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January 29, 2018

**VIA RESS, EMAIL AND COURIER**

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street, 27th Floor  
Toronto, Ontario M4P 1E4

Dear Ms. Walli:

**RE: EB-2017-0335 – Anwaatin Motion to Review and Vary – Submissions of Hydro One Networks Inc. (“Hydro One”)**

Pursuant to Procedural Order No. 1 issued by the Ontario Energy Board (“OEB”) on December 19, 2017, with respect to a Notice of Motion by Anwaatin Inc. to review and vary EB-2016-0160 Decision and Order dated September 28, 2017, we enclose Hydro One’s submissions.

Please contact the undersigned if you have any questions in regards to the foregoing.

Yours truly,

**McCarthy Tétrault LLP**

A handwritten signature in black ink, appearing to read 'G. Nettleton', enclosed within a large, loopy circular flourish.

Gordon M. Nettleton  
GMN

cc: Parties in EB-2017-0335

**ONTARIO ENERGY BOARD**

**IN THE MATTER OF** a cost of service application made by Hydro One Networks Inc. under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B), seeking approval for changes to its transmission revenue requirement and to the Ontario Uniform Transmission Rates, to be effective January 1, 2017 and January 1, 2018 (EB-2016-0160);

**AND IN THE MATTER OF** the Decision and Order dated September 28, 2017 in proceeding EB-2016-0160;

**AND IN THE MATTER OF** a motion filed by Anwaatin Inc. pursuant to sections 40 and 42 of the Ontario Energy Board's *Rules of Practice and Procedure*.

**SUBMISSIONS OF HYDRO ONE NETWORKS INC.**

Date: January 29, 2018

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AND TO: Intervenors of Record

## **Introduction**

1. In accordance with Procedural Order No. 1 dated December 19, 2017, Hydro One Networks Inc. (“**Hydro One**”), provides these submissions in response to the motion made by Anwaatin Inc. (“**Anwaatin**”) to review and vary Decision EB-2016-0160. These submissions address four points:

- (i) Whether the Ontario Energy Board (the “**OEB**” or the “**Board**”) is obligated to make explicit findings in its reasons on the evidence and final argument made by Anwaatin;
- (ii) Anwaatin’s characterization of the Board’s Decision in EB-2016-0160 (the “**Transmission Decision**”);
- (iii) Practical challenges associated with the relief sought by Anwaatin; and
- (iv) Whether adequate redress to Anwaatin’s concerns can be provided in the present circumstances and without review or rehearing of the Transmission Decision.

### **I. Adequacy of Reasons in the Board’s Decision and Order issued on September 28, 2017**

2. The Supreme Court of Canada has clarified that administrative tribunals who carry out decision-making responsibilities are not required to make explicit findings on each constituent element leading to its final conclusion. Reasons for a decision do not need to include or address all arguments, statutory provisions, jurisprudence or other details

that a reviewing court or body would have preferred to see included or addressed. As a result, the fact that a decision does not address all arguments made by parties does not automatically impugn the validity of either the reasons or the result when assessing the reasonableness of the decision. If the reasons allow a reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.<sup>1</sup>

3. Hydro One observes that in the Transmission Decision, the Board did take into account Anwaatin's evidence on consultation. The Board expressly found that Hydro One can and should improve on its customer engagement process by seeking more timely and more meaningful input from First Nations representatives.<sup>2</sup> Anwaatin was the sole intervener to have raised this concern and did so by leading evidence on this point through the report and testimony of Dr. Richardson.

## **II. EB-2016-0160 Evidence**

4. Hydro One understands and acknowledges Anwaatin's additional concerns pertaining to reliability and the impacts of poor system reliability on the First Nation communities represented by Anwaatin communities. Concerns regarding system reliability were foremost in the minds of Hydro One and intervenors during this proceeding. The Transmission Decision reflects this. The participation of Anwaatin in this proceeding has highlighted an area of improvement on which Hydro One intends to act, going forward. That approach, again, appears to be consistent with

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<sup>1</sup> *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708; *Construction Labour Relations v. Driver Iron Inc.*, 2012 SCC 65, [2012] 3 S.C.R. 405.

<sup>2</sup> Transmission Decision, page 24.

what the Board has expressly stated: improve the process used to obtain customer needs and preferences from First Nation communities through more timely and meaningful processes. Hydro One intends to act on this recommendation and intends to do so by continuing to work with First Nation communities to find ways to improve reliability in First Nation communities in northern Ontario.

