

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act*,
1998, S.O. 1998, c.15 (Schedule B) s. 78;

AND IN THE MATTER OF an application by Hydro One
Networks Inc. for the relief necessary to increase
transmission rates in 2017 and 2018.

EB-2016-0160

FINAL ARGUMENT

ANWAATIN INC.

February 2, 2017

It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of Light, it was the season of Darkness, it was the spring of hope, it was the winter of despair, we had everything before us, we had nothing before us ...— in short, the period was so far like the present period, that some of its noisiest authorities insisted on its being received, for good or for evil, in the superlative degree of comparison only.

Charles Dickens, *A Tale of Two Cities*

INTRODUCTION AND OVERVIEW

1. We are counsel to Anwaatin Inc. (**Anwaatin**) on the Ontario Energy Board's (the **Board's**) EB-2016-0160 proceeding to review Hydro One Networks Inc.'s (**Hydro One's**) application to increase 2017 and 2018 transmission rates (the **Proceeding**) pursuant to s. 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 (Schedule B) (the **Act**). Anwaatin's members in this Proceeding include: Aroland First Nation; MoCreebec Eeyoud; and Waaskiaysay Ziibi Inc. Development Corporation (an economic development corporation representing the following five First Nations in the Lake Nipigon Watershed: Biinjitiwaabik Zaaging Anishinaabek (BZA - Rocky Bay First Nation); Bingwi Neyaashi Anishinaabek (BNA); Red Rock Indian Band; Whitesand First Nation; and Animbiigoo Zaagiigan Anishinaabek (AZA)) (collectively, the **Anwaatin First Nation Communities**).
2. Anwaatin submits that the evidence in this Proceeding, more than almost any other, tells a metaphoric "*tale of two cities... and an Indigenous community*" – Southern Ontario, Northern Ontario, and the Anwaatin First Nation Communities. And it is a tale that is noteworthy in its comparative extremes.

3. Specifically, the evidence on each of customer engagement (Issue 3), the Transmission System Plan (Issue 4), reliability and proposed capital expenditures (Issue 7), and bill and customer impacts (Issue 2) shows a sharp contrast between and among: (i) the ongoing customer engagement, top quartile reliability standards, and significant transmission system investment afforded to Southern Ontario customers; (ii) the lower comparators in Northern Ontario; and (iii) Hydro One's complete absence of Indigenous customer engagement on the Application, the entirely substandard reliability, and the paucity of proposed capital investment, in the Anwaatin First Nation Communities.

4. Anwaatin therefore provides these submissions to assist the Board in addressing these extremes, and in order for the Board to fulfill its statutory mandate in a manner that is consistent with s. 78(3) of the Act, the public interest, the Board's customer-focussed objectives under s. 1 of the Act, related codes and filing requirements, and the pressing need for reliable, low-cost electricity in Indigenous communities. They are organized as follows:
 - (A) The First Nations Context and Importance of Indigenous Communities to Hydro One
 - (B) Customer and Stakeholder Engagement
 - (C) Reliability, Capital Spending, and the Transmission System Plan
 - (D) Bill and Customer Impacts on the Anwaatin First Nation Communities and
 - (E) Relief Requested.

5. In summary, Anwaatin respectfully submits that:
 - The First Nations context is unique and should afford Indigenous communities consideration, consultation and rights as, not just "stakeholders", but constitutionally protected "rights holders". Indigenous communities and their rights and interests are also critical to the ongoing success and operations of Hydro One as evidenced by its public disclosures that are, no doubt, thorough and accurate.

- Issue 3: Hydro One did not engage with any Indigenous communities and there is no conclusive evidence that Hydro One considered the needs and preferences of Indigenous/Anwaatin Communities either directly or indirectly through their distributor in a manner consistent with the *Transmission System Code (TSC)*, the Board's *Filing Requirements for Electricity Transmission Applications* (the **Filing Requirements**), and Hydro One's public disclosures.
- Issues 4 and 7: The Transmission System Plan and proposed capital expenditures do not adequately address the extremely substandard transmission reliability and required transmission system investment in the outlier transmission assets serving the Anwaatin First Nation Communities.
- Issue 2: The proposed bill increases and customer impacts of Hydro One's proposed spending are neither just nor reasonable for the Anwaatin First Nation Communities, who are living in energy poverty, paying among the highest electricity bills, and getting among the worst transmission reliability service in Ontario.

