

October 31, 2018

Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
P.O. Box 2319
Toronto, Ontario
M4P 1E4

Dear Ms. Walli:

Re: EB-2017-0182/EB-2017-0194/EB-2017-0364 – Applications for Leave to Construct an Electricity Transmission Line Between Thunder Bay and Wawa – NextBridge Infrastructure and Hydro One Networks Inc.

Please find, attached, the Final Argument of the Consumers Council of Canada in the above-referenced proceeding.

Yours truly,

Julie E. Girvan

Julie E. Girvan

CC: All Parties

**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**

SUBMISSIONS OF THE CONSUMERS COUNCIL OF CANADA

October 31, 2018

I. INTRODUCTION:

These are the submissions of the Consumers Council of Canada (the “Council”) with respect to:

- a) The application by Upper Canada Transmission Inc. (on behalf of NextBridge Infrastructure) (“NextBridge”) to the Ontario Energy Board (“Board” or “OEB”) in EB-2017-0182 for Leave to Construct its proposed East West Tie Transmission Line (the “EWT”);
- b) The application by Hydro One Networks Inc. (“HONI”) in EB-2017-0364 for Leave to Construct its proposed Lake Superior Link Transmission Line (the “LSL”); and
- c) The application by HONI in EB-2017-0194 for Leave to Construct certain EWT related transmission facilities (the “EWT Station Project”).

SUMMARY OF SUBMISSIONS

EB-2017-0194 EWT Station Project

The Council does not have any specific submissions with respect to the leave to construct application for the EWT Station Project. The project is necessary whether the Board approves the EWT or the LSL line. The Council is unaware of any specific issues of concern with respect to the proposed Station project beyond the impact that the apparent delay in the in service date achievable for the project as a result of the “contingent” nature of its EA Approval in relation to either the NextBridge or the HONI outstanding EA Applications, an issue which is addressed in submissions relating to those two line proposals.

EB-2017-0182 EWT Transmission Line

The Council generally concludes that the proposed EWT Transmission Line is supported by the evidence proffered by NextBridge and is capable of being granted leave to construct in accordance with the relevant statutory criteria. In the Council’s view the outstanding issue is whether the competing LSL Transmission Line proposal is of such a nature that it should be preferred over the EWT Transmission Proposal, either outright or on a conditional basis, as a result of some net, material superiority of the LSL proposal over the EWT proposal on the basis of the relevant statutory criteria. The Council respectfully concludes that the LSL Proposal should not be preferred by the OEB over the NextBridge on an outright basis, and that at best the LSL proposal, based on the material risks with respect to price and reliability that it is exposed to as a result of its current state of development, could only be preferred to the EWT proposal on the condition that HONI accept a properly

constructed not-to-exceed price, with all the costs and impacts of the outstanding price and scheduling risks being specifically borne by HONI.

EB-2017-0364 LSL Transmission Line

The Council is generally wary about the risk that the LSL proponent HONI is asking ratepayers to take on with respect to the proposed transmission line in pursuit of an ostensibly cheaper cost relative to the EWT proposal. In the Council's view leave to construct for the LSL proposal could only be provided if HONI accepts a properly constructed not-to-exceed price as a condition of its leave to construct, with HONI implicitly accepting all outstanding risks and impacts associated with the current state of their proposal. Even so, the Council questions whether the possibility that the LSL will not be in service in time to meet the IESO deadline of 2022, before there is unacceptable risk in the affected region, is a risk that the OEB should bear on behalf of ratepayers by preferring the LSL proposal over the NextBridge proposal, even with a comprehensive not-to-exceed price in effect.

II. SUBMISSIONS:

1. DEVELOPMENT PHASE:

NextBridge

On August 22, 2011, the OEB initiated a process to select a designated transmitter for an East-West tie transmission line, pursuant to a request from the Ontario Government that the OEB utilize its policy entitled the "Framework for Transmission Project Development Plans" as the methodology for selecting a transmitter to develop the proposed project.¹ Under the policy the designated transmitter, while not guaranteed an exclusive right to apply for and obtain leave to construct the proposed transmission line, was guaranteed recovery of its prudently incurred costs related to developing the project to the point where a leave to construct could be filed, up to a budgeted amount, as set out in the Board's policy with respect to Transmission Project Development Planning:

From the Board's perspective, the objective of the development phase is to bring a project to the point where there is sufficient information for the transmitter to submit a leave to construct application.

