessary approvals and easement rights required to construct and operate and maintain the project and to provide copies of same to the Board upon request. The Condition does not state that all such specific approvals must be obtained before applications are brought by Hydro One pursuant to section 99 of the Act.”

Hydro One also submitted that it has not taken steps to proceed under the CHA because it is not required to do so since the OEB Act is not included in the CHA’s Schedule, and thus the CHA cannot be said to be applicable or relevant to applications made to this Board under the Act. In the alternative, Hydro One argues that even if the CHA were relevant to the current proceeding, Hydro One has complied with all of the provisions of that Act. Specifically, Hydro One argues that it is not required to notify the hearings registrar because the criteria in section 2 of the CHA have not been triggered.

Section 2 requires that the CHA hearing requirements apply where: “more than one hearing is required or may be required or held by more than one tribunal under one or more of the Acts set out in the Schedule or prescribed by the regulations.” Hydro One submits that it does not require approvals by more than one of the tribunals listed in the Schedule to the CHA. The Environmental Assessment for the Project was not referred by the Minister of the Environment to the Environmental Review Tribunal. Hydro One did require an approval under the Niagara Escarpment Planning and Development Act, but that approval has been obtained (although it is under appeal). Hydro One further maintains that it does not require any approvals under the *Ontario Planning and*

*Development Act*, nor does it intend to seek any approvals pursuant to the *Ontario Water Resources Act*. In addition, Hydro One does not require any approvals pursuant to sections 6, 7 or 8 of the *Expropriations Act*, as Hydro One is seeking approval instead through section 99 of the OEB Act.

The Board accepts Hydro One's submission that Condition 1(4) in the Board's Decision and Order (EB-2007-0050) does not require Hydro to obtain all the approvals pursuant to Condition 1(4) before filing an application with the Board under section 99 of the Act.

The Board will also not stay this proceeding on account of any breaches relating to the CHA. The Board is not mentioned in the CHA, and has no role to play regarding any enforcement of its provisions. The Board does not intend to involve itself in the administration of an act that does not relate to the Board.

It is also not clear to the Board that there has been any breach of the CHA. Although there may be some possibility Hydro One will be required to obtain additional approvals, this does not appear to be either imminent or likely. The Board understands that the CHA applies where more than one hearing is required or "may be required", however it does not accept that this should lead to significant delays where the necessity to hold a particular hearing is speculative and not imminent. There must be some reasonable basis on which to believe a requirement for a hearing to which the CHA applies is a realistic possibility. The Board is not convinced that this is the case here.

The Board therefore rejects the Watson Motion for an order from the Board staying the proceeding until the completion of all proceedings pursuant to the CHA.

## **(ii) Consideration of Routing Alternatives**

The Watson Motion stated that Hydro One and the Board did not allow landowners the opportunity to present evidence regarding routing alternatives for the Project in the section 92 proceeding (EB-2007-0050). The Motion further stated that "only certainly generic and therefore limited aspects of routing have been dealt with and the Board specifically declined to deal with the specific and individual routing issues the Intervenor still seek to raise".

In its pre-filed materials, Hydro One submitted that "the Board's section 92 proceeding and the EA process both took into consideration Project alternatives, including different routes or route modifications. The fact is that the Act now expressly mandates the specific factors and criteria that are considered in the context of whether leave to

construct a Project should be granted". Board staff pointed out in its submission that the Board also addressed the issue of route alternatives in its Issues Day Decision and Order dated September 26, 2007 for the section 92 proceeding. At page 5 of that decision, the Board held:

The Board finds that it can and should address route alternatives that have a material impact on price, reliability and quality of electricity service, and we note [the intervenor group] Powerline Connections' intention to file evidence in this respect. That assessment should be included in the comparison of all reasonably alternatives. The Board notes that these alternatives may be alternatives in routing within the applied for corridor or alternatives outside the applied for corridor.

Mr. Goudy, representing Ms. Catherine Gale Walford, supported the Watson Motion with respect to consideration of routing alternatives in this Section 99 application. Mr. Goudy further emphasized the position that neither the Environmental Assessment process nor the Board's Section 92 proceeding examined the routing at a very site-specific level based on very site-specific considerations. In Mr. Goudy's view, that is left to the Board's Section 99 proceeding. Specifically, Mr. Goudy submitted that this proceeding should allow the consideration of routing alternatives that involve properties adjacent to the lands that have been targeted for expropriation.