DETAILED SUBMISSIONS

A. The First Nations Context and Importance of Indigenous Communities to Hydro One

6. Anwaatin submits that the legal, policy and energy context for Indigenous communities in Ontario is unique and warrants the special consideration of the Board. Specifically, in determining *just and reasonable* transmission rates for Hydro One pursuant to s. 78(3) of the Act, the Board may wish to consider the overarching realities of:

- (a) **energy poverty**: Dr. Richardson outlined that a disproportionate number of Ontario's First Nations live in energy poverty or are saddled with increasing and

unmanageable electricity costs – particularly given that electricity is the main source of **both** heat and power for many Indigenous communities;¹

- (b) **pre-existing sovereignty:** Dr. Richardson highlighted the fact that Ontario's First Nations are not just stakeholders, they are also constitutional rights holders that have pre-existing sovereignty which must be respected by all governments and cannot be ceded by Treaty;² and
- (c) **the duty to consult and accommodate:** the duty to consult with and accommodate First Nations on decisions and major government discussions has been enshrined in the Constitution, affirmed by the Supreme Court of Canada, and more recently bolstered by Canada's acceptance of the United Nations Declaration on the Rights of Indigenous Peoples.³

7. Mr. Hubert of Hydro One also expressly confirmed the importance of First Nations and Indigenous communities to Hydro One to the achievement of Hydro One's stated business objectives:

MS. DeMARCO: Can I ask you to turn to tab 15 of our compendium, which is Exhibit C 1, tab 3, Schedule 3, page 11 of your evidence -- sorry, tab 14.

At page 11 of Exhibit C, tab 3, Schedule 3, you state that:

"Building relationships with First Nations communities based upon trust, confidence, and accountability is vital to achieving Hydro One's business objectives."

Do I have that right?

¹ Hearing Transcripts, Volume 13, 11:21-27.

² Hearing Transcripts, Volume 13, 11.

³ UNGA, 107th Plen Mtg, Res 61/295 (2007).

MR. VELLS: We are just having a bit of trouble finding it in the --

MR. QUESNELLE: It's the very last page in the compendium.

MR. HUBERT: I am sorry, Ms. DeMarco. You were reading something from here?

MS. DeMARCO: Yes, at page 11, I am quoting here. It says in the second sentence:

"Building relationships with First Nations and Métis communities based upon trust, confidence, and accountability is vital to achieving Hydro One's business objectives."

MR. HUBERT: Yes, I see it, and I am up to speed again. Thank you.

MS. DeMARCO: And you agree that that is the case?

MR. HUBERT: I do.⁴

8. This is also reflected in the dozens of references related to First Nations and related risks and business opportunities set out in Hydro One's public and financial disclosures related to its initial public offering.
9. Specifically, the Prospectus⁵ identifies:
 - risks to Hydro One's business related to claims by First Nations (Prospectus pages 4, 16);
 - designated committee of the Board of Directors looking at environment, health, safety and First Nations issues (Prospectus page 136);
 - First Nations-related risks in other applications to the OEB (Prospectus page 162);
 - risks related to the transfer of assets located on Indigenous reserves (Prospectus page 162);
 - First Nations risks relating to asset condition and capital projects (Prospectus page 165);
 - risk of certain First Nations and Métis organizations bringing claims or proceedings in relation to the obligation or duty to consult (Prospectus page 172); and
 - risk that one or more First Nation or Métis organizations may commence legal proceedings in relation to the public offering, seeking remedies that could include

⁴ Hearing Transcripts, Volume 2, 62:8-63:5.

⁵ Exhibit K2.2, Tab 1.

injunctive relief, damages, or even the very material rescission of the offering (Prospectus page 173).

10. Mr. Vels confirmed that each of these First Nations issues was a material risk or consideration of Hydro One.⁶
11. Similarly, Hydro One's Annual Information Form⁷ also clearly indicates that Hydro One is committed to working with First Nations and Métis communities in a spirit of cooperation and shared responsibility⁸ and Mr. Vels confirmed this to be the case:

MS. DeMARCO: And very specifically, in the second paragraph, you refer to First Nations and Métis communities, and you indicate that:

"Hydro One is committed to working with First Nations and Métis communities in a spirit of cooperation and shared responsibility."

Is that fair?

MR. VELLS: Yes.⁹

12. Hydro One also engages with First Nations and Métis communities whose rights may be affected as part of the project development process for new or upgraded transmission lines.¹⁰
13. Further, Hydro One's Annual Report¹¹ indicates that some First Nations and Métis communities and their members have made assertions relating to sovereignty and jurisdiction over reserve lands and traditional territories.¹² Moreover, Hydro One's

⁶ Hearing Transcripts, Volume 2, 71-89.

⁷ Exhibit K2.2, Tab 2.

⁸ Exhibit K2.2, Tab 2, Annual Information Form page 22.

⁹ Hearing Transcripts, Volume 2, 74:3-10.

¹⁰ Exhibit K2.2, Tab 2, Annual Information Form page 18.

¹¹ Exhibit K2.2, Tab 3.

¹² Exhibit K2.2, Tab 3, Annual Report page 34.

Management's Discussions and Analysis¹³ indicates that it is difficult to predict the aggregate financial liability that Hydro One may have in order to obtain the required agreements from First Nations.¹⁴ Chief Financial Officer Vels also confirmed that senior management of Hydro One is very aware of First Nations energy poverty issues and significant transmission reliability issues in Northern Ontario.¹⁵

14. In summary, Anwaatin submits that the interests of First Nations in this Proceeding are both unique and important to the transmission and other business objectives of Hydro One.
15. Nonetheless, Anwaatin submits that the Application, stakeholder and customer engagement, the proposed transmission expenditures, and the approach to reliability do not reflect the unique nature and importance of Indigenous communities to Hydro One. There was no mention of First Nations in the transmission scorecard, no consultation with First Nations (directly or indirectly) on the Application, and no earmarked capital or operations and maintenance expenditures to address the substandard reliability in the Anwaatin First Nation or other Indigenous Communities.