5. The relief sought by Anwaatin in its Motion seeks to have the Board impose directions that change Hydro One's transmission capital expenditure plan for 2017 and 2018. Hydro One submits that evidence adduced during the EB-2016-0160 proceeding does not provide a proper basis to support this outcome.
6. Interrogatories asked by Anwaatin addressed broad topics pertaining to levels of consultation,<sup>3</sup> rate impacts,<sup>4</sup> reliability statistics<sup>5</sup>, indirect delivery charges levied upon customers<sup>6</sup> and the condition of assets and the timing of investment expenditures on transmission assets serving First Nation Communities.<sup>7</sup>
7. In contrast, Hydro One was not asked interrogatories regarding the feasibility and impacts of making specific adjustments to its proposed capital expenditure plan and within the test year period. No evidence was adduced, for example, about whether substitution of projects scheduled for execution in the test years would have greater, equal or lesser impacts. No evidence was adduced concerning rate impacts or abilities to address specific projects intended to improve reliability in Anwaatin communities,

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<sup>3</sup> Exhibit I-10-1.

<sup>4</sup> Exhibit I-10-2.

<sup>5</sup> Exhibit I-10-3.

<sup>6</sup> Exhibit I-10-4.

<sup>7</sup> Exhibit I-10-5.

and whether their incremental inclusion or acceleration of investments already planned for facilities serving communities represented by Anwaatin would be in the best interests of ratepayers. Hydro One submits that such evidence would reasonably be necessary for the Board to make an informed decision about whether Hydro One's applied-for capital expenditure plan should be altered and carried out in a way that "earmarked" capital expenditure to prioritize investments to the exclusion of other projects or in addition to those projects.

8. Furthermore, Anwaatin's direct evidence did not identify or address specific transmission replacement or refurbishment projects sought to be carried out during the test year period and to address transmission reliability concerns. Dr. Richardson's evidence, again, focused on the need for greater consultation.
9. Dr. Richardson admitted that he is a sociologist, experienced with project-based consultation, and not an engineer. His expertise did not concern the topic of transmission planning, transmission facility design or work execution or, transmission reliability.<sup>8</sup> The purpose of his evidence was to serve as a voice for First Nation communities and to describe effects arising from service outages. This point was also clearly articulated in Anwaatin's video evidence. Dr. Richardson's evidence provided recommendations about greater consultation, not the assessment or merits of specific transmission investments and the timing of such investments.

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<sup>8</sup> See Procedural Order No. 4 dated October 28, 2016, at pages 4 and 5: "Dr. Richardson's CV is attached to the Anwaatin Letter. While Dr. Richardson is an experienced consultant, there is little, if anything, in his CV to establish that he has any special expertise related transmission system reliability issues. [...] The OEB is not persuaded that the type of information that ED and Anwaatin propose to present lends itself to any particular expertise possessed by Mr. Lusney or Dr. Richardson. The OEB does not accept either of these witnesses as experts in matters related to transmission losses or system reliability."

10. “Ear-marking budgeted capital” for expenditure in a particular test year would reasonably require the Board to have evidence before it which supported the quantum proposed and the projects that are intended to be carried out in respect of that expenditure level. An opportunity to put that evidence to Hydro One and for Hydro One to provide its views would also be necessary.
11. The “earmarking” of capital expenditures for execution in a test year period would represent a fundamental alternation to the envelope approach Hydro One proposed and which the Board has approved in the Transmission Decision. For the Board to assess the merits of this approach, a complete evidentiary record allowing comparison to what Hydro One proposed and what Anwaatin proposes would be necessary.
12. Anwaatin’s cross-examination of Hydro One’s witnesses also did not materially address the above-noted issues.
13. The discussion between Hydro One’s witnesses and Anwaatin counsel found at Volume 7 of the Transcript<sup>9</sup> addressed the following topics:
  - (a) reported frequency and duration outage metrics for Hydro One’s northern Ontario, southern Ontario and First Nation communities and compared historically and to statistics maintained by the Canadian Electricity Association.<sup>10</sup>

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<sup>9</sup> As referenced and relied on at footnote 22 of the Anwaatin Factum.

<sup>10</sup> Transcript Volume 7, page 147, line 1 to page 163 line 2.

