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February 27, 2018

VIA RESS, EMAIL AND COURIER

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

Dear Mr. Walli

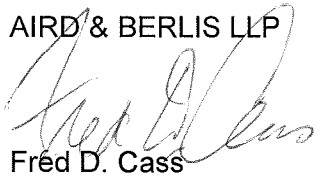
**Re: Hydro One Networks Inc. (Hydro One) –
Lake Superior Link Project Leave to Construct Application**

Attached is a Notice of Motion filed on behalf of Upper Canada Transmission, Inc., operating as NextBridge Infrastructure, in respect of Hydro One's application for leave to construct the Lake Superior Link Project.

If you have any questions about the Notice of Motion, please do not hesitate to contact me.

Yours truly,

AIRD & BERLIS LLP



Fred D. Cass

FDC/pa

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*;

AND IN THE MATTER OF an Application by Hydro One Networks Inc. pursuant to s. 92 of the *Act* for an order or Orders granting leave to construct new transmission facilities (“Lake Superior Link”) in northwestern Ontario;

AND IN THE MATTER OF an Application by Hydro One Networks Inc. pursuant to s. 97 of the *Act* for an Order granting approval of the forms of the agreement offered or to be offered to affected landowners.

NOTICE OF MOTION

Upper Canada Transmission, Inc. operating as NextBridge Infrastructure (“NextBridge”) will make a motion in this proceeding to the Ontario Energy Board (the “Board” or the “OEB”) to be heard at the premises of the Board at 2300 Yonge Street, Toronto, Ontario, on a date, at a time and in such manner as may be determined by the Board.

PROPOSED METHOD OF HEARING:

NextBridge proposes that the motion be heard by the Board in writing.

THE MOTION IS FOR:

1. An order dismissing the Application filed by Hydro One Networks Inc. (“Hydro One”) on February 15, 2018 under Board docket number EB-2017-0364 for leave to construct the Lake Superior Link (referred to by Hydro One as the “Project”), hereinafter referenced as the “Hydro One Application”;
2. In the alternative, a decision or order determining that the Hydro One Application will not be processed because it is incomplete;
3. In the further alternative, a decision or order determining that the Hydro One Application does not comply with the Board’s *Filing Requirements for Electricity Transmission Applications* (the “Filing Requirements”) and suspending the Hydro One Application until Hydro One has complied with the Filing Requirements; and
4. Such further or other order or orders regarding the Hydro One Application as may be deemed necessary or appropriate by the Board.

THE GROUNDS FOR THE MOTION ARE:

5. NextBridge is a licensed Ontario electricity transmitter. It was selected by the Board as the designated transmitter for the development phase of the East-West Tie line project (the “EWT Line Project”). NextBridge is authorized by its licence to own and operate the facilities that comprise the new EWT Line Project.
6. On March 2, 2016, the Lieutenant Governor in Council issued an Order in Council (the “Order in Council”) declaring, pursuant to section 96.1 of the *Ontario Energy Board Act, 1998* (the “OEB Act”), that the EWT Project is needed as a priority project.¹ The Order in Council also indicates that the government of Ontario considers the expansion or reinforcement of the electricity transmission network in the area between Wawa and Thunder Bay with an in service date of 2020, to be a priority.²
7. NextBridge filed an application on July 31, 2017 under Board docket number EB-2017-0182 for leave to construct the EWT Line Project (the “NextBridge Application”). The NextBridge Application proposes an in-service date of December 2020 for the EWT Line Project.
8. After the filing of the NextBridge Application, the Minister of Energy (the “Minister”) issued a letter to the Independent Electricity System Operator (the “IESO”). In this letter dated August 4, 2017, the Minister noted that the decision to pass the Order in Council was based, in part, on the IESO’s need assessments. The Minister asked the IESO to update its assessment on the basis of the latest costs and system needs. The Minister said that “it would be appropriate for the IESO to review all possible options to ensure that ratepayers are protected”.³
9. On December 1, 2017, the IESO submitted its Updated Assessment of the Need for the East-West Tie Expansion to the Ministry of Energy (the “Updated Need Assessment”). In the Updated Need Assessment, the IESO concluded that Northwest capacity needs and the options to address them demonstrate that the EWT Line Project continues to be the preferred option for meeting Northwest supply needs under a range of system conditions.⁴ The IESO continued its recommendation of an in-service date of 2020 for the EWT Line Project.⁵
10. The Minister responded to the Updated Need Assessment by letter dated December 4, 2017. Among the statements made by the Minister in his letter are the following:

