Ontario Energy Board

Commission de l'énergie de l'Ontario

EB-2012-0082

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

AND IN THE MATTER OF an application by Hydro One Networks Inc. for an Order granting leave to construct to upgrade existing transmission line facilities.

BEFORE: Paula Conboy
Presiding Member

Cynthia Chaplin
Member and Vice Chair

DECISION AND ORDER
November 8, 2012

Hydro One Networks Inc. ("Hydro One") filed an application with the Ontario Energy Board (the "Board") dated March 28, 2012 under section 92 of the *Ontario Energy Board Act*, *1998*, S.O. 1998, c.15, Schedule B ("the OEB Act"). Hydro One seeks an order of the Board granting leave to construct to upgrade 70 km of transmission line facilities between Lambton TS and Longwood TS (the "Project") in the west of London area. The Board assigned File No. EB-2012-0082 to the application.

The Proceeding

The Board issued a Notice of Application and Written Hearing ("the Notice") on April 19, 2012.

The Independent Electricity System Operator ("IESO") and the Ontario Power Authority ("OPA") applied for intervenor status. No party indicated a preference for an oral hearing. On May 25, 2012 the Board issued Procedural Order No. 1 granting intervenor

status to the IESO and the OPA. The Board also established dates for submission of interrogatories, responses to interrogatories, and argument.

By letter dated June 13, 2012, the Chippewas of the Thames First Nation ("COTTFN") requested intervenor status (previously it had observer status) and cost eligibility and proposed a revised schedule for the proceeding. The Board granted COTTFN intervenor status and cost eligibility but restricted it to matters directly within the scope of the proceeding and provided a description of the Board's jurisdiction with respect to the Crown's duty to consult and accommodate in respect of the proposed Project. The Board extended the schedule by one week for COTTFN to file interrogatories.

Submissions were filed by COTTFN and Hydro One and the the record was closed on July 27, 2012.

On August 20, 2012, the Haudenosaunee Development Institute ("HDI") wrote to the Board indicating that it had not received proper notice of the proceeding and that it was now seeking intervenor status. The Board, after requesting further information, found that HDI should have been notified of the proceeding and granted intervenor status, subject to the scope of the proceeding and the Board's jurisdiction, as previously explained to COTTFN. A schedule for HDI to submit interrogatories and provide final submissions was provided in Procedural Order No. 4. HDI was to file interrogatories by September 26, 2012, and its final submission by October 12, 2012.

The day before interrogatories were due, on September 25, 2012, HDI advised that it had not received Procedural Order No. 4, however in the evening of the same day, HDI submitted 24 interrogatories by e-mail "… without prejudice to our position that we are entitled to an amended timetable…" Board staff enquired on September 26 how much time was required for interrogatories, and HDI responded that it could provide them by October 3, 2012. Recognizing that some interrogatories had already been submitted, the Board in Procedural Order No. 5 on September 27, 2012, extended the time for interrogatories to October 1, 2012, and made other consequential adjustments to the schedule.

In an email on October 2, 2012, HDI objected to the timelines of Procedural Order No. 5 and requested additional time, without specifying how much additional time was required. Board staff attempted to contact HDI on October 2, 2012 and October 3, 2012

without success. Nevertheless, the Board, by letter dated October 5, 2012, extended the deadline for additional interrogatories to October 9, 2012. On October 9, 2012, HDI submitted 7 additional interrogatories, and on October 15, 2012, Hydro One responded to all 32 interrogatories.

The deadline for HDI's submission was October 22, 2012. No submission was filed on that date. On October 23, 2012, the Board was advised that Hydro One had not provided HDI's counsel with interrogatory replies. The Board in Procedural Order No. 6, on October 25, 2012 extended the deadline for HDI's submission to November 1, 2012 and the deadline for Hydro One's reply to November 8, 2012.

HDI did not file a submission on November 1, 2012. On November 2, 2012 Board staff called and e-mailed HDI's counsel to enquire if a submission had been filed; staff received no response. On November 5, 2012 Hydro One advised the Board and all parties that it would not submit any additional final reply submission, and that it considered the record complete.