Therefore development costs begin when a transmitter is designated and end when a leave to construct application is submitted. The Board expects, therefore, the development budget to include route planning, engineering, site/environmental reports and some (but not all) consultation.²

¹ EB-2011-0140, OEB Letter dated August 22, 2011.

² EB-2010-0059 Board Policy: Framework for Transmission Project Development Plans August 26, 2010, page 15.

On August 7, 2013, two years after the designation process was initiated, the Board selected NextBridge as the designated transmitter in relation to the proposed East-West tie transmission line, with an approved development budget of 22.2M.³

Between August 7, 2013 and August 31, 2017, NextBridge undertook development work pursuant to its role as the designated transmitter for the proposed transmission line. This development work included reporting to the OEB with respect to its spending in accordance with the approved budget and scheduling milestones. It also included adjustments by NextBridge to the proposed EWT route and in service date as a result of the inability of NextBridge to follow the OEB contemplated reference plan through Pukaskwa Park and the release of an Order in Council from the Ontario Government on March 2, 2016, which recast the need for the transmission line from 2017 to 2020.⁴

On August 31, 2017 NextBridge filed a comprehensive Leave to Construct for its proposed EWT transmission project pursuant to the requirements of section 92 of the Ontario Energy Board Act, 1998 S.O. 1998, CHAPTER 15 SCHEDULE B (the “OEB Act”). By the completion of NextBridge’s development phase it had incurred \$40.2M in costs.⁵

HONI

In stark contrast to the development phase experienced by NextBridge, the first public indication that HONI was even interested in bringing forward a proposal for the transmission line contemplated by the March 2, 2016, Order in Council (“OIC”) was when it wrote a letter to the OEB on September 22, 2017, indicating that it was preparing to bring forward its own proposal.⁶ On February 20, 2018, HONI filed its own Leave to Construct application for a transmission line that ostensibly could meet the transmission needs as set out in the OIC. HONI’s development of the project prior to its filing its Leave to Construct Application on February 20, 2018, was not performed in accordance with a Board approved development budget or schedule.

³ EB-2011-0140, Phase 2 Decision and Order dated August 7, 2013, page 41; the development budget was expressed in 2012 dollars.

⁴ EB-2015-0216, Decision and Order dated November 19, 2015 page 10; Order in Council dated March 2, 2016.

⁵ EB-2017-0182, Exhibit B, Tab 9, Schedule 1 page 1.

⁶ EB-2017-0364 HONI Letter of Intent dated September 22, 2017. The Council acknowledges that HONI expressed an interest in developing and constructing the proposed line through its participation in the designation proceeding, but no such interest was expressed from the time of the designation of NextBridge on August 7, 2013 and the Letter of Intent filed on September 22, 2017.

2. IMPACT OF THE OEB'S DESIGNATION OF NEXTBRIDGE IN THIS PROCEEDING:

The Council expects and believes that were one to consider either the EWT proposal or the LSL proposal on their own merits that, ultimately, either proposal is capable of securing Leave to Construct from the Board under s. 92 of the OEB Act, particularly in consideration of the Board's ability to impose conditions on any such approval as it sees fit, and in consideration of the fact that the "need" for the project has been determined outside of the regulatory review by the OEB pursuant to s. 96.1 of the OEB Act.⁷

Of course, the OEB is not in the position of being able to consider and approve both the proposed EWT and LSL proposals on their own merits, as there can only be one line. The OEB is in the position of having to provide for Leave to Construct of either one or both of the proposals in such a way as to ensure that only one proposal ultimately proceeds to the construction phase. This obligation on the OEB is highlighted, the Council suggests, by the fact that the other critical approval for both proposals, the Environmental Assessment ("EA") is specifically undertaken without regard for competing proposals, such that it is possible within that process that both proposals could obtain EA approval:

MR. BUONAGURO: Thank you. And then just briefly, I think you will have recognized that in this leave-to-construct process it has been recognized that there are essentially competing proponents, and the two leave-to-constructs are being reviewed and determined in conjunction with one another, and presumably one or the other and not both will get leave to construct. How is it that in the EA approval process, it seems that the approval process is done without regard to the fact that there's competing proponents proposing essentially the same project?

MS. CROSS: So this project isn't unique, in that we can sometimes see competing proponents. It is not even unique for transmission. We're dealing with a similar situation -- I don't know how many of you might be aware of Watay and Sagatay both proposing to build a line to Pickle Lake -- so we have to look at each application on its merit. That will be what comes forward and ultimately the Board will decide which one leave to construct would be given to, but that is outside of our Minister's scope.