- (b) The age of specific transmission assets serving Anwaatin communities.<sup>11</sup>
  - (c) Clarifications provided regarding breaker refurbishments and the impact on useful service lives and expected service life metrics.<sup>12</sup>
  - (d) Clarifications provided regarding the expected timing of (a) A4L conductor replacement in 2021; and (b) replacement A4L protection equipment in 2017 and 2018.<sup>13</sup>
14. Anwaatin counsel questioned Anwaatin-related transmission refurbishment and replacement projects contained in the business plan for the test year period.<sup>14</sup> Mr. Ng explained that protection systems at the Alexander SS are included in the 2017 and 2018 timeframe,<sup>15</sup> and further explained that replacement of sections of the A4L conductor was scheduled to be completed by 2021.<sup>16</sup> He said that wood poles along the A4L were included as part of Hydro One's transmission wood pole replacement carried out during the test years and explained that wood pole replacements could improve reliability.<sup>17</sup> Mr. Ng also explained that investment decisions are not made based on a comparison of asset age to expected service life, but rather on asset condition assessments. Expected service life was described to be a "quick screening metric."<sup>18</sup> Hydro One's evidence concerning the A4L circuit was provided in

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<sup>11</sup> Transcript Volume 7, page 163, line 23 to page 168.

<sup>12</sup> Transcript Volume 7, page 164-168.

<sup>13</sup> Transcript Volume 7, pages 168-169.

<sup>14</sup> Exhibit I-10-5, Transcript Volume 7, page 171-173.

<sup>15</sup> Transcript Volume 7, page 173-174.

<sup>16</sup> Transcript Volume 7, page 173, lines 16-18.

<sup>17</sup> Transcript Volume 7, page 176.

<sup>18</sup> Transcript Volume 7, page 167.



Anwaatin Interrogatory Response #5. Hydro One's evidence was that "a portion of this line is scheduled for refurbishment in 2017-2022 business plan. Some sections require assessments".<sup>19</sup>

15. Anwaatin's testing of the timing of these investments was limited.<sup>20</sup> The questions posed concerned whether efficiencies would be achieved if A4L conductor replacement project were coordinated and occurred at the same time as the A4L protection equipment refurbishment projects scheduled to take place in the test period.
16. Mr. Ng's evidence, again, was very clear. He explained that this could not take place, as the work activities for each of these projects involved "totally different locations, totally different workforces, [and] totally different undertaking".<sup>21</sup>
17. No further questions were asked about the timing of project or program investments. No evidence was on the record about the ramifications of earmarking more capital expenditure by accelerating the A4L conductor project or whether other transmission projects and programs could be implemented within Hydro One's proposed work execution program for the test year period.
18. The Anwaatin factum filed January 16, 2018 (the "**Anwaatin Factum**") also refers to concerns regarding M9K assets situated at the Moosonee Substation. In response to undertakings provided during the Technical Conference, Hydro One's evidence was

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<sup>19</sup> Exhibit I Tab 10 Schedule 5 Page 8.

<sup>20</sup> Transcript Volume 7, page 168-169.

<sup>21</sup> Transcript Volume 7, page 169, lines 10-12.

that M9K protection systems were nine years old and had an expected service life of 20 years, and for this reason, there was no near term plan to replace.<sup>22</sup>

19. Paragraph 11 of the Anwaatin Factum asserts that the EB-2016-0160 evidentiary record showed:

- (a) “the frequency of momentary interruptions, frequency of sustained interruptions, duration of sustained interruptions, delivery point unreliability, customer delivery point performance outliers, and customer delivery point standards for the Anwaatin First Nations Communities were up to 20 times worse than: (i) the Hydro One service territory average and (ii) other northern and remote communities;
- (b) transmission system reliability trends for the last 10 years are generally getting worse in the Anwaatin First Nations Communities;
- (c) there is an annual backlog of preventive maintenance for transmission lines in the Anwaatin First Nations Communities;
- (d) there are a number of transmission assets in sub-optimal condition in the Anwaatin First Nations Communities; and
- (e) many of Hydro One’s transmission assets in or serving the Anwaatin First Nations Communities are beyond their useful life, their planned replacement date and their anticipated replacement date.”

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<sup>22</sup> Exhibit TCJ2.10.

20. Hydro One submits the breadth of the above-noted assertions requires careful consideration and comparison to the evidentiary record.

