



EB-2017-0182
EB-2017-0194
EB-2017-0364

**Upper Canada Transmission Inc. (on behalf of
NextBridge Infrastructure)
Application for leave to construct an electricity
transmission line between Thunder Bay and Wawa, Ontario**

- and -

**Hydro One Networks Inc.
Application to upgrade existing transmission station facilities
in the Districts of Thunder Bay and Algoma, Ontario**

-and-

**Hydro One Networks Inc.
Application for leave to construct an electricity transmission line
between Thunder Bay and Wawa, Ontario**

PROCEDURAL ORDER NO. 8 on COMBINED HEARING

October 1, 2018

This Procedural Order addresses a combined oral hearing for three applications that have been filed with the Ontario Energy Board (OEB) under section 92 of the *Ontario Energy Board Act, 1998* scheduled to start on October 2, 2018.

The first application, filed by Upper Canada Transmission Inc. (NextBridge), seeks an order granting leave to construct a new electricity transmission line between Wawa and Thunder Bay with a proposed in-service date of December 2020 (NextBridge-EWT Application).¹

¹ The NextBridge-EWT Application has been assigned OEB File No. EB-2017-0182.

The other two applications, both filed by Hydro One Networks Inc. (Hydro One), seek an order granting leave to construct (i) a transmission line between the same two points as the NextBridge-EWT Application, with an in service date of the end of 2021 (Hydro One-LSL Application)²; and (ii) the facilities necessary to upgrade existing transmission stations associated with the new transmission line (Hydro One-Station Upgrades Application).³

On August 13, 2018, the OEB issued Procedural Order No.1 on Combined Hearing, through which the OEB combined the NextBridge-EWT Application, the Hydro One-Station Upgrades Application, and the Hydro One-LSL Application and set out procedural steps for hearing the three Applications as a Combined Hearing in October 2018. The OEB has issued six additional procedural orders on the Combined Hearing.⁴

Confidential Filings

NextBridge and Hydro One requested confidential treatment for parts of their interrogatory responses filed on September 24, 2018.

Hydro One claimed confidentiality over portions of its response to:

1. OEB Staff interrogatory 18 - Exhibit I, Tab 1, Schedule 18
2. NextBridge interrogatory 24 - Exhibit I, Tab 2, Schedule 24, Attachment 1
3. SEC interrogatory 21 - Exhibit I, Tab 5, Schedule 21

NextBridge claimed confidentiality over portions of its response to:

1. OEB Staff interrogatory 56
2. SEC interrogatory 18
3. SEC interrogatory 20

² The Hydro One-LSL Application has been assigned OEB File No. EB-2017-0364.

³ The Hydro One-Station Upgrades Application has been assigned OEB File No. EB-2017-0194.

⁴ Procedural Order No. 2 on Combined Hearing (August 27, 2018) set out further procedural steps including deadlines for posing written interrogatories to NextBridge. Procedural Order No. 3 on Combined Hearing (August 31, 2018) relates only to the OEB's review of NextBridge's development costs for the NextBridge-EWT Application. Procedural Order No. 4 on Combined Hearing (September 7, 2018) granted the intervenor status to three parties who had applied for intervention by September 4, 2018 deadline. Procedural Order No. 5 on Combined Hearing (September 19, 2018) granted the intervenor status to Michipicoten First Nation. Procedural Order No. 6 (September 21, 2018) added October 3, 2018 to the hearing schedule, set the sequence for oral testimonies and asked the parties to provide information to assist developing a hearing plan. Procedural Order No. 7 (September 26, 2018) granted intervenor status to Anwaatin Inc., and established an interim measure with respect to the confidentiality claims.

In addition, NextBridge's previous request for confidential treatment for parts of its earlier January 25, 2018 interrogatory responses remains outstanding.⁵ Most of the information for which NextBridge seeks confidentiality, from both its January and September interrogatory responses, relates to its construction budget or contract with the general contractor.

On September 26, 2018, the OEB issued Procedural Order No. 7 on Combined Hearing and as an interim measure, established a process to consider the confidentiality claims made by Hydro One and NextBridge. Procedural Order No. 7 provided for counsel and consultants for parties to access the proposed confidential information by filing a signed copy of the OEB's standard Declaration and Undertaking, absent an objection from Hydro One or NextBridge.