The Board does not agree with the position as expressed by the Watson Motion (and the Fallis Group Motion) that the Board refused to entertain evidence on routing in the leave to construct proceeding. The Board was clear that the route of the Project would be an issue in that proceeding, and indeed heard evidence and submissions on that topic.

The Board also accepts, however, that the leave to construct proceeding did not examine the potential impacts of the Project on a site specific, property by property basis. The Board agrees that this is to some extent the purpose of the current proceeding.

During the oral hearing of the motions, it appeared that the land owner groups accepted, however, that the general routing for the project had already been determined. Their focus with regard to routing was on site specific routing issues.

Mr. Gillespie argued that the Board should permit questions and evidence on site specific routing issues. He submitted that parties should be permitted to ask questions relating to possible routing alternatives not only within the corridor Hydro One identified in the leave to construct process, but also on neighbouring lands. In Mr. Gillespie's view, this would not amount to a reconsideration of the general routing of the project.

Mr. Goudy argued that parties should be permitted to ask questions about routing alternatives outside of the lands that have been targeted by Hydro One for expropriation. He does not propose to examine routing alternatives outside of the general route that was approved through the leave to construct proceeding and the Environmental Assessment.

Hydro One agreed that parties should be permitted to ask questions regarding the design and location of the transmission facilities that Hydro One proposes to build on their properties, provided that scope of the questions is restricted to the approved route. Hydro One has two concerns, however, regarding any questions or submissions relating to routing alternatives that fall outside of the approved route. First, any variations to the route approved in this proceeding would not match the approval in the leave to construct proceeding. In such a situation, Hydro One would arguably not have leave to construct approval to build the transmission line over the route as approved in the current proceeding. Second, Hydro One emphasized that it had already filed its request for specific expropriations rights, and that it did not intend to file any additional evidence on routing issues because it had no desire to see the route changed. To the extent that route refinements are proposed by any land owner, they would be required to provide evidence in support of that refinement. Hydro One did accept that in some cases it might provide additional information on proposed route refinements through the interrogatory process, depending on the question and the final issues list.

The Board has no intention of revisiting the issues that were decided in the leave to construct proceeding. The general route for the Project was an issue in that proceeding, and the general route will not be considered again in this proceeding.

However, with regard to potential route refinements, the Board will allow questions and submissions on route refinements within the corridor, and to a very limited extent on areas immediately adjacent to the corridor. To be clear, the Board does not accept that it would be appropriate to move the route outside of the corridor. It is not the Board's intent to allow parties to seek information on routing refinements that include areas immediately adjacent to the corridor on the simple grounds that they are impacted by

the existing plan. Hydro One will only be expected to answer questions intended to ascertain the reasonableness of any potential avoidance of demonstrable and substantial impacts that can not otherwise be accommodated within the corridor. The Board recognises that there would be notice issues if new properties potentially become impacted. At this stage, however, the Board is prepared to allow parties to ask questions and make submissions on these matters. The Board re-iterates, however, that it does not intend to stray from the decision in the leave to construct proceeding, nor to make a decision that would be inconsistent with the Environmental Assessment approval. The Board will not amend the approved Issues List; any questions relating to routing will fall within Issue 1.

### **(B) The Fallis Group Motion**

The Fallis Group Motion asks the Board to make twenty four separate orders. Many of these proposed orders are related, and the Board agrees with Board staff's submissions that these requested orders can be generally organized into five categories:

#### **Notice Issues (requested orders 1-3)**

The Fallis Group Motion states that Cedar Crest Trout Farm (the "Company") has an interest as a tenant and holder of a constructive trust in one of the properties that Hydro One Networks Inc. ("Hydro One") seeks to expropriate, and that it did not receive direct notice of the application for authorization to expropriate (the "Application"). Proposed order #3 asks that the Board declare that it is without legislative competence to grant the Application with respect to this property as a proper notice was not served. The Fallis Group Motion also states that the Company was never provided notice for the original section 92 leave to construct application (EB-2007-0050).

Both Hydro One and Board staff opposed the granting of the requested relief. They noted that the Company had been an intervenor since May 20, and that it had been actively represented by Mr. Fallis at every stage of the proceeding. It was also pointed out that the principals of the Company are in fact also the landowners, who did receive direct notice of the application. Mr. Fallis did not identify any prejudice to his client resulting from the alleged lack of notice.