MR. BUONAGURO: So from the ministry's and Minister's point of view, you considered the East-West Tie application as though there is no Lake Superior Link application, and vice versa?

MS. CROSS: We consider each application on its merits and how it has met the requirements of the terms of reference, the Environmental Assessment

⁷ Later in this argument the Council does suggest that the HONI proposal, in isolation, could plausibly be rejected as a result of the uncertainties that persist with respect to the cost and timing of the project, but concedes that in the alternative those risks might be addressed by the use of conditions on any leave to construct that is issued.

Act, as well as any comments that have been received and how they have been addressed.⁸

The Board's policy acknowledges that the designation of a transmitter for the purposes of the development phase does not guarantee that transmitter will successfully obtain leave to construct their proposed project, and specifically contemplates that one or more competing leave to construct applications could be filed, although the policy suggests that a competing leave to construct should be able to demonstrate that the project can be performed in a "better way":

The designation process of the Board is not a procurement process where the end result is a contract. Neither the Board, the OPA, nor the IESO has statutory authority to procure transmission. Under normal circumstances, the Board would expect that the transmitter who is designated would construct and operate the facilities. There are two instances where this might not be the case.

One circumstance is where the designated transmitter makes arrangements to assign the project to another transmitter. A project designation, particularly once a leave to construct has been issued, could have commercial value. The Board would not preclude this option but would have to grant permission to assign the project and be assured that there was no adverse ratepayer impact of the transaction and that the assignee was also licensed and equally qualified to undertake the work.

The other possibility is that another transmitter brings a leave to construct application for a different project that meets the same need in a better way. The Board cannot prevent any person from submitting an application for any matter under its jurisdiction.

However, the undesignated transmitter would have undertaken development at its own cost, which would not be recoverable from ratepayers. The transmitter would also need to adequately explain why it had not taken part in the designation process. Once a leave to construct is granted, the Board would not grant another transmitter approval for duplicative facilities.(emphasis added)⁹

⁸ Transcript, Volume 7, EWT LSL Combined Proceeding, pages 145-146.

⁹ EB-2010-0059 Board Policy: Framework for Transmission Project Development Plans August 26, 2010, page 17. The Council notes that since the policy was first drafted the OPA has been subsumed by the IESO and the IESO has certain procurement powers under amendments to the OEB Act, however those powers do not impact the issues in this proceeding.

Accordingly, the Council notes, HONI is within its right to seek Leave to Construct its own transmission line, and the OEB has an obligation to entertain the possibility of granting leave to HONI's proposal instead of NextBridge's, despite NextBridge's status as the designated transmitter. However, the Council respectfully submits, there should be an obligation on HONI to demonstrate that its project meets the same identified need in "a better way" as described by the Board's policy.

In the context of a s. 92 application for Leave to Construct a transmission line, s. 96 of the OEB Act specifies the criteria that the OEB must employ when considering whether granting Leave to Construct is in the public interest, such that demonstrating that a proposal meets the identified need in a better way must mean demonstrating that the proposal is materially better in respect of one or more of the prescribed criteria than the designated transmitter's proposal, including being materially better when considering all of the criteria in conjunction with one another.

The specific criteria imposed on the OEB in considering leave to construct in these applications as a result of s. 96 of the OEB Act are:

1. The interests of consumers with respect to prices and the reliability and quality of electricity service; and
2. Where applicable and in a manner consistent with the policies of the Government of Ontario, the promotion of the use of renewable energy sources.

HONI confirmed that it was not suggesting that its proposed LSL transmission line was superior to NextBridge's proposed EWT transmission line with respect to "the promotion of the use of renewable energy sources" or the "quality of electricity service".¹⁰ With respect to those two criteria, the Council respectfully submits, the proposed lines have essentially the same impact on the public interest once in service.

With respect to reliability of electricity service HONI claims that its project will provide a greater level of reliability as a result of its "northern presence"¹¹. With respect to price, HONI claims that its project is superior as a result of a lower estimated total construction cost, lower ongoing OM&A costs, and the implementation of a not-to-exceed price.¹² If HONI's proposal is to be ultimately preferred by the OEB with the result that the NextBridge application for Leave to Construct should be rejected, it will have to be because the OEB determines, based on the current state of the evidence before it, that the HONI proposal is materially "better" than the NextBridge proposal as a result of the combination of its reliability

¹⁰ Transcript, Volume 3, EWT_LSL_Combined Proceeding, page 191.