By way of a letter filed on September 27, 2018, NextBridge objected to providing some of its proposed confidential information to counsel and representatives of Hydro One, the Power Workers' Union and First Nations and Métis groups. NextBridge provided a table, as an attachment to its letter, setting out each confidential information item, along with a description of what parts of each document NextBridge objects to providing and to which party.

Also on September 27, 2018, Hydro One filed a letter waiving its claim of confidentiality over its response to OEB Staff interrogatory 18. With respect to the other two responses, Hydro One stated that it is prepared to provide unredacted versions of the documents to counsel only, unless it can be demonstrated that counsel requires the advice of the consultants in order to properly understand the materials. Hydro One provided that its proposed confidential information will be available to counsel at a time and at a place convenient to counsel, on the understanding that counsel are not to make notes on, make copies of, or take pictures of, the material. Hydro One further stated that it is not prepared to provide unredacted versions of the documents to employees of parties, regardless of whether they are lawyers and regardless of whether they sign a Declaration and Undertaking.

By way of a letter dated September 28, 2018, School Energy Coalition (SEC) objected to Hydro One's position. SEC argued the restrictions imposed by Hydro One will significantly impair intervenor counsel from properly assessing the application and

⁵ NextBridge sought confidential treatment over portions of (i) Attachments 2 and 3 to its response to OEB staff interrogatory 7; and (ii) portions of the attachment to CCC interrogatory 8. In its Decision on Confidentiality and Procedural Order No. 3 dated April 27, 2018, the OEB determined that some of this information was not confidential. The OEB has not, to date, ruled on the confidentiality claim for the balance of the information.

asked the OEB to direct Hydro One to provide copies of the confidential material to parties that have filed a Declaration and Undertaking, and to which it has not objected.

On September 28, 2018, Hydro One and NextBridge filed further letters setting out their respective positions on confidentiality.

Having considered the positions of the parties, the OEB finds that external counsel and consultants that have filed a signed Declaration and Undertaking with the OEB should be provided with access to the proposed confidential information of NextBridge and Hydro One. The starting point for this conclusion is the principle that, if the OEB is to have access to information, then counsel/consultants of other parties should typically also have the ability to access it. This principle is reflected in the OEB's *Practice Direction on Confidential Filings* which indicates that the OEB will accept a Declaration and Undertaking from an external counsel/consultant except where there are compelling reasons for not doing so.⁶

In this case, neither Hydro One nor NextBridge has established that the OEB should depart from this usual practice. As a result, with one exception, individuals who have provided a signed Declaration and Undertaking to the OEB will be permitted access to the information for which confidential treatment has been sought by Hydro One and NextBridge. Attached as Schedule "A" to this Procedural Order is current list of individuals that are permitted to review the proposed confidential information.⁷ Individuals appearing on Schedule "A" are further reminded that while the OEB has not made a final determination on the confidentiality requests of Hydro One and NextBridge, they are to treat the proposed confidential information as if it were confidential information.

The one individual who is not being permitted access to the proposed confidential information is an employee for one of the partner companies in NextBridge. The OEB notes that its standard practice is to not allow employees of parties to have access to information for which confidential treatment has been sought.⁸ Moreover, given that external counsel for NextBridge is being provided with access to this information, it is not clear to the OEB that there is a demonstrated need for this individual to have access to the proposed confidential information of Hydro One. General statements that the employee is responsible for technical aspects of the application and requires access are not sufficient.

⁶ OEB's *Practice Direction on Confidential Filings*, s. 6.1.2.

⁷ Schedule A is based upon Declarations and Undertakings filed with the OEB by Friday, September 28, 2018.

⁸ OEB's *Practice Direction on Confidential Filings*, s. 6.1.2.

As an additional measure, in this order, the OEB provides for external counsel and consultants to access to the proposed confidential information at the OEB's office. This is to ensure that representatives are able to review the materials ahead of the oral hearing, in the event that any party wishes to challenge the confidentiality claims that have been made.

To the extent either is prepared to do so, the OEB further encourages Hydro One and NextBridge to provide electronic copies of their proposed confidential information to the individuals whose Declaration and Undertaking has been accepted by the OEB in advance of the oral hearing.