Reliability statistics

21. Discussion of the reliability statistics listed in paragraph 11(a) of the Anwaatin Factum occurred in cross-examination.<sup>23</sup> Hydro One agreed with Ms. DeMarco that it was fair to say Anwaatin average total number of interruptions per delivery point is three times greater than the Hydro One system average.<sup>24</sup> Regarding SAIDI, Ms. DeMarco confirmed with Hydro One's witness that SAIDI statistics (i.e. average durations) for First Nation communities was three times more than for Hydro One's Northern system.<sup>25</sup> Hydro One confirmed with Ms. DeMarco that Delivery Point unreliability index for points serving First Nation Communities, relative to all other points serving Hydro One's northern system, was eight times higher but over time averaged to four times.<sup>26</sup> At no time did Anwaatin counsel put to Hydro One's witnesses information or questions purporting to show reliability differences in the amounts now found in Paragraph 11 and repeated at Paragraph 32. The assertions now made by Anwaatin are, at the very least, inconsistent with the questions asked by Anwaatin and answered by Hydro One's witnesses.

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<sup>23</sup> Transcript Volume 7, page 153 line 3 to page 163 line 23.

<sup>24</sup> Transcript Volume 7, pages 155 line 28 -156 line 10.

<sup>25</sup> Transcript Volume 7, page 160 lines 6 to 161 line 4.

<sup>26</sup> Transcript Volume 7, page 161 line 28 to 162 line 5.

Transmission system reliability trends

22. Hydro One's evidence regarding 10-year reliability trends in Anwaatin communities was provided in Exhibit I-10-5 and TCJ2.5.<sup>27</sup> Questions regarding 10-year trends shown in Exhibit I-10-5 were not put to Hydro One's witnesses by Anwaatin. On their face, each graph depicts different conclusions: duration of sustained delivery point interruptions and delivery point unreliability index show upward trends over 10 years. Frequency of sustained delivery point interruptions and frequency of momentary delivery point interruptions show downward trends over the same period.

Transmission line preventive maintenance

23. Hydro One's evidence regarding the status and backlog of all transmission lines preventive maintenance in areas identified by Anwaatin was provided in in Exhibit I-10-5, page 5 of 8. Vegetation management was described to be "up to date". Overhead Lines Maintenance was described to be "up to date", except for thermovision for M9K and M3K circuits, which tasks were scheduled to be carried out in 2017. Overhead Lines Condition Assessments also indicated that 28.3% of the lines required assessment, which was less than the system-wide average of 31%. Finally, 1.4% of all wood poles used for these transmission lines required assessment, which was less than the system-wide pole assessment of 6%. Based on the foregoing, the evidence does not support the statement made by Anwaatin at paragraph 11(c) in its Factum.

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<sup>27</sup> Trend lines for the 10-year period were included in Exhibit I-10-5 pages 2-4.

Condition of transmission assets

24. Anwaatin Interrogatory 5 asked Hydro One to provide a list of high risk assets in sub-optimal condition in its community.<sup>28</sup> Hydro One's response was clear: there are no high risk transmission class transformers that supply customers in the Anwaatin communities. Regarding transmission conductors, Hydro One stated that 70 km of its A4L transmission circuit was nearing end of life. For this reason, this part of the conductor is now being planned for refurbishment in the next five years. Hydro One's planning for the refurbishment of this conductor was not challenged or called into question during the evidentiary proceeding.

Transmission asset replacement planning

25. Hydro One submits that there was no evidence on the record to support the view, as stated in Paragraph 11(e) of Anwaatin's Factum, that transmission assets in or serving the Anwaatin First Nations Communities are beyond their useful life.
26. If the intended comparator is expected service life, then Hydro One can agree with this statement.
27. However, as noted above and stated by Mr. Ng in his exchange with Ms. DeMarco, expected service life is not what determines investment decisions. It is a "quick screening metric" used in the first screening process and in context of how many assets within a particular fleet are beyond the fleet expected service life. Only after

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<sup>28</sup> Exhibit I-10-5, page 2.

this assessment does Hydro One proceed to consider the specific asset condition and deteriorations or any other factors that warrant replacement.<sup>29</sup> The decision to replace an asset is always based on condition assessment.<sup>30</sup>

28. In light of these circumstances, Hydro One submits that the evidentiary record cannot reasonably be interpreted in the manner articulated in the Anwaatin Factum. The Board's Decision to have effectively rejected Anwaatin's final argument submissions of "earmarking" capital expenditures, is, based on the evidentiary record, supportable and reasonable.