¹¹ Transcript, Volume 3, EWT_LSL_Combined Proceeding, pages 194-195.

¹² HONI AIC, page 9.

and price attributes. In the absence of a finding that the HONI proposal is materially better than the NextBridge proposal based on those criteria then, the Council suggests, the NextBridge proposal should succeed.

3. PRICING:

Nextbridge

NextBridge's proposal with respect to price is appropriately divided between the Development Phase and the Construction Phase. NextBridge's approved Development Phase Costs are recoverable whether or not NextBridge is granted Leave to Construct its proposed EWT transmission line, with that recovery being covered by the to be released decision of the OEB. Accordingly, when evaluating the NextBridge proposal as against the HONI proposal with respect to price, it is necessary to remove NextBridge's Development Costs.¹³

NextBridge's Construction Cost estimate put forward for approval in this case in support of its request for Leave to Construct is \$737M, with variances in that estimate currently expected by NextBridge to be in the range of plus or minus 10%.¹⁴

NextBridge puts forward this price on the foundation of a Class 2 AACE estimate based on the advanced level of preparation work it has accomplished to date, with the assertion that as soon as NextBridge can obtain Leave to Construct the estimate will increase in accuracy to Class 1 under the AACE guidelines with over 90% of the project having been scoped out.¹⁵

Including its Argument in Chief NextBridge will have three opportunities to defend the accuracy of its proposed construction costs; suffice it to say at this point that NextBridge is content with its forecast costs, and has not, to date, agreed that any cap on those costs is appropriate or acceptable to it. Accordingly, unless the Board puts to NextBridge the option of Leave to Construct approval on the condition that NextBridge accept a cap on the recoverable construction costs, approval of NextBridge's proposal will be based on a Board's finding that NextBridge has established the reasonableness of its cost estimate and the variation around that

¹³ The Council notes that NextBridge (properly, in the Council's view) only includes in development costs cost actually incurred up to the point of the filing of the Leave to Construct. The Council also notes that in the course of argument with respect to the NextBridge's recovery of development costs the Council argued that some of the claimed costs were properly construction costs that should only be recoverable if NextBridge becomes the transmitter for the construction phase; in the event the Board agrees with the Council's submission on this point those "phase shifted" construction costs would be added to NextBridge's Construction costs, an increase of \$1.9M.

¹⁴ NextBridge AIC pages 2 and 8.

¹⁵ NextBridge AIC pages 2, 3 and 11.

estimate. Such a finding, if it is made, will be based on the advanced nature of its costing information, particularly insofar as it is based on NextBridge's engagement in the development of the project from the Designation proceeding to the present. This includes reporting to the OEB on its spending and scheduling in accordance with approved budgets and milestones, and the consideration of the major changes in the scope of the project in 2014 as a result of the revised needs assessment represented by the OIC. It also includes the change in the route of the project as a result of NextBridge's inability to route the line through Pukaskwa Park, changes that were previously considered by the OEB.

Such a finding by the Board in the context of a Leave to Construct application for a major transmission line is not, of course, uncommon or unusual. In the normal course the Board provides Leave to Construct on the basis of cost estimates, with the final costs eligible for recovery to be determined on the basis of a prudence review when the transmitter comes to the Board for approval of rate recovery related to the project.

What is somewhat unique in the present case is that the Board is confronted with two proposals for the same line, one (the NextBridge proposal) proceeding based on the more traditional approach of a cost forecast, with the actual costs being reviewed and fully recoverable at a future proceeding, and a less traditional proposal (the HONI proposal) which purports to cap its total possible recovery by agreeing to a not-to-exceed to price (assuming certain preconditions are met, i.e. the timing of HONI's EA approval).

The OEB does not, the Council respectfully submits, have the authority to compel NextBridge to accept a cap on the costs it will be eligible to recover as a result of the construction of its proposed EWT and compel NextBridge to construct the line¹⁶. The OEB can only provide leave to NextBridge to construct the proposed line on the condition that NextBridge accept a cap on the recoverable costs on the line, a condition NextBridge could reject, nullifying the Leave to Construct.

Ideally the Council would prefer that any approval provided to NextBridge contain the cost certainty associated with a not-to-exceed price, particularly when confronted with the competing proposal from HONI that is, at least ostensibly, based on a not-to-exceed price.¹⁷

¹⁶ In theory the OEB could provide Leave to Construct on the basis of the forecast costs and then, in the event NextBridge seeks approval for materially higher costs, deny those costs on the basis that they were imprudently incurred. However in that instance NextBridge would be accepting the risk that it may incur costs that turn out to be unrecoverable as a result of a finding of imprudence, which is distinctly different than imposing a cap on recoverable costs before construction is undertaken.