B. Customer and Stakeholder Engagement

16. The importance of customer and stakeholder engagement in setting transmission rates is reflected and embedded in the TSC and the Filing Requirements. Specifically, s. 2.3.2 of the Filing Requirements requires Hydro One to address: (i) how customers were engaged

¹³ Exhibit K2.2, Tab 4.

¹⁴ Exhibit K2.2, Tab 4, Management's Discussion and Analysis page 22.

¹⁵ Hearing Transcripts, Volume 2, 89:15-90:3.

in order to determine their needs; (ii) what their needs are; and (iii) how the Application responded to any identified needs.

17. The definition of "customer" in the TSC allows for the needs of end-use customers, which represent 92% of Hydro One's transmission revenue,¹⁶ to be reflected either directly (for transmission-connected loads) or indirectly, through their distributor, for distribution-connected loads. Hydro One experts confirmed that, if a distributor does not participate in the consultation, their end-use customers are not represented in the customer consultation process.¹⁷

18. Hydro One has substantiated the importance of its customer and stakeholder consultation activities, indicating:

"based on its previous experience with such applications, the involvement of stakeholders and First Nations was recognized as critical to developing a submission that reflected the broad interests and concerns of Hydro One constituencies."¹⁸

19. In fact, Hydro One's public and financial disclosure documents go as far as to indicate that:

"the company has a recent history of successful negotiations and engagement with First Nations and Métis communities in Ontario..."¹⁹

20. Anwaatin respectfully submits that the evidence in this Proceeding is not consistent this view. Hydro One did not consult with First Nations on the Application:

¹⁶ Hearing Transcripts, Volume 4, 123.

¹⁷ Hearing Transcripts, Volume 4, 124.

¹⁸ Exhibit K13.2, Anwaatin Intervenor Evidence, para 8; EB-2005-0501, Exhibit A, Tab 16, Schedule 1.

¹⁹ Hearing Transcripts, Volume 2, 84:13-19.

MS. DeMARCO: [...] I just want to be clear on the record here that Hydro One did not, in fact, consult with First Nations on this application?

MR. HUBERT: That is correct; we did not include First Nation groups in the customer engagements, as we spoke about earlier, nor in the stakeholder consultation.²⁰

21. Nor did Hydro One seek feedback from any First Nations on any drafts or elements of the Application:

MS. DeMARCO: Was there any feedback in relation to specific drafts or elements of this application that First Nations were consulted on?

MR. HUBERT: None that I am aware of related to specific drafts of this application, no.²¹

22. As a result, Anwaatin submits that Hydro One did not comply with either the express requirements, or the spirit and intent of, the Filing Requirements and the TSC.
23. Hydro One and its expert, Navigant, confirmed that: 26 distributors, 24 industrials, and several generators were consulted as part of the customer and stakeholder consultations. Only two Northern distributors, Sudbury and Thunder Bay Hydro, attended. Hydro One Distribution was not invited to attend, nor were the Anwaatin First Nation Communities, which were not, therefore, represented.²² Navigant also confirmed that there was no direction from Hydro One to have Navigant seek the perspective of First Nations and

²⁰ Hearing Transcripts, Volume 2, 65:20-22. See also Hearing Transcripts, Volume 2, 84:22-25 and 85:19-21.

²¹ Hearing Transcripts, Volume 2, 67:1-12.

²² Hearing Transcripts, Volume 2, 100; Volume 3, 112-13; and Volume 4, 124.

Northern Ontario stakeholders, despite the many recent and very public customer service challenges in those communities.²³

24. Hydro One and its expert, IPSOS, confirmed that 20 unique distributors, with only two Northern Ontario distributors – again excluding Hydro One Distribution – were included in its stakeholder consultations.²⁴
25. Dr. Richardson confirmed that virtually all of the customers in the Anwaatin communities are end-use customers of Hydro One Distribution.²⁵ Mr. Henderson, of Hydro One, confirmed that there is no evidence to support that Hydro One Distribution was expressly consulted or provided written comments on its customers' needs.²⁶ Similarly, there is no clear way for Anwaatin and other Hydro One Distribution customers to determine what Hydro One Distribution may, or may not, have said on their behalf in this Proceeding.²⁷
26. Anwaatin submits that the complete absence of evidence in the Application reflecting relevant concerns in Northern Ontario strongly supports the conclusion that neither Hydro One Distribution, nor any other directly or indirectly connected transmission stakeholder reflected the many and serious concerns of Anwaatin and other Indigenous communities in Ontario.

²³ Hearing Transcripts, Volume 3, 113:1-10.

²⁴ Hearing Transcripts, Volume 4, 124-126.

²⁵ Hearing Transcripts, Volume 13, 49:4-5.