### **III. Impracticalities of Anwaatin's Sought Relief**

29. Hydro One understands Anwaatin's motion and factum to be seeking to have Hydro One directed to effectively carry out investments within Anwaatin communities within the test year period where such investments are the result of an "earmarked" capital amount.
30. The practical realities of this request must be considered. There are now but 10 months remaining in the test period. The planning and work execution of unspecified projects and programs intended to meet an arbitrary and untested "earmarked" capital amount can and would reasonably cause considerable incremental process, change, and uncertainty with the already scheduled work program and thus cause inefficiencies in the execution of work projects and programs underway or planned to be executed in

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<sup>29</sup> Transcript Volume 7, page 167 lines 3-9.

<sup>30</sup> Transcript Volume 7, page 167 lines 15-16.

this short remaining window of time. The Board has no assurance, particularly from the evidentiary record, that the imposition of Anwaatin's requested changes is in the best interests of all ratepayers.

#### **IV. An Alternative Approach**

31. While Hydro One submits that the relief sought by Anwaatin should not be granted, it is nonetheless is extremely mindful and sensitive to the views expressed by the First Nation community members represented by Anwaatin. Hydro One commends Anwaatin on its advocacy of the disproportionate impacts to First Nation communities caused by transmission outages. These issues are now matters of heightened awareness and ones which Hydro One's new senior leadership team intends to address moving forward.
32. In this calendar year, two significant applications will be considered by the Board: Hydro One's Distribution Rates Application (EB-2017-0049) (the "**Distribution Proceeding**") and the next Hydro One transmission rates application.
33. In the Distribution Proceeding, Hydro One's evidence is that system reliability and concerns about the frequency of power outages, unreliable power and degrading condition of Hydro One assets on reserve are of foremost concern.<sup>31</sup> The Board has imposed a new issue to its Issues List (Issue 6) which reads "Does Hydro One's First

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<sup>31</sup> EB-2017-0049 Exhibit A Tab 4 Schedule 2 at pages 4 (lines 7-10) and pages 6-7 (lines 23-17).

Nation and Métis Strategy sufficiently address the unique rights and concerns of Indigenous customers with respect to Hydro One's distribution service?"<sup>32</sup>

34. Changes are being made to the manner in which Hydro One carries out its investment decisions. Initiatives to improve system reliability to First Nation communities is a priority, and Hydro One will, going forward, be implementing a three-pronged strategy that consists of: increasing capital investments and replacing equipment that affects reliability; leveraging technology to allow Hydro One to better detect, limit the scope of, and remotely respond to certain types of outages; and reducing planned outages by bundling work.<sup>33</sup>
35. Anwaatin is an active party in the Distribution Proceeding. Hydro One fully expects the hearing process will provide it with the opportunity to examine how these changes will impact the communities it represents.
36. With regard to the upcoming transmission rates proceeding, while Hydro One's application has not yet been filed, it is reasonable to expect consideration of similar issues as they concern transmission system reliability applicable to First Nation communities and ways in which Hydro One intends to address and achieve improvements in the future.
37. All of this leads to the following conclusion: the concerns and issues raised by Anwaatin in the EB-2016-0160 proceeding have not been ignored: they have informed

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<sup>32</sup> EB-2017-0049 "Decision on Issues List and Interim Rates and Procedural Order No. 2 dated December 1, 2017 at page 7.

<sup>33</sup> EB-2017-0049 Exhibit A Tab 4 Schedule 2 at PDF page 7 lines 13-17.



and will continue to inform the changes that Hydro One is making, going forward. The upcoming hearing processes can and should provide an effective forum for Anwaatin and others to further their positions and needs; to test and potentially advance alternative solutions; and to collaborate further on ways to improve system reliability concerns in cost-effective ways. The Board can and should determine that these next proceedings are a far better forum for Anwaatin to utilize as compared to a rehearing into the EB-2016-0160 evidentiary record wherein any change in relief or directions made to Hydro One is not likely to have significant, if any, impact.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 29<sup>th</sup> day of January, 2018.

*Signed in the original*

Gordon Nettleton

McCarthy Tétrault LLP

Counsel for Hydro One Networks Inc.

*Signed in the original*

Michael Engelberg

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