¹⁷ HONI's proposal is described as only ostensibly being based on a not-to-exceed price because that feature of the proposal is contingent on ratepayers taking on certain risks with

However, the Council concedes, it is likely untenable for the Board to make more than one Leave to Construct order in the present case that is contingent on the proponent accepting a not-to-exceed price cap, if for no other reason that it creates the possibility that both proponents could reject the proposed condition, leaving the Board with no viable project proponent for a project that the Ontario Government has determined is needed.¹⁸ To be clear, however, if Nextbridge is the chosen transmitter all costs associated with the project will be subject to a prudence review when it comes before the OEB in the future for approval of its revenue requirement.

The forecast cost for NextBridge's EWT transmission line of \$737M is comparable, it seems to the Council, to the \$642M¹⁹ proposed by HONI for its LSL when one considers:

- a) the increased cost to NextBridge as a result of its inability to go through Pukaskwa Park, a cost that itself increases the HONI cost estimate by approximately \$40m should HONI be denied that route; and
- b) the decreased costs associated with HONI's quad tower design, a design which has yet to be tested.

When one considers that some material amount of sunk costs incurred by NextBridge, alongside wind up costs, will likely be recoverable by NextBridge, the effective gap between the two cost estimates is even smaller.²⁰

The Council notes that whereas NextBridge's cost estimate is a Class 2 estimate under AACE standards, with over 90% of the work having been scoped; by contrast HONI is still at a Class 3 estimate with a much lower amount of work having been effectively scoped and consequently a much higher possibility of variance.²¹

respect to timing that, should those risks manifest, could nullify the not-to-exceed price aspect of the proposal.

¹⁸ The Council concedes that it is at least theoretically possible that the OEB could engage the two proponents in a series of leave to construct proposals, essentially engaging in a negotiation between the parties until one party accepts a set of conditions acceptable to it; the Council does not, however, believe that is the preferable way to resolve the issues in this proceeding.

¹⁹ This includes the approximately \$16M in development costs that HONI is seeking to recover; HONI asserts that it should be able to recover all of its development costs and includes in that category of costs all costs incurred until the leave to construct is granted; the Council respectfully submits that the Board's policy, as previously set out, categorizes development costs as ceasing as soon as the leave to construct application is filed, which in HONI's case was February 2018, at which time HONI has incurred materially less than \$4M in development costs based on its report that it had spent only \$4M as of October 2018 (Exhibit I Tab 1, Schedule 11, p. 8).

²⁰ Exhibit K7.1 sets out 34.3M in construction costs already expended by NextBridge.

²¹ Transcript, Volume 3, EWT_LSL_Combined Proceeding, page 154.

The Council recognizes that HONI is offering a not-to-exceed price that, if effective, would limit the positive variance on the project to a maximum construction cost of \$683M. However that not-to-exceed price, as will be discussed later in this argument, is premised on the ability of HONI to obtain EA approval by August 2019, a target date which rests on several assumptions which are themselves fraught with risks that HONI appears unwilling to accept.

HONI

HONI asserts a total construction price for their LSL transmission line of \$642M, which is, on its face, substantially lower than the price of \$737M forecast by NextBridge for its EWT transmission line.

In order to assuage concerns, the Council respectfully submits, with respect to the relative level of planning associated with the HONI proposal as compared to the advanced nature of the NextBridge proposal, HONI has provided the OEB with the option of a not-to-exceed price based on an analysis of their forecast variance tolerance around different aspects of their construction price based on the categories and tolerances described in exhibit JT 2.25. HONI's proposal is to use the weighted average 6% variance around the total cost of \$642M to arrive at a not-to-exceed price of \$683M.²² It is important to note, however, that HON's Board of Directors has not yet approved a not-to-exceed price.

How to implement a not-to-exceed price if at all:

The Council respectfully submits that should the OEB determine that the additional reliability risks associated with the HONI LSL proposal are worth bearing on behalf of ratepayers for the sake of the apparently reduced overall construction costs, then the OEB should ensure that those savings will materialize. That assurance should come in the form of a not-to-exceed price that guarantees that ratepayer cost risk will be capped at a level materially below the cost forecast associated with the NextBridge EWT proposal.