²⁶ Hearing Transcripts, Volume 4, 125-128.

²⁷ Hearing Transcripts, Volume 4, 128:20.

27. Further, Anwaatin submits that the timing of the consultations, the Application, and its approval by Hydro One's Board of Directors, was not consistent with any meaningful changes to the Application to respond to needs identified by customers and stakeholders.
28. Mr. Henderson and Mr. Guiry confirmed that the consultations were held between March 9, 2016, and April 8, 2016. The draft IPSOS report was submitted on April 18, 2016. The draft IPSOS presentation was given on April 27, 2016, and the completed Application was submitted to the Board of Directors on April 28, 2016, for approval by that Board on May 6, 2016.²⁸ Anwaatin respectfully submits that it is highly unlikely that meaningful changes to the Application were made to respond to identified customer needs in the one (1) day between the IPSOS presentation and the circulation of the Application to the Board of Directors for approval.
29. This lack of meaningful response to customer needs also appears to be supported by the reported customer views on the reliability / reliability risk evidence. Specifically, a customer indicated:
- "You're asking about risk, not performance. For me, as an end user, risk is your problem. My problem is performance. At the end of the day, do I have it or not. I am worried about how many outage hours I have, not how many I potentially have."²⁹*
30. Nonetheless, Hydro One proceeded with the complicated and confusing "change in reliability risk" metrics that did not address the reliability performance, which customers, stakeholders, intervenors, and the Board identified.

²⁸ Hearing Transcripts, Volume 4, 129:7-130:17.

²⁹ Hearing Transcripts, Volume 4, 137:3-8.

31. Hydro One alleges that its approach to stakeholder consultation in this Proceeding is reasonable, as parties that had previously participated in the prior transmission rate case were consulted.³⁰ Anwaatin respectfully disagrees in light of the Anwaatin Evidence and Hydro One's own past practices on First Nations consultations.
32. Dr. Richardson outlined the successful First Nations consultation processes used by Hydro One in the EB-2005-0501 application for 2007/2008 transmission rates. Over 35 First Nations and Indigenous organizations were present for Hydro One's 2006 First Nation Discussion Sessions and Hydro One noted that the sessions successfully informed First Nations about its 2007/2008 rate application and resulted in First Nation input.³¹ Hydro One also indicated that most participants indicated that they would participate in future meetings with Hydro One, and that it would take into consideration suggestions to work with the Chiefs of Ontario to co-develop an effective and culturally-appropriate consultation process in the future when planning to engage First Nations communities and political and treaty organizations.³² Given the interest and importance of First Nations and Indigenous communities to Hydro One, as evidenced in their public disclosures and Hydro One's past practices, Anwaatin submits that the approach to First Nations and Indigenous consultation in this Proceeding does not appear to be reasonable.
33. Further, Dr. Richardson provided concrete recommendations for Hydro One to improve its consultation and engagement with Indigenous Peoples, including Anwaatin, through

³⁰ Hydro One Argument in Chief, 34.

³¹ Exhibit K13.2, Anwaatin Intervenor Evidence, para 13; EB-2005-0501, Exhibit A, Tab 16, Schedule 1, at 23 and 29.

³² Exhibit K13.2, Anwaatin Intervenor Evidence, para 13; EB-2005-0501, Exhibit A, Tab 16, Schedule 1, at 23 and 29.

processes reflective of Hydro One's past practices and through a "Best Practice Guide" to encourage participation of other Hydro One entities including Hydro One Distribution and Hydro One Remotes.³³

34. Moreover, Anwaatin's views on customer, stakeholder, and First Nations consultation appear to be largely supported by Board Staff, who encouraged Hydro One to include First Nations in Hydro One's future customer engagement exercises:

Staff encourages Hydro One to obtain information about the needs of [First Nations] through the participation of Hydro One Distribution, Hydro One Remotes, other distributors that serve First Nations, and the Anwaatin First Nations and other First Nations organizations, in Hydro One Transmission's ongoing customer engagement exercise.³⁴

35. Further, in order to ensure that Ontario's Indigenous communities are not "out of sight, out of mind" in Hydro One transmission processes, Anwaatin respectfully requests that the Board require Hydro One to include a related First Nations consultation metric on the Transmission Scorecard. Anwaatin is of the strong view that a defined First Nations consultation metric is required to ensure that the importance of First Nations and their issues, as stated in Hydro One's public disclosure, is reflected in the implementation of Hydro One's transmission business.

³³ Exhibit K13.2, Anwaatin Intervenor Evidence, para 7.

³⁴ Board Staff Submission dated January 25, 2017, at 13.

C. Reliability, Capital Spending, and the Transmission System Plan

Relative Reliability in Overall Ontario, Northern Ontario, and the Anwaatin Communities

36. Hydro One's 10-year transmission system reliability data shows a striking difference between the top quartile reliability and the transmission system investment in Southern Ontario, much worse and unbenchmarked reliability in Northern Ontario, and the entirely unreliable electricity transmission in the Anwaatin First Nation Communities.