As of November 8, 2012, the Board has received no submission and no communication from HDI.

Evidence and Board Findings

Section 96(2) of the Act provides that for an application under section 92 of the Act, when determining if a proposed work is in the public interest, the Board shall only consider the interests of consumers with respect to price and reliability and quality of electricity service, and where applicable and in a manner consistent with the policies of the Government of Ontario, the promotion of the use of renewable energy sources.

In the context of this application, the Board has addressed the following matters:

- Project need
- System Impact Assessment and Customer Impact Assessment
- Land issues and form of Easement Agreement
- Issues raised by COTTFN

The Board does not have jurisdiction to determine issues related to the Environmental Assessment approval, but any Board order granting Leave to Construct is conditioned on the successful completion of the Environmental Assessment approval process and the acquisition of any necessary permits. Hydro One advised that the Project is subject to the Class Environmental Assessment for Minor Transmission Facilities and that a screening letter was filed with the Minister of the Environment on March 9, 2012. The record of the application shows that information was made available for public review. Hydro One has committed to following Ministry of Natural Resources advice in regard to Species at Risk.

Project Need

Typically the Board assesses project need as part of its analysis of consumer price impacts. In this context the Board considers both whether the project is needed at all, and what alternatives have been considered.

The Board in an earlier proceeding (EB-2011-0055 issued February 28, 2011) modified the licence of Hydro One in accordance with a Minister's Directive of February 17, 2011 to the Board. The change to the licence included the requirement that Hydro One develop and seek approval for an upgrade of existing transmission lines west of the City of London. The need arises to meet the Long Term Energy Plan target for 10,700 MW of non-hydroelectric renewable generation by 2018. This Project fulfills part of that requirement by increasing the transfer capability of the Flow East Toward London and allows an increase of up to 500 MW of additional renewable generation in the west of London area.

Hydro One's evidence and submissions are that the cost for the proposed facilities (estimated at $40 million) will be borne by ratepayers through the provincial Uniform Transmission Rates ("UTR"). The project will have a small impact on transmission rates (0.01% on the average residential consumer bill).

In its application and in response to interrogatories, Hydro One provided information on the Project costs. The Board has examined this information and is satisfied that the cost estimates are reasonable and that the impact on transmission rates is reasonable and justified in regard to other options which were available.

The Board concludes that there will be minimal price impact on ratepayers as a result of this Project. The submissions of COTTFN with respect to potential costs for Aboriginal consultation and accommodation are addressed below.

System Impact Assessment and Customer Impact Assessment

The Board's filing requirements for transmission and distribution applications[1] specify that Hydro One is required to file a System Impact Assessment ("SIA") performed by the IESO and a Customer Impact Assessment ("CIA") performed by the relevant licensed transmitter, in this case Hydro One itself.

An SIA for this project dated September 29, 2011 was included in the pre-filed evidence. Hydro One submitted a CIA dated December 14, 2011 which concluded that there was no adverse impact on Hydro One customers from the Project.

The Board will require, as part of the Conditions of Approval, that Hydro One satisfy the requirements of the SIA and the CIA as well as further requirements and conditions which may be found to be necessary pursuant to the terms of the SIA and CIA.

Subject to the above-noted requirements, the Board is satisfied that the Customer Impact and System Impact Assessments support the conclusion that there will be no adverse impacts on reliability of the IESO-controlled grid or Hydro One's customers.

Land Issues and Form of Easement Agreement

Section 97 of the Act requires that the Board be satisfied that the applicant has offered or will offer each landowner affected by the proposed route or location an agreement in a form approved by the Board. Hydro One advises that the Project does not require any new permanent easements.

The Notice was directly served on all directly impacted landowners. There were no landowner requests for intervenor status. Hydro One advises that temporary property rights exist or commits that such will be obtained before entering upon any land for construction.

[1] Filing Requirements for Transmission and Distribution Applications, November 14, 2006, Section 4.3.8 (System Impact Assessment), and Section 4.3.9 (Customer Impact Assessment)

COTTFN asserts that an agreement is required in regard to its interests in the area of the Project. The Board addresses these concerns below.