As noted, HONI has made a proposal that it says generally follows the format of the analysis in JT 2.25, which separates out the different cost categories that underpin its base \$642M estimate and quantifies the variance they ascribe to each category, ranging from 5% variances around the categories associated with the EPC contract, to 15% for items outside the EPC contract.

In the Council's view, if the OEB were to extend Leave to Construct approval to HONI on the basis of a not-to-exceed price that HONI must accept, the OEB should specify that the not-to-exceed price would be enforced on a category by category basis. For example, the not-to-exceed price would only allow a 5% variance in the EPC

²² Exhibit I-01-18.

contract price, pursuant to the analysis in JT 2.25, and not allow any “excess” variance generated by applying a factor of 5% to the EPC contract to offset costs in other categories in excess of the variance of the stipulated variance for those categories.

The Council feels that such category by category tracking and enforcement of the not-to-exceed price is necessary in order to recognize the fact that in pitching its price to the OEB HONI has relied heavily on the fact that the EPC contract, although unsigned, provides price certainty for approximately \$546M of the total price of the proposal. In the Council’s view allowing HONI, as part of its not-to-exceed price, to access as much as an additional \$30M in available funding as a result of generating a variance on the base EPC contract amount and applying that funding to non EPC related cost categories undermines the very price certainty that HONI says it is offering. This is particularly so since HONI claims that EPC contract will essentially be variance free once executed, presumably upon obtaining Leave to Construct. To that end, if the OEB is of a mind to entertain the HONI proposal, it may be appropriate to provide Leave to Construct on the condition that the price variance on the EPC contract be accepted at 0%.

In addition, as a condition of any not-to-exceed price condition that the OEB may impose on a Leave to Construct in favour of HONI, HONI should be required to accept the risks associated with both direct cost increases and indirect costs generated by a failure by HONI to obtain EA approval in the manner currently sought by HONI and by August 19, 2019. This is a risk that, in its description of a not-to-exceed price it could offer to take as part of the hearing process, HONI has not yet indicated it was willing to bear.²³ Such risks include the risk of costs being incurred by the IESO to manage the transmission system in the absence of the planned line from 2020 onward until it is in service, a cost that the IESO has estimated to be as low as \$7M in 2020 to as high as \$55M in 2024.²⁴

In the Council’s view, based on the criteria set out in section 96 of the OEB Act, the only benefit that may persuade the OEB to provide HONI Leave to Construct its LSL transmission line rather than NextBridge’s proposed EWT transmission line is the apparent material cost savings associated with HONI’s proposal. If HONI is granted Leave to Construct without a not-to-exceed price where the risk associated with the EA approval is borne by HONI then the one material benefit of providing HONI with Leave to Construct rather than NextBridge is at risk to a degree that the Council believes the OEB should not bear on behalf of consumers.

With respect, the Council submits, ratepayers already have before it a proposal from NextBridge where the proponent is requesting that ratepayers take on the risk of any prudently incurred spending caused by variations from forecast in the future;

²³ Exhibit I-01-18.

²⁴ Addendum to the 2017 Updated Assessment for the Need for the East-West Tie Expansion, page 4.

the difference is that in the proposal put forward by NextBridge the forecast risk has been reduced to what the Council suggests is a reasonable level, i.e. through the development of a Class 2 estimate and the progression of the NextBridge EA approval process to its near conclusion.

4. RELIABILITY

NextBridge

NORTHERN PRESENCE

When asked about whether HONI believes it had any reliability advantages over NextBridge HONI cited its' "northern presence", a reference to the fact that as the incumbent transmitter for much of the Ontario Transmission system including the areas proximate to the proposed line HONI believed it could promise a fundamentally better experience for consumers from a reliability perspective in terms of responding to issues on the constructed line.

NextBridge responded indirectly to the notion that HONI claimed superior "northern presence" by detailing its plans for maintaining its line and responding to issues as necessary once the line was in service.²⁵

In the Council's view the reliability advantages HONI claims as a result of its "northern presence" are likely dwarfed by reliability considerations in other areas at issue in this proceeding, namely the long term reliability issues that have been raised with respect to HONI's quad circuit tower design and the ability of HONI to meet an in service date prior to the 2022 service year proposed by the IESO as critical. In the Council's respectful submission the notion of a HONI "northern presence" does not, in and of itself, warrant preferring the HONI proposal over the NextBridge proposal.

IN SERVICE DATE

The IESO has asserted that whichever line is approved it is critical that a line be in service by the end of the 2022 calendar year:

MR. RUBENSTEIN: Do I take that to mean that in the IESO's view the line is needed by the end of 2022?

