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**VIA EMAIL AND RESS**

18 October 2017

**Kirsten Walli**  
Board Secretary  
Ontario Energy Board  
P.O. Box 2319, 27<sup>th</sup> Floor  
2300 Yonge Street  
Toronto ON M4P 1E4

Dear Ms. Walli:

**Re: EB-2016-0160 – Hydro One – Notice of Motion for Review and Variance**

We are counsel to Anwaatin Inc. (**Anwaatin**). Pursuant to Rules 40 to 42 of the Board's *Rules of Practice and Procedure*, as amended, enclosed please find the Notice of Motion for a review and variance of the Board's Decision in EB-2016-0160 dated September 28, 2017.

Anwaatin will deliver a Motion Record and Factum in due course in accordance with a schedule to be stipulated by the Board. This notice has also been filed through the RESS system and served by email on all intervenors of record in EB-2016-0160. Anwaatin has no strong preference for an oral or written hearing of this motion, but notes that counsel for Anwaatin is working out of the country and unavailable from November 6 to 20, 2017, inclusive.

Yours very truly,

Lisa (Elisabeth) DeMarco

cc: Applicant and Intervenors (by email)

**ONTARIO ENERGY BOARD**

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

**AND IN THE MATTER OF** an application by Hydro One Networks Inc. (**Hydro One**) for electricity transmission revenue requirement and related changes to the Uniform Transmission Rates beginning January 1, 2017 and January 1, 2018 (the **Application**);

**AND IN THE MATTER OF** the Decision of the Ontario Energy Board on the Application dated September 28, 2017;

**AND IN THE MATTER OF** Rules 40, 42 and 43 of the *Rules of Practice and Procedure* of the Ontario Energy Board.

**NOTICE OF MOTION**

Anwaatin Inc. (**Anwaatin**) will make a motion to the Ontario Energy Board (the **Board**) at its offices at 2300 Yonge Street, Toronto, on a date and a time to be fixed by the Board.

**PROPOSED METHOD OF HEARING:**

Anwaatin has no strong preference as to whether the Board hears this motion orally or in writing, but notes that if multiple approved intervenors wish to participate in the motion it may be more conducive to oral hearing.

**THE MOTION IS FOR:**

1. An Order reviewing and varying the Decision and Order of the Board dated September 28, 2017, in EB-2016-0160 (the **Decision**) in which the Board: (i) appears to have failed to consider any Anwaatin evidence regarding extremely disparate and inadequate transmission system reliability in First Nations communities in Northern Ontario, Indigenous community video evidence, and Dr. Richardson's evidence on the significant negative impacts of the very poor transmission reliability on the Anwaatin communities;

and (ii) the Board appears not to have addressed, and/or provided reasons for, Anwaatin's requested reliability related relief that part of Hydro One's approved capital budget be earmarked to remedy the outdated, outlier transmission assets that are causing the very poor reliability issues in the Anwaatin communities;

2. An Order varying the Decision to expressly address the Anwaatin reliability and disparate reliability impact evidence adduced by Anwaatin and the express relief requested by Anwaatin, by earmarking a portion of the capital budget, either within or in addition to the capital envelop in the Decision, to address the Indigenous reliability and reliability impacts or imposing a condition that the Anwaatin reliability issues be promptly addressed;
3. An Order that this Motion and the issues to be determined herein satisfy the "threshold test" pursuant to Rule 43 of the Board's *Rules of Practice and Procedure*;
4. An Order that Anwaatin be eligible for an award of costs on this Motion in accordance with the Board's *Practice Direction on Cost Awards*; and
5. Such further and other Orders as counsel may advise and the Board may permit.