Table 1: Frequency of Interruptions (SAIFI) Compared Across Hydro One, Northern Ontario, and the Anwaatin First Nation Communities³⁵

Year	Hydro One Overall	Northern Ontario	Anwaatin First Nation Communities	Increased Frequency in Northern Ontario Interruptions Relative to Hydro One Overall	Increased Frequency in Anwaatin Interruptions Relative to Hydro One Overall
2006	1.67	4.38	3.40	2.62	2.04
2007	1.36	4.29	6.60	3.15	4.85
2008	1.5	4.29	2.40	2.86	1.60
2009	1.16	3.03	2.40	2.61	2.07
2010	1.14	3.24	4.00	2.84	3.51
2011	1.19	3.24	4.20	2.72	3.53
2012	1.26	3.66	2.40	2.90	1.90
2013	1.26	3.81	4.40	3.02	3.49
2014	1.08	2.66	1.80	2.46	1.67
2015	1.09	3.47	2.40	3.18	2.20

³⁵ Hearing Transcripts, Volume 7, 154:4-156:10.

Year	Hydro One Overall	Northern Ontario	Anwaatin First Nation Communities	Increased Frequency in Northern Ontario Interruptions Relative to Hydro One Overall	Increased Frequency in Anwaatin Interruptions Relative to Hydro One Overall
Average	1.271	3.607	3.40	2.84	2.69

Table 2: Duration of Interruptions (SAIDI) Compared Across Hydro One, Northern Ontario, and the Anwaatin First Nation Communities³⁶

Year	Hydro One Overall	Northern Ontario	Anwaatin First Nation Communities	Increased Duration of Northern Ontario Interruptions Relative to Hydro One Overall	Increased Duration of Anwaatin Interruptions Relative to Hydro One Overall
2006	62.0	153.5	85.4	2.48	1.38
2007	40.5	150.4	260.6	3.71	6.43
2008	50.5	196.9	228.8	3.90	4.53
2009	38.4	95.0	114.0	2.47	2.97
2010	56.4	251.2	850.2	4.45	15.07
2011	127.9	591.6	371.0	4.63	2.90
2012	71.5	356.0	151.8	4.98	2.12
2013	66.0	196.1	689.8	2.97	10.46
2014	36.6	117.1	556.8	3.20	15.21
2015	44.3	178.4	522.8	4.03	11.80
Average	59.41	228.62	383.12	3.68	7.29

³⁶ Hearing Transcripts, Volume 7, 156:11-161:14.

Table 3: Delivery Point Unreliability Index Compared Across Hydro One, Northern Ontario, and the Anwaatin First Nation Communities³⁷

Year	Hydro One Overall	Northern Ontario	Anwaatin First Nation Communities	Decreased Reliability in Northern Ontario Relative to Hydro One Overall	Decreased Reliability in Anwaatin Relative to Hydro One Overall
2006	18.7	65.4	35.0	3.50	1.87
2007	11.4	61.2	175.9	5.37	15.43
2008	14.2	65.0	24.9	4.58	1.75
2009	15.7	31.8	118.1	2.03	7.52
2010	12.9	62.1	673.8	4.81	52.23
2011	21.6	145.0	492.6	6.71	22.81
2012	14.0	108.0	106.7	7.71	7.62
2013	20.9	97.0	430.2	4.64	20.58
2014	12.2	60.1	474.8	4.93	38.92
2015	11.8	68.8	463.9	5.83	39.31
Average	15.34	76.44	299.59	5.01	20.81

37. Specifically, Table 1 indicates that the 10-year average frequency of interruptions is nearly three (3) times worse in Northern Ontario and the Anwaatin First Nation Communities than the overall Ontario average. Table 2 indicates that the 10-year average duration of interruptions is almost four (4) times longer in Northern Ontario and more than seven (7) times longer in the Anwaatin First Nation Communities than the overall Ontario average.

³⁷ Hearing Transcripts, Volume 7, 161:15-162:28.

Table 3 shows the delivery point unreliability index, which indicate that delivery points in Northern Ontario are over five (5) times (500%) less reliable than the Ontario average, and delivery points in the Anwaatin First Nation Communities are a staggering 20.81 times (2081%) less reliable than the Ontario average.³⁸

38. Mr. McLachlan of Hydro One confirmed that, across numerous reliability metrics, Hydro One's reliability get progressively worse for Northern Ontario and is the worst for the Anwaatin First Nation Communities:

MS. DeMARCO: And so fair to say that First Nations communities are far less reliable than the north as a whole?

MR. McLACHLAN: Based on all the comparisons we just did here, from the CEA to the Hydro One to the northern system, to then the First Nations communities, yes, the reliability is actually progressively worse in each four of those categories.³⁹

39. Further, Hydro One's transmission service reliability for the Anwaatin First Nation Communities has not been improving with time. It has been declining since 2006.⁴⁰
40. Moreover, the Hydro One evidence confirms that a full sixty percent (60%) of the delivery points serving the Anwaatin First Nation Communities are customer delivery point performance standard "outliers".⁴¹ Specifically, each of Longlac TS, Moosonee DS, and Beardmore #2 DS.⁴²

³⁸ Hearing Transcripts, Volume 7, 155:22-156:10; 160:26-161:14; 162:9-20; and 162:21-28.