MR. MARIA: So I am not sure exactly what you mean by "needed". It is needed by 2020. However, given that it might not be in-service by 2020 there are measures that we can take to manage reliability. There's some risk associated with those measures and there is some costs, which is why we

²⁵ Transcript, Volume 7, EWT_LSL_Combined Proceeding, pages 35-40. NextBridge provided details as to the staffing it plans in order to maintain the line and respond to outages.

prefer to have the line in-service in 2020, but basically by 2020, by beyond 2022, the -- we believe the risks to trying to deal with the situation through interim measures is not acceptable.

MR. RUBENSTEIN: So I took it that the 2020 date was recommended, but 2022 takes it to another level, and it is needed by that time?

MR. MARIA: So to meet planning standards the line needs to be in-service by 2020. That is the preferred solution. However, if that can't happen there are other ways of meeting the planning standards through those interim options, which carry with it some risk and some cost. And we're willing to accept that risk until beyond 2022, at which point the risk becomes too great.²⁶

The Council respectfully submits that the OEB should accept the IESO's evidence for the purposes of determining which proposal best meets the criteria under s. 96 of the OEB Act.²⁷ NextBridge has asserted that it remains on track to meet an in-service date of 2020 pursuant to its original schedule, having adapted to any shifts in scheduling during the time between the filing of its Leave to Construct and the present. The current schedule presumes EA approval by February 2019, a date the MECP has agreed is reasonable.²⁸

HONI asserts that NextBridge cannot meet a 2020 in service date if for no other reason that the HONI Station upgrade that is needed prior to the line going into service will be delayed to 2021.²⁹ NextBridge disputes the notion that the HONI station cannot be completed in time for their EWT to go into service by the end of 2020, noting that HONI appears to continue to investigate whether the station work can be accelerated.³⁰

In any event, the Council submits, it would appear that at worst NextBridge's EWT transmission line will be in service between December 2020 and December 2021, and if it is the latter the major contributor to the delay will be the delayed in-service date for HONI's upgraded Transformer station, a delay largely outside the control of NextBridge. A December 2021 in service date would put the EWT line into service well in advance of the IESO December 2022 "deadline", avoiding the most critical reliability concerns outlined by the IESO in its evidence.

HONI

There are, in the Council's view, two aspects of the HONI proposal where, on their face, ratepayers are being asked to take on some level of reliability risk beyond that which underpins the NextBridge proposal.

²⁶ Transcript, Volume 3, EWT_LSL_Combined Proceeding, page 135.

²⁷ Transcript, Volume 3, EWT_LSL_Combined Proceeding, page 191.

²⁸ Transcript, Volume 7, EWT_LSL_Combined Proceeding, page 100.

²⁹ HONI AIC, page 34.

³⁰ NextBridge AIC, page 18.

TOWER AND QUAD CIRCUIT DESIGN

HONI's tower design is markedly different than that proposed by NextBridge, to the extent that HONI's proposed quad circuit design using towers that have yet to be tested.³¹ While the Council can appreciate that such a design is in part what makes it possible for HONI to propose a path through Pukaskwa Park and contributes to the reduced costs of its proposed transmission line, the fact that the proposed design is not approved at the time of the leave to construct is being requested is, the Council respectfully suggests, a symptom of the haste with which HONI has had to build its proposal in order to ostensibly "compete" with the NextBridge application. Under such circumstances the Council questions whether it is appropriate for ratepayers take on the risk associated with the tower design, both in terms of the intuitive risks associated with a quad circuit design, and the more concerning risk that the tower design may not be approved for use at all. To the extent that the Board believes these risks should be taken on in exchange for HONI's apparently lower price proposal, the Council has suggested that any leave to construct extended to HONI be conditional on HONI taking on the risks that remain outstanding, including the risks associated with their untested tower design and use of a quad circuit.

IN SERVICE DATE

HONI has put forward an in service date of December 2021 in relation to its not-to-exceed price, contingent on Leave to Construct Approval by January 2019 and EA approval by August 2019.³² As currently constructed the HONI proposal does not include a not-to-exceed price or assume a December 2021 in service date if HONI does not obtain Leave to Construct by January 2019 and EA Approvals by August 2019.