With regard to the assertions in the Fallis Group Motion that the Company did not receive notice of the original section 92 leave to construct application, Board staff submitted that Notice for the Leave to Construct application was in fact widely published in 6 local newspapers during the period January 9-15, 2008.

The Board finds that there is no issue relating to notice vis a vis the Company. The Company received at minimum constructive notice, and has not been prejudiced in any way. The Board will not make any of the notice related orders requested in the Fallis Group Motion.

The Board accepts Board staff's submissions with respect to the Notice Issues and rejects the request for orders 1-3 of the Fallis Group Motion.

The Board does recognize, however, that it is possible that there are parties that could be impacted by the decision that have not received notice. Tenants without a registered interest in the land, for example, would not have received direct notice of the application. Although it is the Board's expectation that the registered owners would notify all tenants, it is not a certainty that they have done so. In order to ensure that notice is complete, the Board will require Hydro One to publish a supplemental notice through the next Procedural Order. To the extent any new parties respond to this notice, the Board will make provision for them to make submissions on any preceding procedural steps, such as the issues list.

#### **Injurious Affection Issues (requested orders 4-6 and 10)**

The Fallis Group Motion seeks an order from the Board declaring that the Board has no jurisdiction to authorize Hydro One to cause injurious affection.

Hydro One submitted that injurious affection is term that concerns claims for a type of damage resulting from a taking. As a result, this is a compensation issue, and is not a matter within the Board's jurisdiction to address. Hydro One argues that compensation issues are decided through the provisions of the Expropriations Act, and the Board therefore does not need to make any declarations or orders relating to injurious affection.

Board staff submitted that injurious affection is in effect a heading of damages, and not a subject of explicit approval itself. Injurious affection is essentially a by-product of some expropriations. Although an expropriation itself may be authorized by an approving authority (such as the Board), injurious affection is a compensation issue and should be dealt with in that context. As discussed below, the Board itself has no authority over compensation issues.

*Distinction between "expropriating authority" and "statutory authority" (Decision with respect to questions presented in Procedural Order No. 3)*

In the context of discussions around the injurious affection issues, the Board indicated that it would seek further written submissions from parties relating to certain definitions in the *Expropriations Act*. In Procedural Order No. 3, the Board identified three questions it wished to have addressed, and gave parties until July 30 to make written submissions on these questions. The Board received submissions from Mr. Goudy, Mr. Nettleton, Mr. Fallis, and Mr. Ross. Mr. Gillespie indicated that he supported the submissions of Mr. Fallis and Mr. Ross.

After reviewing each party's respective submissions, the Board agrees with and adopts the position taken by Mr. Goudy in response to the questions presented in Procedural Order No. 3. The Board also accepts the position taken by Hydro One, to the extent that Hydro One's submissions support the position taken by Mr. Goudy.

Therefore, the Board takes the position that the distinction between the terms "statutory authority" and "expropriating authority" in the *Expropriations Act* has no significance in the context of this proceeding and is not an issue that the Board needs to address in its final decision in this case. Under the *Expropriations Act*, the term "statutory authority" is expansive and encompasses the term "expropriating authority."<sup>1</sup> Every "expropriating authority" is also a "statutory authority" for the purposes of certain provisions of the *Expropriations Act*.<sup>2</sup> If the Board does authorize the proposed expropriations under the OEB Act, Hydro One will become an "expropriating authority" and will therefore be a "statutory authority" under the *Expropriations Act*.

Mr. Ross submitted issues regarding the Board's mandate to test an application under section 99 of the OEB Act in order to determine if the expropriation is in the public interest. These submissions do not address the questions asked by the Board in Procedural Order No. 3 and therefore the Board will not discuss them further.

Mr. Ross also submitted that a "Statutory Authority" has the power to cause injurious affection whereas an "Expropriating Authority" does not and that neither term

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1 The *Expropriations Act* refers to an "expropriating authority" only when the provision deals with an "authority" actually engaging in the process of land expropriation. On the other hand, the term "statutory authority" is referred to in provisions that deal not only with the actual process of land expropriation but in provisions that deal with compensation issues relating to that process, which do not involve actual expropriation of land *per se*.

2 See Ontario Court of Appeal's decision in *Rotenberg v. York (Borough)* (No. 2) (1976), 13 O.R. (2d) 101 (C.A.), 1976 CarswellOnt 267, which confirms that the term "statutory authority" encompasses an "expropriating authority" in the context of cost awards.

encompasses the other, that if authorized to expropriate land, Hydro One would be an Expropriating Authority able to expropriate land but not cause injurious affection in the process, and that the distinction between an “expropriating authority” and a “statutory authority” is an issue that the Board must address in its final decision in order to reach a juristically sound result.

