

Hydro One Networks Inc.

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BY COURIER

December 5, 2017

Ms. Kristi Sebalj
Registrar
Ontario Energy Board
P. O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

**Re: EB-2017-0182 – Upper Canada Transmission Inc. (“NextBridge”)
Application for Leave to Construct a Transmission Line
Hydro One Networks Inc. (“Hydro One”) Response to NextBridge Objection to Intervenor
Status for Hydro One**

Dear Ms. Sebalj:

Hydro One files this letter in response to the November 13th letter sent on behalf of NextBridge by Mr. Cass of Aird & Berlis LLP (“the NB Submission”), in which Mr. Cass sought at length to severely limit Hydro One’s role as an intervenor in the above-noted NextBridge leave to construct (“LTC”) Application (“the NB Application”) to build the East-West Tie (“the Project”) and also to place restrictions on Hydro One’s intended LTC application.

After the NB Submission was filed, the Ontario Energy Board (“the Board”) issued P.O. No. 1 on November 29, 2017, which granted Hydro One’s request for intervenor status and also stated, on page 3 of P.O. No. 1, the following:

- “the participation of all intervenors, including Hydro One, is restricted to matters relevant to the proceeding”
- “there is no need for the OEB to vet Hydro One’s requests for information”

- “the OEB makes no ruling or order:
 - (i) relating to documentation previously provided to Hydro One,
 - (ii) to create a confidentiality screen at Hydro One, or
 - (iii) as to the appropriate filing requirements for any competing application...”

As can be seen by the preceding paragraph, the Board granted Hydro One’s request but left open the matter of items (i), (ii) and (iii) of the third bullet. Therefore, the Board’s P.O. No. 1 gave Hydro One the opportunity to reply to the NB Submission. Hydro One wishes to answer certain allegations in the NB Submission because of the inaccuracies therein and the hostile and unprofessional nature of the allegations, which are unbecoming to an organization like NextBridge, or indeed any enterprise that seeks to be a leading and highly-regarded Canadian company.

Competition to Construct the Project

It is apparent from the NB Submission that NextBridge is concerned that a competing bid will be submitted by Hydro One and that any competing bid, whether by Hydro One or any other transmitter, will lessen NextBridge’s chances of being selected by the Ontario Energy Board (“the Board”) as the successful LTC applicant.

The fact is that when the Designation Proceeding was held at the Board during 2012 and 2013 (EB-2011-0140), it was clear that the transmitter chosen to do the development work for the East-West Tie was being selected to perform only the development work and that there would be no restriction whatever on the ability of transmitters other than NextBridge to come forward and submit LTC applications to build the project. NextBridge had no reason to believe that it would not face competition for construction of the line. As the Board stated in the Phase 2 Decision and Order (EB-2011-0140 – page 4), “Designation does not carry with it an exclusive right to build the line or an exclusive right to apply for leave to construct the line. A transmitter may apply for leave to construct the East-West Tie line, designated or not.”

And, although NextBridge expresses concern about unwanted competition from Hydro One, NextBridge itself has taken steps to stifle competition by entering into agreements with property owners and First Nations that either prevent those parties from having discussions (or make them reluctant to have discussions) with third parties, including Hydro One, who may be interested in constructing the East-West tie and thereby providing a better choice to Ontario electricity ratepayers, at lower cost.

Statutory Considerations for Applications for Leave to Construct

The process to be granted approval to build a transmission line was, and remains, consistent with s. 92(2) of the *Ontario Energy Board Act, 1998* (“the Act”), which reads as follows:

“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.”

Therefore, foremost in the Board’s mind must have been, and must continue to be, the interests of consumers with respect to price, (i.e., the cost of the Project), a matter that only benefits from, and is not harmed by, competition. This objective was outlined on page 2 of the Board Policy Framework for Transmission Project Development Plans (EB-2010-0059):

“Within the context of transmission investment policy, economic efficiency can be understood to mean achieving the expansion of the transmission system in a cost effective and timely manner to accommodate the connection of renewable energy sources. The Board believes that economic efficiency will be best pursued by introducing competition in transmission service to the extent possible within the current regulatory and market system.”

The Need for the Project

In its Updated Assessment of the Need for the East-West Tie Expansion issued on December 1, 2017, the IESO confirmed that the Project is still needed. The IESO also stated clearly, at page 4 of the Updated Assessment:

“The project costs included by NextBridge in its LTC application are higher than what was assumed in the IESO’s December 2015 Report. Therefore, on August 4,

2017, the Minister requested the IESO to prepare an updated need assessment...”