The Board is satisfied that Hydro One has fulfilled the requirements of section 97.

Issues Raised by COTTFN

In its final submission COTTFN argued that the Board should reject the application for four reasons:

1. HONI failed to demonstrate that it had offered or will offer to each owner of land affected by the approved route or location an agreement in a form approved by the Board, as required by section 97 of the Act;
2. HONI failed to demonstrate that the Project is in the public interest having regard to the interests of consumers with respect to the price of electricity service;
3. HONI failed to demonstrate that the Project will promote the use of renewable energy sources in a manner consistent with the policies of the Government of Ontario; and
4. The Project triggers the duty to consult, and that the Crown has yet to discharge this duty.

The Board will first describe the Board's statutory mandate and jurisdiction, and then will address each of these arguments.

Overview of Board's statutory mandate and jurisdiction

As the Board identified in Procedural Order No. 1, there are specific statutory limits on the Board's jurisdiction with respect to electricity leave to construct applications. The Board's jurisdiction to consider issues in a section 92 leave to construct case is limited by subsection 96(2) of the Act which states:

> 96(2) In an application under section 92, the Board shall only consider the following when, under subsection (1), it considers whether the construction, expansion or reinforcement of the electricity transmission line or electricity distribution line, or the making of the interconnection, is in the public interest:
>
> 1. The interests of consumers with respect to prices and the reliability and quality of electricity service.

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.

The Board does not have the power to consider any issues other than those identified in subsection 96(2).

Some of the issues raised by COTTFN relate, directly or indirectly, to the Crown's duty to consult with Aboriginal peoples. The Board has in prior decisions addressed the extent of the Board's jurisdiction to consider the issue of the adequacy of Aboriginal consultation in electricity leave to construct proceedings. For example, in a case involving Yellow Falls Power Limited Partnership, the Board found:

> It is a well-established principle of administrative law that administrative tribunals have only the powers bestowed upon them explicitly by their enabling statutes, or those which arise by necessary implication. This principle has been applied by supervising courts in numerous cases so as to prevent creeping, unintended jurisdiction in such tribunals. An exception to that principle has been introduced by the Supreme Court with respect to constitutional and constitution-like issues. Specifically, the Supreme Court of Canada has decided that tribunals that have been endowed with the express power to determine questions of law, have a residual or presumed jurisdiction to resolve constitutional issues that come before them in the normal course of their work.
>
> The issue here is the extent to which the Legislature has endowed the Board with the power to determine questions of law with respect to leave to construct applications. Because the Board's power to determine questions of law is specifically limited in section 19 to areas within its jurisdiction, the Board finds that it has no authority to determine constitutional issues, such as the adequacy of consultation with Aboriginals, in relation to any matters beyond the criteria in section 96(2). This is consistent with case law referenced above.[2]

In that decision, the Board went on to describe the relevant scope for issues related to Aboriginal consultation and accommodation:

> Finally, in the Board's view, if it does have any jurisdiction at all to consider matters relating to the adequacy of consultation with Aboriginal peoples, section 96(2) operates to expressly constrain the Board's discretion, and limits its jurisdiction to the determination of matters of law arising exclusively in connection with the prescribed criteria, namely price, quality, reliability, and the government's policies with respect to renewable energy projects. The Board finds that the Legislature's unequivocal intention was to limit the scope of such

[2] EB-2009-0120, Decision on Questions of Jurisdiction and Procedural Order No. 4, issued November 18, 2009 ("Yellow Falls"), p. 11.

> proceedings to the enumerated criteria, and to preclude any other considerations of whatever kind, from influencing its determination of the public interest. The Board's authority to determine questions of law is not open-ended, but rather has been strictly prescribed by section 96(2).

As the Board advised in Procedural Order No. 2, the same approach will be adopted for the current proceeding. Only Aboriginal consultation and accommodation issues which fall within the specific criteria of section 96(2) can be considered within the scope of this proceeding.