The Board does not accept the position taken by Mr. Ross. As discussed at para. 3 of this decision, every expropriating authority is also a statutory authority for the purposes of certain provisions of the *Expropriations Act*, including those relating to cost awards. This idea has been confirmed by the Ontario Court of Appeals.<sup>3</sup> Therefore if authorized to expropriate land under the OEB Act, Hydro One would be an “expropriating authority” and also a “statutory authority,” giving Hydro One the ability to both expropriate land and cause injurious affection as defined by the *Expropriations Act*.

Mr. Fallis put forward many lengthy submissions in response to Procedural Order No. 3, a number of which did not address any of the questions asked by the Board.

Response submissions 3-6 address the business composition of Hydro One Inc., and suggest that the beneficial equity in the company is owned solely by the Government of Ontario.

Response submissions 7-9 address the authority of the Minister of Government Services to request a taking and an expropriation of land on behalf of the Minister of Energy and Infrastructure.

Response submissions 10-11 address the process that the Minister of Government Services must follow when applying to the Board for an Order for leave to construct on behalf of the Minister of Energy and Infrastructure, which does not require the Minister of Government Services to apply for the authority to expropriate lands, subject only to the *Expropriations Act*.

Response submissions 12-17 argue that every expropriation of land by the Government and government agencies of Ontario, if carried out under the authority of the Minister of Government Services, shall be subject to the *Expropriations Act*.

Response submissions 21-23 submit that sections 98, 102 and 103(1), (2) of the OEB Act have nothing to do with the expropriation of land.

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<sup>3</sup> See note 2

None of these submissions relate in any way to the questions posed by the Board in Procedural Order No. 3, and the Board will not address them further.

Other submissions made by Mr. Fallis, though they relate to the questions asked by the Board, largely mirror his written submissions put forward in his original motion. Mr. Fallis' response submissions 1 -2, 28-32, and 42-44 question the Board's legislative authority to approve an application to expropriate certain lands under section 99 of the OEB Act. These submissions are the same as the issues addressed in requested orders 11-22 of the original Fallis Group Motion. Response submissions 25 -26 relate to compensation for injurious affection, and response submissions 36-38, and 48 relate to the authority of the Board to grant Hydro One the authority to cause injurious affection, issues that were addressed in the Fallis Group Motion requested orders 4-6 and 10.

Mr. Fallis' response submissions 45-46 state that if the Board empowers Hydro One with the right to expropriate land, it will neither be an "expropriating authority" nor a "statutory authority." The Board rejects this submission for the reasons stated above.

The Board has determined that it will not make any of the requested orders relating to injurious affection. The Board's powers with regard to expropriations are set out in the OEB Act. Injurious affection is a category of damages; it is not expressly "authorized" by the Board, but is instead a result of certain expropriations. Any claims relating to injurious affection are compensation issues and are properly dealt with through the framework of the *Expropriations Act*.

**The Meaning of the Word "authorizing" in s. 99(5) of the Act (requested orders 11-22);**

Section 99(5) of the Act states: "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."

The Fallis Group Motion seeks clarity from the Board regarding the effect or meaning of any order granting authority to expropriate under s. 99(5) of the OEB Act. The Fallis Group Motion's central contention in this regard appears to be that a Board order authorizing expropriation under s. 99(5) is in effect a condition precedent to a subsequent application to expropriate through the provisions of the *Expropriations Act*. The Motion seeks an order confirming that an "authorization" of the Board does not amount to an approval to expropriate, and that Hydro One would still have to apply under the *Expropriations Act* for an actual approval to expropriate.

Hydro One submits that the analysis in the Fallis Group Motion is incorrect, and that section 99 of the OEB Act provides the Board with the express power to grant orders authorizing an applicant to expropriate land. Hydro One argues that section 4(2) of the Expropriations Act expressly precludes applications under section 99 of the OEB Act for being subject to the inquiry and application processes under sections 6, 7 and 8 of the *Expropriations Act*. In other words, an approval under section 99 of the OEB Act authorizes the applicant to actually expropriate the lands, and is not a condition precedent to a subsequent application under the *Expropriations Act*.