³⁹ Hearing Transcripts, Volume 7, 162:21-28.

⁴⁰ Hearing Transcripts, Volume 4, 141:9-18. See also Exhibit I, Tab 10, Schedule 3, 5-6, for the underlying data.

⁴¹ Hearing Transcripts, Volume 7, 163:19-22.

⁴² Hearing Transcripts, Volume 7, 151; Exhibit I, Tab 10, Schedule 3, 6.

41. And finally, the state of reliability may actually be comparatively even worse when the method of analyzing the data is considered.

Comparators, Cohorts and Reliability Benchmarking

42. Hydro One aims to be in the top quartile for reliability when measured against its Canadian peers. However, this objective does not apply to the single-circuit systems that Hydro One uses to serve Northern Ontario and generally the systems north of Barrie, Ontario. In fact, Hydro One has no reliability objective for its Northern Ontario systems:

MS. DeMARCO: So in relation to reliability, I understand that your intention or objective is to be the top quartile; is that right?

MR. PENSTONE: That's correct, for our multi-circuit network.

MS. DeMARCO: So it's just Southern Ontario, it doesn't include Northern Ontario?

MR. McLACHLAN: I will say yes and no to that. It's a correlation to Southern Ontario because the majority of our multi-circuit delivery points are Southern Ontario. However, there are a few minor delivery points that are multi-circuit in the north. But the correlate – it could be said that it's primarily Southern Ontario, yes.

MS. DeMARCO: Okay. So you have no reliability objective for Northern Ontario. Fair to say?

MR. PENSTONE: In terms of quartile ranking with Canadian peers, that's accurate.⁴³

43. Anwaatin submits that it is possible to include northern Ontario's single-circuit systems in its benchmarking through a comparable peer group. In Undertaking J2.3, Hydro One confirms that relevant comparators for Northern Ontario transmission reliability may include Hydro-Québec/TransEnergie, Manitoba Hydro, and BC Hydro, as all three of these

⁴³ Hearing Transcripts, Volume 7, 153:3-19; Volume 2, 108:11-109:1.

transmitters have systems similar to Hydro One's northern transmission system.⁴⁴ Although Hydro One alleges that this would not lead to statistically significant benchmarking,⁴⁵ Anwaatin submits that it would certainly assist in putting Hydro One's Northern Ontario and Anwaatin very poor reliability performance in a broader context.

44. The Transmission Availability Data System (**TADS**) data provides an indication of Hydro One's reliability performance in Northern Ontario benchmarked with Peers. Hydro One's sustained outage frequency for lines with voltages below 200 kV was the most unreliable (poorest) in the peer group. Even excluding worst-performing circuits, Hydro One's sustained outage frequency for these lines was among the least reliable (poorest) in its peer group.⁴⁶ Hydro One's momentary outage frequency was also among the highest (poorest) in the peer group.⁴⁷ All of the Anwaatin First Nation Communities are served by lines with voltages below 200 kV.
45. Board Staff was also critical of the Hydro One approach to reliability benchmarks, indicating that Hydro One used two reliability studies with different peer groups and that the CEA statistics only considered the southern, multi-circuit portion of Hydro One's transmission system, while the TADS metric considered the entire system.⁴⁸
46. Anwaatin agrees with Board Staff's submission that benchmarks should be used to assess the performance of a utility relative to other utilities and to compare costs/benefits:

⁴⁴ Exhibit J2.3, 1.

⁴⁵ Exhibit J2.3, 1.

⁴⁶ Exhibit B2-2-1, Attachment 1, 21.

⁴⁷ Exhibit B2-2-1, Attachment 1, 22.

⁴⁸ Board Staff Submission dated January 25, 2017, at 19.

[t]he objective of benchmarking is to assess the performance of a utility relative to other utilities, and thereby assess the reasonableness of the spending proposals in the application. [...] To be truly useful, benchmarking studies must compare performance on both cost and benefit metrics to assess whether a utility is performing well relative to its peers.⁴⁹

Transmission System Plan and Proposed Expenditures

47. Despite the very poor reliability performance in the Anwaatin First Nation Communities, the Application contains no expressly earmarked investments to materially address/correct the reliability issues in the Anwaatin First Nation Communities.
48. In recent years, the Anwaatin First Nation Communities have experienced numerous extended outages and delivery point interruptions:
- on May 3, 2015, 115 kV circuit T7M (Otter Rapids x Moosonee) was removed from service due to a broken conductor. The interruption lasted 22 hours, 45 minutes;
 - on June 7, 2014, 115 kV circuit T7M (Otter Rapids x Moosonee) was removed from service due to a failed line insulator. Due to unsettled weather in the area and approaching nightfall, the helicopter patrol was deferred until daybreak. The interruption lasted 23 hours, 22 minutes;
 - on June 26, 2013, 115 kV circuit A4L (Alexander x Longlac) was removed from service due to electrical storms in the area. Defective insulators between Jellicoe DS #3 Junction and Beardmore DS #2 Junction at structure #733 were found and repaired the next day. The interruption lasted 13 hours, 46 minutes;

⁴⁹ Board Staff Submission dated January 25, 2017, at 20.