COTTFN argument re: no proper s. 97 offer

COTTFN submits that the Board lacks the jurisdiction to approve the application as Hydro One has failed to demonstrate that "it has offered or will offer to each owner of land affected by the approved route or location an agreement in a form approved by the Board", as required by section 97 of the Act. Section 3 of the Act defines "land" as "any interest in land". COTTFN argues that it has Aboriginal harvesting rights in its traditional territory, Aboriginal title to or at a minimum an Aboriginal right to use the air space above the lands in its traditional territory, and an exclusive treaty right to use and enjoy its reserve. This, in COTTFN's submission, constitutes an interest in land. As Hydro One has not offered (nor does it intend to offer) any section 97 agreement to COTTFN, COTTFN argues that this requirement of the Act has not been met and that the application should therefore be denied. COTTFN suggests that an Impact Benefit Agreement or a Resource Benefit Sharing Agreement would constitute an acceptable offer pursuant to section 97; however Hydro One has not made such an offer and does not appear intent on doing so.

Hydro One submits that COTTFN does not have an interest in land as contemplated by the Act. Hydro One accepts that if the Project passed through any reserve land, section 97 would be engaged. However, the Project does not cross any reserve land.

Hydro One does not dispute that COTTFN may have Aboriginal and/or treaty rights in the Project area. However, Hydro One submits that these are constitutional rights within the meaning of section 35 of the *Constitution Act, 1982*. The potential existence of Aboriginal and/or treaty rights in the Project area does not make COTTFN an "owner of land" within the meaning of section 97. Hydro One further notes that COTTFN has no registered interest in the subject lands in the provincial land registry office, and that Hydro One is in fact seeking no new permanent land rights on account of the current Project (it already has the necessary land rights in relation to the existing transmission line).

Board Findings

The Board finds that the COTTFN is not an owner of the subject lands as contemplated by section 97, and that no offer of an agreement to COTTFN is required to satisfy the requirements of the Act.

The Board agrees with Hydro One that any Aboriginal and/or treaty rights held by COTTFN in the areas directly affected by the Project are Constitutional rights, and not land ownership rights as envisioned by section 97. Typically section 97 agreements are easements or similar interests in land that are registered directly on title. The Board does not view Aboriginal or treaty rights as an ownership interest in land for the purposes of section 97.

As Hydro One observed, the Project in fact requires no new permanent land rights. Many of the potential adverse impacts highlighted by COTTFN relate to the existing transmission line. The Project does not cross any reserve lands.

To the extent that the Project creates any new adverse impacts to any COTTFN Aboriginal and/or treaty rights, the appropriate means of addressing this is not through section 97, but instead through consultation and, where appropriate, accommodation. As discussed both above and below, the Board has no role in conducting consultation itself, or in assessing the adequacy of the Crown's consultation efforts in relation to environmental issues, in a section 92 application.

COTTFN argument re: price impacts

COTTFN argues that Hydro One has failed to adequately demonstrate that the project is in the public interest having regard to the interests of consumers with respect to the price of electricity. The price of electricity is one of the matters that the Board is specifically empowered by section 96(2) to consider in a section 92 application.

COTTFN submits that the Project triggers the duty to consult (and likely the duty to accommodate), and that Hydro One has not factored these costs into its cost projections for the Project. COTTFN expects that the costs of this consultation and accommodation could be significant and, as the Board has not been apprised of these costs it cannot make an informed decision respecting the overall cost of the Project. COTTFN further submits that Hydro One will incur costs in compensating COTTFN for the existing transmission line's ongoing infringement of its Aboriginal and treaty rights.

Hydro One argues that it has in fact consulted with COTTFN, and that it has received no information pertaining to the potential impairment of any Aboriginal or treaty right that would require accommodation. Hydro One emphasized that the Project is a

reconductoring of an existing transmission line, and will require very minimal alterations to the existing physical layout of the facilities. In Hydro One's view, most of the infringements identified by COTTFN relate to the construction of the existing transmission line, and not to the Project currently before the Board. Given that all of the work for the Project will be conducted on existing rights of way and on towers that are already in place, Hydro One expects minimal disturbance of land. Hydro One therefore expects that it will not be incurring any additional costs relating to accommodation with respect to the Project.