SNC-Lavalin Contract

In its September 28, 2018 letter referenced above, SEC also took issue with Hydro One's refusal to provide an unredacted copy of Hydro One's contract with SNC-Lavalin (SNC-Lavalin Contract). SEC stated that Hydro One has refused to provide a full response to SEC interrogatory 8, in which SEC requested an unredacted copy of the SNC-Lavalin Contract.⁹ SEC argued that Hydro One did not provide a valid reason for refusal and that the remedy to Hydro One's confidentiality concern is to request confidential treatment pursuant to the OEB's *Practice Direction on Confidential Filings*. SEC requested the OEB order Hydro One to respond to SEC interrogatory 8 in full.

The OEB orders Hydro One to provide the Board Secretary with a full unredacted copy of the SNC-Lavalin Contract. This contract will not be placed on the public record, pending the OEB's consideration of Hydro One's claims for confidential treatment over parts of the contract. However, it will be part of the evidentiary record for this combined proceeding. External counsel and consultants that have filed a signed Declaration and Undertaking with the OEB are to be provided with access to the SNC-Lavalin Contract at the OEB's office as set out below.

It is necessary to make provision for the following matters related to this proceeding. The OEB may issue further procedural orders from time to time.

⁹ A redacted version of the contract was filed as Exhibit JT2.22 on NextBridge's motion to dismiss the Hydro One-LSL Application and is on the public record

IT IS THEREFORE ORDERED THAT:

1. Hydro One shall provide the Board Secretary with an unredacted copy of the SNC-Lavalin Contract which clearly indicates on its face (for example by yellow highlighting) the information for which confidential treatment is being sought.
2. Hydro One and NextBridge shall attend **at the OEB's Office (25th floor – West Hearing Room)**, starting at **8:30 A.M. on Tuesday, October 2, 2018** and bring a minimum of 5 copies of their proposed confidential information that are to be made available to external counsel and consultants who have filed a signed Declaration and Undertaking with the OEB. Copies of materials must clearly indicate on their face (for example by yellow highlighting) the parts of each document for which confidential treatment has been sought.
3. External counsel and consultants who have filed a signed Declaration and Undertaking with the OEB may attend **the OEB's Office (25th floor – West Hearing Room)**, starting at **8:30 A.M. on Tuesday, October 2, 2018** to view the information for which confidential treatment has been sought by Hydro One and NextBridge.
4. The oral hearing will commence, as previously scheduled, at **10:00 A.M on Tuesday, October 2, 2018** at the **OEB's Office (25th Floor - North Hearing Room)**.

All filings to the OEB must quote the file numbers **EB-2017-0182/EB-2017-0194/EB-2017-0364**, be made in searchable /unrestricted PDF format electronically through the OEB's web portal at <https://pes.ontarioenergyboard.ca/eservice/>. Two paper copies must also be filed at the OEB's address provided below. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <http://www.oeb.ca/Industry>. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a USB Flash drive in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

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.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Zora Crnojacki at Zora.Crnojacki@oeb.ca and OEB Counsel, Lawren Murray at Lawren.Murray@oeb.ca.

ADDRESS

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DATED at Toronto, October 1, 2018

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

Schedule A

List of Representatives with Signed Declaration & Undertaking

**Hydro One Networks Inc.
Upper Canada Transmission Inc.
(on behalf of NextBridge Infrastructure)**

Combined Proceeding

EB-2017-0182 | EB-2017-0194 | EB-2017-0364

Procedural Order No. 8

October 1, 2018

Name	Company	Representative For
Fred Cass	Aird & Berlis LLP	Upper Canada Transmission Inc. (NextBridge)
Robert Warren	Weirfoulds LLP	Hydro One Networks Inc.
Lisa (Elisabeth) DeMarco	DeMarco Allan LLP	Anwaatin Inc.
Jonathan McGillivray		
Don Richardson		
Jaycinthe Ledoux	Olthuis Kleer Townshend LLP	Bamkushwada L.P.
Molly MacDonald	Esquega Law Office	Biinjitiwaabik Zaaging Anishinaabek
Etienne Esquega		
Julie Girvan	J. E. Girvan Enterprises	Consumers Council of Canada
Michael Buonaguro	Michael R. Buonaguro Barrister and Solicitor	
Virginia Greer	Aboriginal Business Network	Long Lake #58 First Nation
Jason Madden	Pape Salter Teillet LLP	Metis Nation of Ontario
Megan Strachan		
John Wilson		
Andrew Blair	Elenchus Research	Power Workers' Union
Bayu Kidane		
Richard Stephenson	Palare Roland Rosenberg Rothstein LLP	School Energy Coalition
Mark Rubenstein	Shepherd Rubenstein Professional Corporation	