- on April 11, 2011, 115 kV circuit T7M (Otter Rapids x Moosonee) and other 115 kV circuits in the area were removed from service due to a line insulator failure. The interruption lasted 15 hours, 53 minutes; and
- on May 26, 2010, there were two sustained outages on 115 kV circuit T7M (Otter Rapids x Moosonee), due to a damaged tower and defective insulator string approximately 9 km from the Otter Rapids Switching Station and a defective sky wire at tower 971. The interruption lasted 23 hours, 31 minutes.⁵⁰

49. The IESO has also noted that the A4L has had recent consecutive years of substandard performance, with 2016 being the worst in the last ten years.⁵¹ Hydro One has identified the difficulty in locating faults on the A4L as the root cause for long outage durations.⁵² Some Anwaatin First Nation Community members identified the impacts of climate change and increasingly severe weather patterns, including ice storms, as causing periodic increases in both momentary and sustained outages in the IESO regional planning areas of Greenstone-Marathon and the North and East of Sudbury Region. Among those noting the impacts of climate change on transmission service, some mentioned the opportunity for Hydro One to engage with First Nation knowledge holders about specific and localized risks to transmission lines based on their observations of trees and branches in proximity to transmission lines that could become ice covered and result in power outages.⁵³ However, Hydro One's proposed spending contains no proposals to address these issues.

⁵⁰ Exhibit TCJ2.7, 1-4.

⁵¹ Exhibit K13.2, Anwaatin Intervenor Evidence, para 18.

⁵² Exhibit K13.2, Anwaatin Intervenor Evidence, para 19.

⁵³ Exhibit K13.2, Anwaatin Intervenor Evidence, para 21.

50. Anwaatin therefore submits that Hydro One's proposed capital expenditures do not adequately consider and address system reliability in the Anwaatin First Nation Communities. As such, the Board should not approve "just and reasonable" rates in this Proceeding, in accordance with s. 78(3) of the Act unless or until the Anwaatin reliability issues are addressed.
51. Hydro One's own data indicates that several of the transmission lines in the Anwaatin First Nation Communities are old and already well beyond (up to 28 years) their expected service lives.⁵⁴ The A4L circuit in the Anwaatin First Nation Communities has caused, and continues to cause many reliability issues. It is already years beyond its expected service life, yet it is not currently scheduled to be replaced until 2021.
52. The Auditor General also highlights the problem of Hydro One not replacing high risk assets contrary to its rate applications.⁵⁵ She indicates that significant transmission assets that are beyond their expected service life are still in use⁵⁶ and that funding requests to the Ontario Energy Board are not supported by reliable data.⁵⁷
53. Anwaatin therefore submits that the proposed Transmission System Plan and related capital investments are **not** addressing the most pressing reliability needs in Ontario. This gap is disproportionately impacting Ontario's most vulnerable Northern and First Nation communities, including Anwaatin.

⁵⁴ Hearing Transcripts, Volume 7, 164-169.

⁵⁵ Hearing Transcripts, Volume 7, 170:13.

⁵⁶ Hearing Transcripts, Volume 7, 170:19.

⁵⁷ Hearing Transcripts, Volume 7, 170:25.

54. Hydro One argues that certain of its proposed integrated station investments, including wood pole replacements in or around the A4L line and the Anwaatin First Nation Communities may ameliorate the extreme reliability issues in the Anwaatin communities. But, Mr. McLachlin and Dr. Richardson both confirm that the causes of the reliability issues on the A4L line is not wood poles.⁵⁸

Additional Customer Confusion Regarding Reliability in the Anwaatin First Nation Communities

55. Exhibit K.7.3 illustrates the complex and confusing calculations surrounding the proposed "change in reliability risk" metric that Hydro One has used in the Application to communicate with stakeholders and customers. Anwaatin respectfully submits that this metric is adding to the confusion regarding rates and reliability in the Anwaatin First Nation Communities. This confusion and customer frustration was specifically acknowledged by Dr. Richardson and Ms. Lea.⁵⁹ Customer frustration is further exacerbated by the disproportionate impact that poor transmission reliability has, and continues to have, on the Anwaatin First Nation Communities.

D. Bill and Customer Impacts On the Anwaatin First Nation Communities

56. The Anwaatin video evidence includes First Nation community leaders speaking directly to the disproportionate and significant impacts that they experience during their many unreliability events. Specifically, two Aroland Band Council members spoke to the transmission-related power outages between August 30, 2016, and August 31, 2016. The

⁵⁸ Hearing Transcripts, Volume 7, 176:21; Volume 13, 32.

⁵⁹ Hearing Transcripts, Volume 13, 49.