Board Findings

Although the Board does not have the jurisdiction to consider the adequacy of Aboriginal consultation other than within the limits of section 96(2), it does have the mandate to consider the impact a project may have on electricity prices. To the extent that Hydro One will need to incur material costs to address issues of Aboriginal consultation, then the Board is required to consider those costs in the context of the entire Project, just as it would any other cost.

However, the Board is not convinced that Hydro One will incur any material additional costs with respect to consultation. The majority of the alleged infringements to Aboriginal or treaty rights identified by COTTFN relate to the existing transmission line, and not the Project currently before the Board. The Supreme Court has been clear that the focus of consultation must be on the existing proposal:

> The claimant must show a causal relationship between the proposed government conduct or decision and a potential for adverse impacts on pending Aboriginal claims or rights. Past wrongs, including previous breaches of the duty to consult, do not suffice.[3]

There is no evidence to suggest that there are potential infringements to Aboriginal or treaty rights from the Project itself. There will be slight modifications to three of the existing transmission towers but these are part of routine maintenance of the line, and not a part of this Project application. The new conductors will actually be slightly smaller than the current conductors. The construction work will occur on existing rights of way and will require minimal and temporary disturbance to the land. Any concerns about additional costs for accommodating any infringements to Aboriginal or treaty rights are highly speculative, and appear unlikely to occur. Given the relatively low cost of the Project in comparison with the existing Uniform Transmission Rates ("UTR") revenue requirement (the Project is expected to increase the UTRs by only 0.28%, or

[3] *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, 2010 SCC 43 ("Rio Tinto"), para. 45.

the typical residential customer bill by 0.01%), the Board concludes that it is highly unlikely that consultation or accommodation issues will lead to a material increase in customer prices. Importantly, to the extent that Hydro One incurs additional costs for the Project (whether it be for consultation or anything else), it will be required to justify those costs when it seeks to include the Project in rate base (and rates) in a future rate proceeding. Therefore Hydro One, and not customers, remains at risk for any additional costs.

COTTFN argument re: promotion of renewables

COTTFN argues that Hydro One has failed to establish that the Project will promote the use of renewable energy sources in a manner consistent with the policies of the Government of Ontario. This is one of the matters the Board is empowered to consider by section 96(2).

COTTFN points to a letter from the Minister of Energy to the OPA stating that the Government is committed to reserving a minimum of 10% of remaining capacity for project with significant Aboriginal participation, and directing the OPA to allocate out of available capacity a minimum of 100 MW for projects with at least 50% community and Aboriginal participation. COTTFN submits that there is no evidence that any of the existing or new transmission capacity from the transmission line will be reserved for renewable energy generating projects with significant Aboriginal participation, and therefore no basis for the Board to conclude that the Project is consistent with the Government's renewable energy policies.

Hydro One responded that the Project will significantly promote the use of renewable energy sources, and is consistent with the Government's policies in that regard. The Project will enhance the deliverability of system resources and enable approximately 500 MW of new renewable generation west of the London transmission area.

Hydro One observes that the Minister's Directive (referenced by COTTFN) was to the OPA, not Hydro One or the Board, and it does not govern the Board's authority in assessing the need for transmission expansion. The obligations identified in the Directive are for the entire province, and not simply for the area to be served by the Project. In addition, the Project is likely to facilitate the Government's renewable energy policies enabling up to 500 MW of new renewable generation in the area, some of which may well be accessed by COTTFN or other Aboriginal groups.

Board Findings

The Board finds that the Project is consistent with the Government's policies respecting renewable generation. The Project will enable up to 500 MW of additional renewable

generation, some of which may be accessed by Aboriginal groups. There is nothing in the Minister's Directive that requires the Board or Hydro One to set aside particular portions of transmission capacity to any particular Aboriginal or community group. It would not be appropriate for the Board to determine how the OPA should meet the requirements of the Minister's Directive.

COTTFN argument re: duty to consult

COTTFN argues that the Ontario Crown has failed to consult and accommodate COTTFN in respect of the Project's potential to cause adverse impacts on Aboriginal or treaty rights. Although COTTFN recognizes that the Board is not empowered to conduct consultation itself, it submits that Board's decision in this proceeding triggers the duty to consult, and that the Board should therefore not approve the Project until it is satisfied that consultation (and possibly accommodation) is complete. At a minimum, the Board should make any approval conditional on the completion of consultation and any required accommodation.