Referring to that need, the NB Submission alleges, without any factual basis or evidence, that a competing bid will delay not only the NB Application but also the Project as a whole. The NB Submission goes on to request that the Board expeditiously consider the NB Application so as to not risk what the IESO’s Updated Assessment refers to as “the recommended in-service date.” Hydro One responds that P.O. No. 1 shows that the Board is in control of its own process and has the ability to ensure that proceedings before the Board proceed efficiently and in a manner that takes into account the Province’s need for transmission and the timeline to satisfy that need.

NextBridge’s Objection to Competition from Hydro One

Hydro One is puzzled by the NB Submission’s expression of surprise about competition from Hydro One for the Project. On March 31, 2017, more than six months prior to Hydro One’s request for intervenor status in the NB Application, Hydro One sent an e-mail to a member of the NextBridge team that stated, *inter alia*, the following:

“...I have been instructed by our EVP and CLO, copied above, that Hydro One should not receive or accept any information from a competitor that might be confidential or proprietary and is not strictly required under our scope of work for the East West Tie Station Project. Accordingly, I have deleted your note and attachments and would ask that you edit and resend these materials to remove unnecessary information or material you consider of a competitive nature.”

NextBridge had no reason to believe that Hydro One would not submit its own LTC application to build the Project, nor did NextBridge have any reason to believe that Hydro One would not request full intervenor status in the NB Application. There is every reason to believe that NextBridge would have requested intervenor status in a Hydro One application had Hydro One’s application predated NextBridge’s, just as there is every reason to believe that NextBridge will request full intervenor status in an upcoming Hydro One LTC application.

NextBridge’s objection to Hydro One’s role as an intervenor raises the question of the benefit of having intervenors in tribunal proceedings. Section 22.02 of the Board’s *Rules of Practice and Procedure* states:

“The person applying for intervenor status must satisfy the Board that he or she has a substantial interest and intends to participate actively and responsibly in the proceeding by submitting evidence, argument or interrogatories, or by cross-examining a witness.”

It is difficult to imagine persons having a more substantial interest in an LTC application than a party who believes it can benefit all Ontario electricity consumers by building the Project at a lower cost and with reduced environmental impact. It is also difficult to imagine information that is more informative of, and beneficial to, an LTC application, than facts brought to light by a potentially lower-cost competitor, given that what is in the public interest in an LTC application is, as stated above, “the interests of consumers with respect to prices and the reliability and quality of electricity service.”

NextBridge’s Fears as to Hydro One’s Participation

The NB Submission makes totally unfounded assertions as to the consequences of a competitor’s role as a full intervenor in the NB Application and the pernicious motives of a full intervenor. The NB Submission states, “Hydro One’s own statements indicate that it intends to participate not simply as an intervenor with an interest in how the...Project interconnects to its stations...but, additionally, as a competitor that is intent on using and potentially disrupting, slowing, and undermining the NextBridge LTC proceeding for the purpose of assisting it in relation to a Competing LTC.” The NB Submission goes on to raise the unfounded spectre that Hydro One may even “...leverage its position in a way that is not available to others, for example through limiting access to existing facility corridors.”

Such baseless allegations and fears and attributions of inappropriate motives are inaccurate and unjustified. As the Board has shown in P.O. No. 1, the Board is in control of its own process and has the ability to prevent abuse of its process. The Board has held many hearings in which there have been numerous intervenors, and proceedings are a matter of public record. The allegations that, by being an intervenor with the normal rights of intervenors, Hydro One would be able to utilize the NB Application “to elicit competitive information” and to potentially disrupt and undermine the NB Application are illogical and inaccurate. This is akin to saying that all intervenors in any application are disrupting and delaying the process.

The NB Submission additionally alleges that because of Hydro One’s size, Hydro One may “abuse its status as incumbent transmitter.” That NB Submission makes an analogy to the Designation Proceeding, at which time Hydro One was in possession of information that may have been beneficial to a party preparing a proposal (in the Designation Proceeding) to perform

the development work. The Board ordered at that time that Hydro One be subject to restrictions on Hydro One's sharing of information with a partnership in which Hydro One was a partner.