¹ Ontario Executive Council Order in Council 326/2016.

² *Ibid.*

³ Ontario Ministry of Energy Letter of Direction to IESO dated August 4, 2017.

⁴ IESO Updated Assessment of the Need for the East-West Tie Expansion, December 1, 2017, at p.19.

⁵ *Ibid.*

- ~ The Updated Need Assessment clearly explains the need to pursue the completion of the EWT Line Project with a 2020 in-service date.
- ~ The Government of Ontario continues to support this project to ensure long-term supply stability in the Northwest.
- ~ Given the IESO's recommended in-service date of 2020, the Minister expects the OEB will proceed in a timely manner in consideration of its performance standards for processing applications.

11. Contrary to the in service date of 2020 laid out in the Order in Council, the IESO's Updated Need Assessment, and the Minister's letter of December 4, 2017, the Hydro One Application proposes an in-service date of December 2021 for the EWT Line Project. Consequently, whether the Hydro One Application has met the Filing Requirements will need to be evaluated in the context of the proposed December 2021 in-service date in the Hydro One Application. Such an evaluation shows, at a minimum, that the Hydro One Application has not addressed the following Filing Requirements:

4.4.2.3 Evidence in Support of Need – Hydro One has not addressed how an in-service date of December 2021 meets the need for the EWT Line Project. Hydro One relies on sources that recognize a need for the project by the end of 2020.⁶ The Hydro One Application is incomplete because Hydro One's Evidence in Support of Need has no connection to its proposal for a December 2021 in-service date.

4.3.6 System Impact Assessment ("SIA") – the Application does not include a final SIA that has studied an in-service date of 2021 and studied Hydro One's new transmission route and design, which includes the use of a four circuit, guyed wire transmission tower design for 35 kilometers and a 15 day continuous outage of the existing EWT Line. Hydro One acknowledges this deficiency in Exhibit F, Tab 1, Schedule 1 at page 1.

4.4.7 Customer Impact Assessment ("CIA") – the Hydro One Application does not include a CIA, which is contingent on the completion of the SIA. Hydro One acknowledges this deficiency in Exhibit G, Tab 1, Schedule 1 at page 1.

12. Further, Hydro One has not provided the requisite evidence showing the proposed 2021 in-service date is achievable. Hydro One has relied on a number of key assumptions that Hydro One plainly states "are critical to the completion of the

⁶ Hydro One Application, Exhibit B, Tab 1, Schedule 1, at p.1.

Project, both with respect to the schedule and overall costs”.⁷ Hydro One says that if these assumptions do not materialize, it will not be able to complete the Project as proposed in the Hydro One Application.⁸

13. Among the assumptions Hydro One asserts in its application that are critical to its ability to meet a December 2021 in-service date are:

(a) that the Ministry of Environment and Climate Change (“MOECC”) will work collaboratively with Hydro One “to implement a regulatory measure, such as a Cabinet exemption” to typical Environmental Assessment (“EA”) requirements;

(b) that NextBridge’s “EA-specific development work” will be made available to Hydro One, which Hydro One says is “critical to mitigate ratepayer costs and ensure a timely in-service date for the Project”; and

(d) that its Application is conditional on it finalizing agreements with directly impacted indigenous communities to be established on mutually agreeable terms “within a short period of time” from receipt of OEB approval.⁹

14. With regard to its assumption that NextBridge’s “EA-specific development work” will be made available to it, Hydro One asserts that the development work carried out by NextBridge for the EWT Project is “now in principle owned by all transmission customers”.¹⁰ However, there is no principle that NextBridge’s development work, including “EA-specific development work”, is “owned” by transmission customers. NextBridge’s EA is its own property.

15. NextBridge’s EA is proponent-specific and, like any other proponent, it is necessary for Hydro One to carry out its own EA and consultation process. Further, Hydro One proposes to replace existing double circuit towers in Pukaskwa National Park (the “Park”) with four circuit guyed towers and to convert the existing transmission line through the Park to a four-circuit line. To do this, Hydro One will be required to, among other things, complete either a Basic or Detailed Impact Assessment under section 67 of the *Canadian Environmental Assessment Act (2012)* or equivalent, as well as meet Indigenous consultation obligations in relation to the lands within the Park, which is not required for NextBridge’s proposal.

⁷ *Ibid.*, at p.6.

⁸ *Ibid.*

⁹ *Ibid.*, at pages 6 and 7

¹⁰ *Ibid.*, at Exhibit B, Tab 1, Schedule 1, p.10.

16. Hydro One further qualifies its ability to achieve a 2021 in-service date by stating it is contingent on OEB approval by October 2018¹¹, NextBridge EA approval by October 2018¹², MOECC approval of the route changes by June 2019¹³, Parks Canada approval of the construction of 35 kilometers of new transmission towers with four circuits and guyed wires¹⁴, and that Hydro One starts construction in July 2019¹⁵.
17. Hydro One's proposal to meet an in-service date of December 2021 is based on a number of key assumptions and qualifications, which put into question the viability of its in-service date, and requires that any Evidence in Support of Need, SIA and CIA for its Project consider the likelihood that the in-service date may be extended by months or years. Therefore, the number of qualifications in Hydro One's estimated in-service date also shows the Application is incomplete.
18. The Overview (Chapter 1) of the Filing Requirements includes the following statements that are pertinent to the areas where the Hydro One Application is incomplete:
- ~ The onus is on the applicant to substantiate the need for and reasonableness of the relief it is seeking;
 - ~ The filing requirements provide the minimum information that applicants must file for a complete application;
 - ~ The OEB will consider an application complete if it meets all of the applicable filing requirements (Emphasis in original); and
 - ~ If an application does not meet all of these requirements or if there are inconsistencies identified in the information or data presented, the OEB may return the application unless satisfactory explanations for missing or inconsistent information have been provided. (Emphasis in original).¹⁶
19. In support of its motion, NextBridge relies on sections 4.5 and 4.6 of the *Statutory Powers Procedure Act*, sections 92 and 96.1 of the OEB Act and Rules 18 and 19 of the Board's *Rules of Practice and Procedure*.

¹¹ *Ibid*, Exhibit B, Tab 11, Schedule 1, at p.1.

¹² *Ibid*, Exhibit B, Tab 7, Schedule 1, at p.7.

¹³ *Ibid*.

¹⁴ *Ibid*, Exhibit C, Tab 1, Schedule 2, at p.1.

¹⁵ *Ibid*, Exhibit B, Tab 1, Schedule 1 at p.8.

¹⁶ Ontario Energy Board Filing Requirements for Electricity Transmission Applications, Chapter 1: Overview (February 11, 2016), at p.1.

THE FOLLOWING MATERIAL WILL BE RELIED UPON AT THE HEARING OF THE MOTION:

1. The Hydro One Application and the evidence filed in support of the Hydro One Application by Hydro One.
2. The NextBridge Application and the evidentiary record in EB-2017-0182, including the Updated Need Assessment and the Minister's letters to the IESO.
3. Such further and other material as the Board may permit.

February 27, 2018

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