

Court decides in favor of Hydro

(Continued from page 6) enabled Hydro to use the provisions of the Expropriations Act to acquire the subject lands.

Sections 4, 5 and 6 of The Expropriations Act required Hydro to obtain the approval of its "approving authority" (the Minister of Energy and Resources Management). Without that approval it could not expropriate. Upon applying for approval Hydro was obliged to give notice to registered owners of the lands to be expropriated. Those owners were given the right to request a hearing. Where a request for hearing is made an inquiry officer must be appointed (s. 7, ss. 1, 2 and 3). The procedure for the hearing was set out in s. 7, as follows, after providing that the inquiry officer was to fix a time and place and notify the parties:

7. (4) At least five days before the date fixed for the hearing, the expropriating authority shall serve upon

each party to the inquiry a notice indicating the grounds upon which it intends to rely at the hearing and shall make available for inspection by the parties any documents, including maps and plans, that the expropriating authority intends to use at the hearing.

(5) The hearing shall be by means of an inquiry conducted by the inquiry officer who shall inquire into whether the taking of the lands or any part of the lands of an owner or of more than one owner of the same lands is fair, sound and reasonable in the circumstances and necessary in the achievement of the objectives of the expropriating authority.

(6) The inquiry officer shall report to the approving authority a summary of the evidence and arguments advanced by the parties, the inquiry officer's findings of fact, and his opinion on the merits of the application for approval with his reasons therefor.

(7) The inquiry officer may combine two or more related

inquiries and conduct them in all respects and for all purposes as one inquiry.

(8) The expropriating authority, each owner who notifies the approving authority that he desires a hearing in respect of the lands intended to be expropriated and any owner added as a party by the inquiry officer are parties to the inquiry.

(9) The inquiry officer:

(a) may add any owner whose land would be affected by the expropriation of the lands concerned in the inquiry or any modification thereof as a party to the inquiry;

(b) shall give every party to the inquiry an opportunity to present evidence and argument and to examine and cross-examine witnesses, either personally or by his counsel or agent;

(c) is not bound by the technical or legal rules of evidence; and

(d) may inspect the lands concerned either alone or in the presence of the parties.

(10) The inquiry officer may recommend to the approving authority that a party to the inquiry be paid a fixed amount for his costs of the inquiry not to exceed \$200 and the approving authority may in its discretion order the expropriating authority to pay such costs forthwith.

Section 8 is also relevant:

8. (1) The approving authority shall consider the report of the inquiry officer and shall approve or not approve the proposed expropriation or approve the proposed expropriation with such modifications as the approving authority considers proper, but an approval with modifications shall not affect the lands of a registered owner who is not or has not been made a party to the hearing.

(2) The approving authority shall give written reasons for its decision and shall cause its decision and the reasons therefor to be served upon all the parties within ninety days after the date upon which the

report of the inquiry officer is received by the approving authority.

(3) The approving authority shall certify its approval in the prescribed form.

Mr. Donald F. Meyrick, Q.C., was appointed as the inquiry officer and, pursuant to notices that he caused to be published, the hearing into the expropriation of the subject lands commenced on November 22, 1976.

It should be observed that this hearing did not encompass the entirety of the lands covered by the Order-in-Council. It dealt with only a part; we are told a fourteen mile stretch in the area of Limehouse, Ontario, to the north and west of Metropolitan Toronto.

The hearing that was commenced on Monday, November 22, 1976, continued on a daily basis until Thursday, November 25, 1976, when it was adjourned "to April 4th, 1977, or earlier by either party giving fifteen days' notice".

(See Mr. Meyrick's reasons). As required by The Expropriations Act, Hydro served upon the property owners a notice of grounds. This was a lengthy document, some fifteen pages, that contained a lengthy statement entitled "The Objective of the Expropriating Authority". In the notice of grounds the following occurs:

The purpose and objective of the proposed expropriation is the acquiring of sufficient land or interests therein for a right of way for an electrical transmission line (part) extending from Bradley Junction, a defined location in the northern portion of Greenock Township in the County of Bruce (which is connected by a right of way already acquired and in respect of which construction is proceeding linking the Bruce Nuclear Generating Station near Douglas Point on Lake Huron) to the Milton Transformer Station (a location near the Town

of Milton) which location is also fixed.

In a statement of "objectives", included in the notice, the following occurs:

This objective (linking of the Bruce Generating with the major transmission facilities to the south via a transformer station at Milton) must be accepted for the purposes of these hearings. This involves a direct linkage of Bruce with Milton generally through Bruce, Grey, Dufferin, Wellington and Halton Counties. This aspect of the system design was accepted by Dr. Solandt in the course of the extensive inquiries conducted by him between September 13, 1972 and March, 1974. This accepted and recommended design has been approved by the Government of Ontario and is beyond consideration in these hearings.

A list of documents, maps and plans intended to be used at the hearing was included in the notice of grounds. These included the Solandt Commission's Report.

Before the first witness was called by the Hydro, counsel for the property owners asked

The Acton Free Press, Wednesday, March 9 1977 7

for a ruling. They desired to know whether the inquiry officer would permit cross-examination and hear evidence about alternate routes for the transmission lines. After hearing argument, the inquiry officer reserved his ruling.

The hearing thereupon proceeded. Mr. Arthur Mosher was Hydro's first witness. He was the manager of the Land Use and Environmental Planning Department, route and site selection division of Ontario Hydro, and had been the project planner responsible for the planning of the route from Nanticoke Generating station to Pickering Generating station. He gave a general history leading up to the selection of the recommended route.

At the conclusion of his testimony in-chief, the cross-examination began. During the cross-examination, Mr. Meyrick announced that he was prepared to make a ruling on the question that he had previously reserved. After further argument by counsel, Mr. Meyrick ruled that:

No evidence should be led or adduced through cross-examination on the initiative of the respondent owners and other interested parties in opposition which would involve an inquiry into the relative merits of alternative routes for the desired power line.

Mr. Meyrick said also: It is clear, however, that important public interests emerge on both sides of the equation, none of which is served by delay. I accordingly recommend that matters be precipitated and that the appropriate officials within the public sector (Hydro and the Province) be authorized and directed to forthwith enter into dialogue with counsel and agents representing the private sector for the purpose of a joint application to Court for an abridgment of time and an early disposition of the ensuing legal contest.

It is the "ruling" that is the subject of this application. I am unaware of any decision that governs or substantially relates to this question. (Continued on page 13)

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