NextBridge, in its Argument in Chief, summarizes succinctly the various issues that will persist beyond any Leave to Construct approval for HONI that could very well materially impact the ability of HONI to meet a in service date of December 2022, the date beyond which the IESO has said there will exist an unacceptable risk to the transmission system in Ontario without the proposed line:

- a. Routing through the Park: Hydro One does not yet have a final confirmed route for the LSL Project because it has not yet received confirmation from Parks Canada that it will be allowed to cross through the Park. Hydro One does not expect to receive Parks Canada approval until August 2019, after completion of area studies in the spring of 2019 and a detailed Impact Assessment. Hydro One indicated that it currently does not have a complete

³¹ Exhibit I-8-1 part b) affirms the need for tower prototype testing in Q1 2019 after Leave to Construct is expected to be granted.

³² Exhibit I-01-18 page 2.

understanding of what permits are required for construction within the Park. There are multiple open First Nations land claims in relation to Park lands.

- b. EA Approval by way of Declaration Order: The ToR for the LSL EA have only recently been submitted for approval to MECP, with approval not expected before December 2018. Hydro One's own forecast is that it cannot achieve EA approval until October 2019. That date is reliant on receiving a Declaration Order from the Minister. However, the Declaration Order is only available where NextBridge's EA is approved. It is not clear whether and when that would happen in the event that NextBridge's Application is not approved.
- c. EA Approval by way of Individual EA: If Hydro One is required to complete an individual EA for the LSL Project as MECP has advised, Hydro One acknowledges that it cannot meet its proposed December 2021 in-service date. It is questionable whether Hydro One will even be in a position to meet a December 2022 in-service date should it not be allowed to rely heavily on the NextBridge EA. That risk is increased by the fact that the approval of the EWT Station Project EA will not issue until after the LSL Project is approved. As described below, this means that the station work to support the LSL Project will not be available until the end of 2022 or later.
- d. Agreements with Affected Communities: Hydro One has undeveloped relationships with affected communities, including FNM community members, and has completed very little consultation and engagement with area stakeholders. This has resulted in at best weak stakeholder support, and in some cases outright opposition. First Nation and Métis communities have consistently stated that the Hydro One project schedule offers an insufficient window of time to complete meaningful consultation and engagement.
- e. Project Engineering: Hydro One's detailed project engineering undertaken is in the early stages, and recently it changed its quad circuit tower design for the third time since the LTC application was filed. It is uncertain if further quad circuit tower design changes will be implemented by Hydro One, and what impacts those design changes may have on LSL Project route, right-of-way, cost, or other impacts.
- f. Land Rights: Hydro One has made limited progress in relation to land acquisition and land rights required for its LSL Project route. Hydro One has not negotiated any voluntary settlements and does not know what expropriations will be needed. Hydro One does not have any agreements with First Nations over whose reserves parts of the proposed route pass. Hydro One does not know what leasehold interests, land use permits, sustainable forest licences, interests under the Mining Act, interests under

the Public Lands Act, or interests under the Aggregate Resources Act are impacted by its proposed route.³³

Of particular concern to the Council is the state of the consultation with the affected communities, particularly communities to whom the Crown owes a duty to consult and accommodate. The Council does not purport to represent those communities and expects that those communities that have chosen to participate in this proceeding will provide submissions on any shortcomings in the consultation between their community and HONI. The Council also recognizes that it is not for the OEB, in the context of a s. 92 Leave to Construct application, to determine whether any owed duties to consult and accommodate have been met. However the Council does believe it is important for the OEB to recognize that such duties, by their nature, can take time to fulfill properly; subject to the submissions of the various affected communities, the Council is very concerned that such consultation, properly conducted, may cause HONI's proposal to be delayed well beyond a December 2021 in service date.

The Council respectfully submits that the existence of these issues is, like the untested tower design proposed by HONI, a symptom of the haste with which HONI has had to put together its proposal in order to "compete" with the NextBridge application.

In the Council's respectful submission it is unlikely that a proponent, absent the need to "beat" a competing application for Leave to Construct, would advance a Leave to Construct application with so many outstanding issues that could materially affect both the cost of the proposed project and the timing within which the project could be brought into service. In the Council's respectful submission it is likely that such an application would be rejected on the basis that the Board could not reasonably assess the impact that project will have on prices and the reliability of electricity service pursuant to the criteria under s. 96 of the OEB Act. Alternatively, in the event the Board would entertain an approval for such a project, it should be contingent on the condition that HONI bear all the risks associated with the outstanding pricing and reliability issues that may manifest.

III. COSTS

The Council requests that it be awarded 100% of its reasonably incurred costs associated with its participation in this proceeding.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 31st DAY OF OCTOBER 2018

³³ NextBridge AIC, pages 25-27.