Hydro One argues that there is no evidence or assertion of a causal relationship between the Project and any potential for adverse impacts on COTTFN's pending Aboriginal claims or rights. Hydro One further argues that it has in fact satisfied any consultation and accommodation requirements.

Board Findings

As discussed above, the Board has no jurisdiction to conduct Aboriginal consultation itself, nor to assess the adequacy of the Crown's consultation efforts in a section 92 application (except as they may arise within the limits of section 96(2)). Aboriginal consultation is a matter of Constitutional law. Although section 19 of the Act confers a general power to consider issues of law, section 96(2) of the Act places specific limitations on the extent of the Board's power to review. As the Supreme Court stated in Rio Tinto: "[t]he power to decide questions of law implies a power to decide constitutional issues that are properly before it, *absent a clear demonstration that the legislature intended to exclude such jurisdiction from the tribunal's power*."[4] In enacting section 96(2) of the Act, the Legislature has clearly demonstrated its intention to exclude from the Board's purview any matters other than those directly associated with the interests of consumers with respect to price and the reliability and quality of electricity service, or the promotion of the Government's renewable energy policies. Other issues, including environmental impacts, have been expressly excluded from the Board's jurisdiction. This limitation has been identified by the Board in a number of prior

[4] Rio Tinto, para. 69 (emphasis added).

decisions, such as the Yellow Falls decision discussed above.[5] Given these express limits, the Board will not opine on the adequacy of the Crown's consultation efforts, except as the issue relates directly to the criteria discussed above. The Board is similarly not prepared to impose a condition relating to consultation, as it would have no means of determining if this condition were satisfied except by assessing the adequacy of Crown consultation efforts.

The Board is not stating that there is no duty to consult, nor is it stating that any required consultation or accommodation has already occurred. Rather, the Board is stating that it has no jurisdiction to address these issues except within the narrow framework discussed above. If COTTFN is seeking a determination on the adequacy of Crown consultation, it will have to do so in another forum.

HDI's Participation

As described in further detail above, HDI did not file final submissions despite several extensions to the deadline. The Board has, however, reviewed all of the interrogatories filed by HDI, and the responses by Hydro One. The interrogatories deal largely with matters related to Aboriginal treaties, rights, and the duty to consult. The few interrogatories concerning prices, quality and the reliability of electricity service do not reveal any information that alters the Board's findings above.

Conclusion

Having considered all of the evidence related to the application, the Board finds the proposed project to be in the public interest in accordance with the criteria established in section 96(2) of the Act.

The schedule for the cost claim process and for Board costs is set out below.

THE BOARD ORDERS THAT:

1) Pursuant to section 92 of *Act*, Hydro One Networks Inc. is granted leave to construct to upgrade a transmission line from Lambton TS to Macksville Junction west of London, subject to the Conditions of Approval attached as Appendix A to this Order.

[5] See, for example, the decision and order dated December 8, 2011 in EB-2011-0063, pp. 19-20.

2) Chippewas of the Thames First Nation's and Haudenosaunee Development Institute cost claim shall conform with the Board's Practice Direction on Cost Awards, and shall be filed with the Board and one copy served on Hydro One by **Monday November 26, 2012**. Hydro One may file with the Board any objection to the cost claim and one copy must be served on the claimant by **Monday December 3, 2012**. COTTFN will have until **Monday, December 10, 2012** to respond to any objections. A copy of any submissions must be filed with the Board and one copy is to be served on Hydro One.

3) Hydro One Networks Inc. shall pay the Board's costs incidental to this proceeding immediately upon receipt of the Board`s invoice.

All filings to the Board must quote file number EB-2012-0082, be made through the Board's web portal at https://www.pes.ontarioenergyboard.ca/eservice/, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. All filings should be directed to the attention of the Board Secretary, and be received no later than 4:45 p.m. on the required date. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties should use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca. If the web portal is not available you may email your document to the attention of the Board Secretary at boardsec@ontarioenergyboard.ca.