That process is not applicable or appropriate for the NB Application, because it is not the case in the NB Application that Hydro One now has advantageous information that would make it unfair for Hydro One to compete with NextBridge to build the Project. If any party has any information that provides a competitive advantage, that party is NextBridge, as a result of having performed the development work on the Project for the past few years. Such information should be shared with all potential bidders for the ultimate benefit of Ontario ratepayers, in a manner similar to the orders imposed on Hydro One during the Designation Proceeding. The environmental assessment work done by NextBridge, which will be paid for by Ontario ratepayers, should also be shared with all potential bidders.

Confidential Information

Furthermore, it is incorrect to accuse Hydro One of being in possession of non-public information from NextBridge that is of benefit to Hydro One in preparing its own LTC. Whatever information Hydro One requested NextBridge to provide was required to ensure that Hydro One understood the connection requirement needs of the Project. Therefore, not only is it inappropriate to ask, as the NB Submission does, for the Board to order "protections" in relation to Hydro One's preparation of a competing LTC, but also it would not be appropriate for the Board to order such "protections" or to order Hydro One to prepare a list of records received from NextBridge, provide the list to NextBridge, and destroy such records. NextBridge is well-aware of records provided to Hydro One during the course of the development work; and if NextBridge believes any of that information enables Hydro One to unfairly prepare a competing LTC, the onus should be on NextBridge to identify such records. Hydro One also states that the request in the NB Submission that "all information that is of a competitive nature in the future be provided only to Hydro One's counsel on the understanding that it will not be shared with others at Hydro One" has no merit whatever, for the same reasons as stated in the first part of this paragraph.

NextBridge's Fears of an LTC Application by Hydro One to Build the Project

The NB Submission contains more than two full pages (pages 7 and 8) of NextBridge's proposed restrictions on an LTC to be submitted by Hydro One, including, *inter alia*, restrictions to address concerns about timelines, feared delays, filing requirements, and cost estimates. Hydro One reiterates that there is no evidence that any of NextBridge's concerns are real: it

appears that NextBridge simply wishes to tie the hands of any competitor who comes forward so that NextBridge is assured of being selected by the Board as the transmitter who will build the Project. NextBridge openly questions the Board's ability not to be distracted by a competitor and the Board's ability to control its own (the Board's) process: as the NB Submission states, "NextBridge is concerned that Hydro One will submit a Competing LTC that will result in inefficient use of resources, including diverting time and resources away from a review of the NextBridge LTC." Again, there is no evidence that this fear has any basis. NextBridge wishes to win the right to build the Project without having the Board do a full comparison of one or more competing bids, and even without having the Board fully examine the NextBridge bid.

Summary

Hydro One disputes and rejects all of the items raised in the NB Submission of November 13th, on which NextBridge relies in an attempt to:

- (a) restrict Hydro One's role as an intervenor in the NB Application;
- (b) restrict any company's ability to compete with NextBridge;
- (c) tie the Board's hands in receiving and hearing evidence in the NB Application;
- (d) restrict the Board's ability to receive and hear a Hydro One LTC application;
- (e) restrict Hydro One's use of information that it has or may receive;
- (f) expedite the Application in a manner that precludes evidence as to lower-cost alternatives to construction by NextBridge.

Hydro One states that NextBridge has provided no evidence that any of the foregoing actions would be appropriate. Restricting the role of intervenors and putting a lid on pertinent evidence are not good recipes to enable a tribunal to make an informed decision. On the contrary, these steps would restrict the Board's ability to fully consider the Board's statutory mandate to consider the interests of consumers with respect to prices and the reliability and quality of electricity service.

As implied by the Board's P.O. No. 1, at any time during the NB Application and during any competing application, the Board has the ability to make appropriate orders if the Board finds that its process is being abused by any intervenor. That event has not occurred; and, as can be seen from P.O. No. 1, that time is not now. Neither the commercial interests of NextBridge nor the baseless spectre of an inefficient use of the Board's time are viable reasons for the Board to narrow the scope of Hydro One's intervention or that of any other intervenor, or to place novel

restrictions on the process of the NB Application or on the process of any LTC application filed by Hydro One or any other party.

Hydro One therefore asks that the Board continue Hydro One's status as an intervenor in the NB Application with full intervenor rights, not with limited rights, and that the Board reject NextBridge's requests relating to (i) documentation provided to Hydro One, (ii) creation of a confidentiality screen and (iii) creation of novel filing requirements for an LTC application by Hydro One.

Yours very truly,

ORIGINAL SIGNED BY MICHAEL ENGELBERG

Michael Engelberg

cc: Applicant - Upper Canada Transmission, Inc.

Intervenors