#### **THE GROUNDS FOR THE MOTION ARE:**

1. Anwaatin respectfully submits that the Board erred in:
  - (a) Failing to consider the Anwaatin reliability disparity evidence set out at Exhibit B1, Tab 1, Schedule 3, page 25; Exhibit I, Tab 10, Schedule 3 and Schedule 5; Exhibit TCJ2.5; and Hearing Transcript Volume 7, pages 147-163, showing that reliability in the Anwaatin Indigenous communities is 2081% (20.81 times) worse than the Ontario average and approximately four (4) times worse than reliability in Northern Ontario (the **Anwaatin Reliability Disparity Evidence**);

- (b) Failing to consider the Anwaatin band council video evidence and Dr. Richardson's written and oral evidence on the significant, negative impacts of the poor and disparate transmission reliability on the Anwaatin communities set out in the record and at Volume 13 of the EB-2016-0160 Hearing Transcripts (the **Anwaatin Reliability Impact Evidence**);
- (c) Failing to consider, decide upon and provide any reasons for the Board's Decision on capital budget relating to the Anwaatin transmission reliability issues and Anwaatin's requested relief that the Board "address and materially improve transmission reliability in the Anwaatin First Nation Communities by earmarking part of [Hydro One's] 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" (the **Anwaatin Requested Relief on Reliability**);
- (d) Providing no written reasons or other reasonable basis upon which to conclude that the Board even considered the Anwaatin Reliability Disparity Evidence the Anwaatin Reliability Impact Evidence, and/or the Anwaatin Requested Relief on Reliability and final argument;
- (e) Failing to respond to the evidence presented by Anwaatin and meet the standard of "justification, transparency, and intelligibility" for the reasonableness of the Decision as required in law, and the just and reasonable standard for the transmission rates as required by s. 78(3) of the *Ontario Energy Board Act, 1998*;
- (f) Failing to protect the interests of disparately impacted Anwaatin Indigenous consumers with respect to prices and the **adequacy, reliability, and quality of**

**electricity service** in accordance with s. 1(1)(1) of the *Ontario Energy Board Act, 1998*;

(g) Breaching the Board's procedural fairness duties to Anwaatin to consider the Anwaatin Reliability Disparity Evidence, the Anwaatin Reliability Impact Evidence before the Board in reaching a Decision, to give reasons for the Decision on the Anwaatin Requested Relief on Reliability, and to correspondingly reach a Decision on the capital budget (either within or in addition to the proposed capital envelope) that does not result in unfairness and prejudice to Anwaatin's right to be heard, and negatively impact the Anwaatin Communities' health and well-being; and

(h) Failing to reach and/or provide reasons for a Decision on the capital budget related to the Anwaatin reliability issues and Anwaatin Requested Relief on Reliability that falls within the range of possible, acceptable outcomes that are defensible in respect of the facts and law;

2. Anwaatin respectfully submits that the threshold test for the Board to hear this Motion to Review and Vary the Decision has been met in that:

(a) the determination of the issue raised in this Notice of Motion and the supporting grounds raise questions of errors in fact and law impacting the correctness of the Decision;

(b) the impact and substance of the Anwaatin Indigenous reliability issues impacting the capital envelope is such that their determination could result in the Board varying the Decision;

- (c) the panel appears to have failed to address a material issue of Anwaatin Indigenous reliability and the related capital budget earmarking requested, which is material and relevant to the Decision and the outcome for Anwaatin Indigenous communities; and
3. Such other grounds as counsel may advise and the Board may permit.

**THE FOLLOWING DOCUMENTARY MATERIAL AND EVIDENCE** will be relied upon at the hearing of the motion:

- 1. The record and Decision in EB-2016-0160;
- 2. Anwaatin's submissions on this motion to be delivered in accordance with the Board's procedural order or orders;
- 3. A Motion Record including Anwaatin's submissions and a Book of Authorities that shall include, without limitation:
  - (i) the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched. B, ss. 1, 19 and 78;
  - (ii) the Board's *Rules of Practice and Procedure* (ss. 8, 40-43);
  - (iii) *Dunsmuir v New Brunswick*, 2008 SCC 9;
  - (iv) *Baker v Canada (Minister of Citizenship & Immigration)*, [1999] 2 SCR 817;
  - (v) *Ontario (Energy Board) v Ontario Power Generation Inc.*, 2015 SCC 44;
  - (vi) EB-2006-0322/EB-2006-0338/EB-2006-0340, Decision dated May 22, 2007, on Motions to Review the Natural Gas Electricity Interface Review;
  - (vii) *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62;
  - (viii) *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12;
  - (ix) *United States v Lake*, 2008 SCC 23; and
  - (x) *Burke v N.A.P.E.*, 2010 NLCA 12; and

4. Such further and other material as counsel may advise and the Board may permit.

**October 18, 2017**

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**AND TO:           Intervenors in EB-2016-0160**