ISSUED at Toronto on November 8, 2012

ONTARIO ENERGY BOARD

Kirsten Walli
Board Secretary

CONDITIONS OF APPROVAL

Hydro One Networks Inc.

Transmission Line and Associated Transmission Facilities

Decision and Order

Board File No. EB - 2012- 0082

Dated November 8, 2012

Definitions:

(1) “Project” means the Transmission Line and associated Transmission Facilities as defined in the Decision and Order.

(2) “Applicant” means Hydro One Networks Inc.

1 General Requirements

1.1 The Applicant shall construct the Project and restore the Project land in accordance with the Leave to Construct application, evidence and undertakings, except as modified by this Order and these Conditions of Approval.

1.2 Unless otherwise ordered by the Board, authorization for Leave to Construct shall terminate December 30, 2014 unless construction of the Project has commenced prior to that date.

1.3 The Applicant shall comply with the requirements of the Class EA for Minor Transmission Facilities and any amendment thereto.

1.4 The Applicants shall satisfy the Independent Electricity System Operator (“IESO”) requirements as reflected in the System Impact Assessment Report submitted under a cover letter dated September 29, 2011, and such further and other conditions which may be imposed by the IESO.

1.5 The Applicant shall maintain the validity of the conclusions reflected in its Customer Impact Assessment Report dated December 14, 2011 and undertake whatever is necessary for that purpose.

1.6 The Applicant shall advise the Board's designated representative of any proposed material change in the Project, including but not limited to material changes in the proposed route, construction techniques, construction schedule, restoration procedures, or any other material impacts of construction. The Applicants shall not make a material change without prior approval of the Board or its designated representative. In the event of an emergency the Board shall be informed immediately after the fact.

1.7 The Applicant shall obtain and comply with all necessary approvals, permits, licences, certificates and easement rights required to construct, operate and maintain the Project, and shall provide copies of all such written approvals, permits, licences and certificates upon the Board’s request.

2 Project and Communications Requirements

2.1 The Board's designated representative for the purpose of these Conditions of Approval shall be the Manager, Electricity Facilities and Infrastructure Applications.

2.2 The Applicant shall designate a person as Project Manager and shall provide the name of the individual to the Board's designated representative. The Project Manager will be responsible for the fulfillment of the Conditions of Approval on the construction site. The Applicants shall provide a copy of the Order and Conditions of Approval to the Project Manager, within ten (10) days of the Board's Order being issued.

2.3 The Applicant shall develop, as soon as possible and prior to the start of construction, a detailed construction plan. The detailed construction plan shall cover all material construction activities. The Applicants shall submit two (2) copies of the construction plan to the Board’s designated representative at least ten (10) days prior to the commencement of construction. The Applicants shall give the Board's designated representative ten (10) days written notice in advance of the commencement of construction.

2.4 The Applicant shall furnish the Board's designated representative with all reasonable assistance needed to ascertain whether the work is being or has been performed in accordance with the Board's Order.

2.5 The Applicant shall, in conjunction with the IESO, and other parties as required, develop an outage plan for the construction period which shall detail how proposed outages will be managed.

2.6 The Applicant shall furnish the Board's designated representative with two (2) copies of written confirmation of the completion of Project

construction. This written confirmation shall be provided within one month of the completion of construction.

3 Construction Impacts - Reporting Requirements

3.1 Both during and for a period of twelve (12) months after the completion of construction of the Project, the Applicants shall maintain a log of all comments and complaints related to construction of the Project. The log shall record the person making the comment or complaint, the time the comment or complaint was received, the substance of each comment or complaint, the actions taken in response to each if any, and the reasons underlying such actions. The Applicants shall file two (2) copies of the log with the Board within fifteen (15) months of the completion of construction of the Project.

3.2 Within fifteen (15) months of the completion of construction, Hydro One shall file with the Board a written Post Construction Financial Report. The report shall indicate the actual capital costs of the Project with a detailed explanation of all cost components and shall explain all significant variances from the estimates filed with the Board.