Aroland First Nation, BZA - Red Rock Indian Band, BNA, and AZA communities experienced a power outage along the A4L transmission line in the Greenstone-Marathon planning area for nearly 24 hours.⁶⁰ The power outage extended from the west, near Cameron Falls south of Lake Nipigon, to east of Longlac and north of Nakina, and affected thousands of people.

57. Community members affected by the power outage reported significant negative impacts and hardship arising from it, including:

- full loss of most refrigerated foods
- loss of significant quantities of frozen meat, fish, and game birds, representing months of protected hunting and harvested food upon which First Nation families depend for their livelihoods
- lost hunting and harvesting time as a result of the necessity of dealing with the prolonged outage, and the need to find ways to replace lost meat, fish, and game birds with new protein sources through additional hunting and harvesting
- loss of significant quantities of frozen blueberries used for sustenance as well as for cash sales to supplement family incomes
- significant time needed to engage in the traditional practice of honouring the bodies of harvested animals whose meat is spoiled and wasted by taking the harvested animal parts that spoiled during the long outage to the bush to be buried and honoured with tobacco

⁶⁰ Exhibit K13.2, Anwaatin Intervenor Evidence, para 21.

- increased sightings of, and dangers from, bears foraging at landfills for spoiled meats that are not subject to traditional methods of disposition
- financial challenges for families with elders and caregivers who rely on traditional food sources to nourish their families with traditional meals, but who were forced to replace traditional food sources with store-bought foods, and use very limited household incomes to purchase food instead of paying for other family necessities and
- additional financial expenditures in Aroland First Nation, community and Band Council in order to organize and purchase a community freezer with a back-up generator to provide elders and caregivers with assurance that harvested foods will be protected from substandard transmission performance.⁶¹

58. Community members across all Anwaatin First Nations identified additional hardships resulting from many other power outages over the winter, especially for children and elders who rely on electricity for home heating. Anwaatin Community members report that the duration of power outages in recent years is causing stress to families who must plan for, and purchase, backup generators and/or find other ways to ensure that children and elders are protected when the power goes out. Winter transmission power outages on the transmission line between Otter Rapids and Moosonee / Moose Factory Island have resulted in a state of emergency during cold winter months, sometimes including boil

⁶¹ Exhibit K13.2, Anwaatin Intervenor Evidence, para 21.

water advisories due to complications at water treatment facilities (e.g. January 22, 2011).⁶²

59. Additional negative impacts of the poor system reliability in the Anwaatin First Nation Communities include immediate threats to the well-being of community members, such as loss of communications, loss of insulin (which requires constant refrigeration, for diabetic community members), and loss of the ability to operate machines for sleep apnea.⁶³
60. Anwaatin submits that these disproportionate impacts are significantly more severe than the impacts of an occasional power outage in Southern Ontario, and are not therefore just and reasonable. Anwaatin requests that the Board deny the proposed transmission rates increase under s. 78(3) of the Act, unless or until some of the proposed capital expenditures are earmarked to promptly address the reliability issues in the Anwaatin First Nation Communities.

E. Requested Relief

61. Anwaatin respectfully requests that the Board:
- (a) direct Hydro One to implement the First Nations consultation and engagement processes (similar to the process it used in EB-2005-0501 as described in Anwaatin's evidence) in all future Hydro One rate applications. This will assist Hydro One in its efforts to ensure that First Nations are meaningfully engaged in the

⁶² Exhibit K13.2, Anwaatin Intervenor Evidence, para 21.

⁶³ Hearing Transcripts, Volume 13, 14:9-17.

transmission planning process, and can provide their unique perspective, knowledge and insights;

- (b) require Hydro One to include a First Nations consultation metric on the Transmission Scorecard;
- (c) require Hydro One to create a Best Practice Guide for Indigenous Consultation (the **Best Practice Guide**) in order to ensure that the spirit and intent of the Filing Requirements and the TSC are met, and the importance of First Nations to Hydro One's transmission business is adequately addressed in a coordinated and collaborative manner. The Best Practice Guide should reflect the elements set out in the Anwaatin Evidence and encourage coordinated participation of all Hydro One entities (Transmission, Distribution, Remotes) consistent with the Anwaatin and Board Staff recommendations; and
- (d) address and materially improve transmission reliability in the Anwaatin First Nation Communities by earmarking part of its approved capital expenditures in the 2017/2018 rates to provide required replacements/investment in the outlier transmission assets serving Anwaatin Communities in a manner that is consistent with the Board's mandate and jurisdiction under the Act.

62. In summary, Anwaatin requests and requires collaborative and cooperative solutions to address their consultation, reliability and energy cost issues. They now need a motivated transmitter that is willing to work with them to achieve that end.

I see a beautiful city and a brilliant people rising from this abyss, and, in their struggles to be truly free, in their triumphs and defeats, through long years to come, I see the evil of this time and of the previous time of which this is the natural birth, gradually making expiation for itself and wearing out.

Charles Dickens, *A Tale of Two Cities*

ALL OF WHICH IS RESPECTFULLY
SUBMITTED THIS DAY,

2 February 2017



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