Board staff's arguments on this point were similar to those of Hydro One. Board staff submitted that the Fallis Group's interpretation of the OEB Act and the Expropriations Act is not correct, and that any authorization granted under s. 99(5) of the OEB Act is in fact an approval to expropriate. Where authority is granted under s. 99(5) of the OEB Act, an applicant need not seek separate approval through ss. 6-8 of the Expropriations Act.

The Board accepts the interpretation of the Acts as presented by Hydro One and Board staff. Section 4(2) of the Expropriations Act clearly exempts parties that have an approval under section 99 of the OEB Act from following the process established in sections 6-8 of the Expropriations Act. The Board will not make any of the orders requested in the Fallis Group Motion relating to the interpretation of the word "authorizing" in section 99 of the OEB Act.

### **Issues Regarding the Consolidated Hearings Act (requested orders 23-24)**

The Fallis Group Motion and the Watson Motion make similar arguments and request similar relief with respect to issues concerning the Consolidated Hearings Act.

The Board's decision with respect to CHA hearings is detailed above.

The Board therefore rejects the request for orders 23-24 of the Fallis Group Motion.

### **Other Issues (requested orders 7, 9, and 22)**

The Fallis Group Motion requests several additional orders that do not fit neatly into the categories listed above. Requested order 7 of the Fallis Group Motion asks the Board to declare that Hydro One has no authority to expropriate lands for its works absent a grant of authority by the Board under s. 99. The very purpose of this Hydro One application to the Board is to receive an order from the Board authorizing it to

expropriate land. There is no suggestion from any party that Hydro One has an independent right to expropriate land absent such an authorization from the Board. Therefore, there is no need to make an order confirming this, and the Board will not do so.

Requested order 9 seeks a declaration from the Board that any damages arising from the proposed expropriations will be determined by the Ontario Municipal Board unless otherwise agreed to by the parties. The Board has been very clear that it has no authority to set compensation and that compensation is determined (if necessary) through the provisions of the *Expropriations Act* or by the Ontario Municipal Board. Hydro One has stated on several occasions that it agrees that the Board has no authority to set compensation amounts. In fact, the Board is not aware of any party suggesting that the Board has responsibility for setting compensation. The Board finds, therefore, that there is no need to make a declaration confirming this point.

Requested order 22 seeks a declaration from the Board that it has not established guidelines or forms for use in s. 99 applications. As submitted by Board staff, the Board notes that its powers with respect to expropriations are set out in the OEB Act, and the Act does not require the Board to establish guidelines or prepare forms. To the extent any guidelines or forms were established, they would be subordinate to the provisions of the OEB Act in any event. There is no need for an order stating that no guidelines or forms have been established.

Requested order 22 further asks the Board to refer all 20 of the previous requested orders (there is no requested order number 9) to the Superior Court of Justice to gain “clarity of understanding of the limitation of powers as conferred upon the Board on a Sec. 99 Application.”

The Board will not refer any of the orders requested in the Fallis Group Motion to the courts. Section 32 of the OEB Act does allow the Board to state cases to the Divisional Court. However, there is no reason to do so in this case. The Board has considered numerous expropriation cases before without recourse to a stated case. Pursuant to section 19 of the OEB Act, the Board has full authority to hear and determine all issues of fact and law that fall within its jurisdiction. The Board intends to hear this case in full. In addition, there may be factual issues relevant to the requested orders that have yet to be determined, and any record presented to the Divisional Court might be incomplete. The request to refer this matter to the courts is therefore denied.

At paragraph 17 of the Motion Record, the Fallis Group Motion alleges that there have been certain breaches of the *Canadian Charter of Rights and Freedoms* with respect to this application. Mr. Fallis repeated the allegations in his oral argument. Mr. Fallis did not, however, identify which Charter right or rights he felt had been breached, nor did he provide any case law, or indeed any real argument, to support these allegations. In the Board's view, an alleged breach of a Charter provision is a serious matter. It is irresponsible for counsel to make such allegations where they are unable to articulate any of the details of the alleged breach, or even identify which provision they believe has been breached. Such conduct is not helpful to the Board's processes. The Board finds that there is no merit to these allegations whatsoever, and will make no orders in this regard.

## **CONCLUSION**

Based on the submissions of the parties and the above findings, the Board has decided that certain issues relating to routing will be considered to be within the scope of Issue 1 as identified in the Issues Decision. All other requested orders in the Watson Motion and the Fallis Group Motion are denied.

**DATED** at Toronto, August 6, 2010

## **ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary