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April 13, 2018

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

RECEIVED
APR 19 2018
ONTARIO ENERGY BOARD

Dear Ms Walli:

**Re: NextBridge motion for the dismissal of Hydro One's Lake Superior Link Application
OEB File No. EB-2017-0364
Application for Intervenor Status**

This letter of intervention is being sent on behalf of the Bamkushwada Limited Partnership ("BLP") and the following First Nations: Pays Plat First Nation, Fort William First Nation, Red Rock Indian Band, Pic Mobert First Nation and Biigtigong Nishnaabeg (the "Five First Nations"). The Five First Nations are limited partners in BLP.

BLP and the Five First Nations (together, the "BLP First Nations") request intervenor status in Ontario Energy Board ("OEB") proceeding EB-2017-0364 further to the OEB Rules of Practice and Procedure. Attached is the application in support of this request.

Yours truly,

Olthuis, Kleer, Townshend LLP

JULIE-ANNE PARISEAU FOR
KATE KEMPTON

cc. Chief Michano, Biigtigong Nishnaabeg
Chief Mushquash, Pays Plat First Nation
Chief Collins, Fort William First Nation
Chief Desmoulin, Pic Mobert First Nation
Chief Wawia, Red Rock Indian Band
Oliver MacLaren, Olthuis Kleer Townshend LLP

ONTARIO ENERGY BOARD
EB-2017-0364

BAMKUSHWADA LIMITED PARTNERSHIP ("BLP")
and
BIIGTIGONG NISHNAABEG
PAYS PLAT FIRST NATION
FORT WILLIAM FIRST NATION
PIC MOBERT FIRST NATION
RED ROCK INDIAN BAND
("Five First Nations")
(BLP and the Five First Nations being "BLP First Nations")

APPLICATION FOR INTERVENOR STATUS

To:

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

APPLICATION FOR INTERVENOR STATUS

DESCRIPTION OF THE INTERVENORS

1. BLP is a limited partnership composed of the Five First Nations, and one other (Michipicoten First Nation), which was established and operates for the purpose of participation in the East West Tie Project ("EWT"). BLP has an agreement with NextBridge Infrastructure LP ("NextBridge," the general partner of which is Upper Canada Transmission, Inc., the designated transmitter for EWT), which fulfills the requirement of aboriginal participation in this transmission project as directed by the Minister of Energy in a letter dated March 29, 2011 to the OEB. Lake Superior Link Project ("LSL") proposed by Hydro One Networks Inc. (HONI) is in direct competition with the EWT in which BLP and its constituent First Nation partners are participating.
2. The Five First Nations are all First Nations that would be affected by EWT and the LSL, as both would run through their traditional territories and impact their known and asserted rights, culture, heritage and ways of life. The Five First Nations have been and are being consulted and accommodated by Nextbridge in respect of the impacts of the EWT. They have not been consulted or accommodated by HONI in respect of the LSL.
3. In addition, Pic Mobert First Nation and Biigtigong Nishnaabeg have filed and are actively pursuing aboriginal title claims in court, both of which overlap with the Pukaskwa National Park.
4. Thus, BLP and the Five First Nations have a substantial interest in the NextBridge Motion filed for the dismissal of HONI's Lake Superior Link application.
5. BLP and the Five First Nations intend to participate actively and responsibly in the proceeding as described further in the grounds for intervention summarized below.

GROUNDINGS FOR THE INTERVENTION

Routing through Pukaskwa National Park

6. HONI's proposed LSL project depends in part on being routed through Pukaskwa National Park. Any such routing and the attendant construction and disturbance would require Crown permissions. These would trigger the constitutional duty to consult and accommodate the Five First Nations. No such consultations have occurred (by any Crown entity or by HONI), and no accommodation measures discussed let alone provided. No approvals should be issued, including any leave to construct, until such constitutional duty is fully met. Whether and if so how it could be met in the circumstances is unknown.
7. One of the circumstances in which the duty to consult and accommodate in respect of the LSL would be situated, is the fact that Pic Mobert First Nation and Biigtigong Nishnaabeg both have *prima facie* strong claims to aboriginal title over territory that

includes the Pukaskwa National Park. As per the Supreme Court of Canada's decision in *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44 on aboriginal title, significant consultation and accommodation must be completed prior to any development, and any project that proceeds without First Nation consent on claimed aboriginal title lands, may end up being terminated (or least uncertain) if and when those lands are confirmed to be subject to aboriginal title.

In-Service Date

8. As identified by the Minister of Energy on multiple occasions in the past years, an in-service date of 2020 was targeted as being a priority for the transmission line. HONI is proposing an in-service date of 2021 for its LSL project. This would impose significant costs / losses on BLP and the Five First Nations.
9. Businesses and members of the Five First Nations have invested resources and time to prepare for contracts and employment for project construction based on a 2020 in-service date. The costs and losses of a one-year delay have not been factored into the LSL.

Indigenous Consultation

10. Canadian law on the duty to consult and accommodate requires that the Crown (or the delegate of the Crown, which for the LSL is HONI) must always consult with the intent of *substantially addressing* the affected Indigenous parties' concerns.
11. When First Nations raise concerns about the impacts of a project, all good faith reasonable attempts to substantially address such concerns must be made. Concerns are addressed through accommodation measures: hence, the duty to consult *and accommodate*.
12. The duty to consult and accommodate must be met prior to and as a condition precedent of the granting of any project approval, including leave to construct. Granting approval first, with a condition subsequent that such duty will be met after, is contrary to law. Whether such duty can be met in respect of the LSL is uncertain, given the circumstances of timing that the LSL has imposed.

First Nation Rights and Jurisdiction

13. The Five First Nations are indigenous nations with their own governments. They are participating in the EWT. All Crown entities are required to act honourably and to further reconciliation with First Nations from whom much has been taken by the Crown and to whom much harm has been done. The grand purpose of section 35 of Canada's Constitution is reconciliation of aboriginal societies with the asserted sovereignty of the Crown. The LSL must be examined as to whether it enables or defeats such purpose.

INTERESTS OF THE INTERVENORS

14. Considering the above mentioned grounds for intervention, BLP and the Five First Nations have a substantial and unique interest in the present proceeding and therefore BLP First Nations request the status of an intervenor.

INTERVENORS'S INTENDED PARTICIPATION

15. BLP First Nations intend on making written and oral submissions and filing evidence in support of the above grounds. BLP First Nations might also seek to cross examine HONI on evidence submitted, but cannot specifically indicate at this point if such cross-examination will be required.

INTENTION TO SEEK COST AWARDS

16. The BLP First Nations will be requesting an award of costs for their participation in this proceeding pursuant to section 3.03 (b) and (c) of the Board's Practice Direction.

NOTICE AND COMMUNICATION

17. The BLP First Nations request that copies of all documents, correspondence and notices in connection with this proceeding be forwarded to both of the representatives listed below:

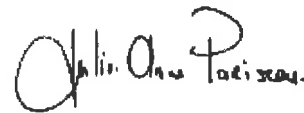
Chief Peter Collins, President of Bamkushwada

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ALL OF WHICH IS RESPECTFULLY
SUBMITTED THIS
13th day of April, 2018



JULIE-ANNE PARISEAU FOR
KATE KEMPTON
Olthuis Kleer Townshend LLP
Counsel for the BLP First Nations