

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.

**NEXTBRIDGE BOOK OF DOCUMENTS AND AUTHORITIES
FOR JUNE 4, 2018 MOTION**

	TAB	ITEM	REFERENCE
DOCUMENTS	1.	NextBridge's Notice of Motion, February 27, 2018	
	2.	OEB Procedural Order No. 1 2, Hearing of Motion, April 27, 2018	
	3.	Excerpts from NextBridge Additional Material for the motion, April 30, 2018	Attachment A, pp. 6-15; Attachment B, pp. 1-3 and 7; Attachment H
	4.	Order in Council and related Minister's Directive (March 2016)	Ex. B-1-1, Attachment 1
	5.	August 4, 2017 Minister's Directive	Ex. B-3-1, Attachment 1
	6.	December 1, 2017 Updated Assessment of the Need for the East-West Tie Expansion	Ex. B-2-1, Attachment 2
	7.	December 4, 2017 Minister's Directive	Ex. B-3-1, Attachment 2
	8.	Hydro One LSL Project Schedule and updated version of Hydro One LSL Project Schedule, as well as Evidence on Need	Ex. B-11-1, and Exhibit JT2.9, and Exhibit B-3-1
	9.	Hydro One testimony at Technical Conference in response to questions from NextBridge, May 17, 2018	2Tr.12-88
	10.	Hydro One evidence re. delay in in-service date and re. tower testing	Hydro One Additional Evidence for Motion, pp. 19-22 and 30
	11.	Excerpt from Hydro One testimony at Technical Conference in response to questions from IESO, May 17, 2018	2Tr.252-253
	12.	Hydro One LSL Project Key Assumptions	Ex. B-7-1, pp. 6-7
	13.	March 2, 2018 Letter from Ontario to Hydro One delegating procedural aspects of consultation	Hydro One Additional Evidence for Motion, Att. 9
	14.	Evidence from BLP First Nations re. consultation – Affidavits of Chief Desmoulins, Chief Michano and Chief	BLP Evidence, and 1Tr.5-27

	TAB	ITEM	REFERENCE
		Collins, and transcript of their testimony at the May 16, 2018 Technical Conference	
	15.	Evidence from Biinjitiwaabik Zaaging Anishinaabek (BZA) re. consultation – Affidavit of Chief Hardy and transcript of his testimony at the May 17, 2018 Technical Conference	BZA Evidence, and 2 Tr.8-12
	16.	Evidence from Métis Nation of Ontario (MNO) re. consultation – Written evidence of MNO, as well as letter from MNO to Hydro One dated May 14, 2018, and transcript of the testimony of Margaret Froh, Germaine Conacher and Tracy Campbell at the May 17, 2018 Technical Conference	MNO Evidence, MNO letter dated May 14, 2018 and 1 Tr.153-159
	17.	Evidence from Bamkushwada First Nation re. consultation – Affidavit of Chief Sayers, and transcript of his testimony at the May 17, 2018 Technical Conference	BFN Evidence and 2 Tr.5-14
	18.	EWT LP Argument in Chief in Designation Proceeding (EB-2011-0140), April 18, 2013	Ex. KT2.2 from Technical Conference
	19.	BLP Response to Undertaking JT1.1 (exclusivity language from agreement between BLP and NextBridge)	Ex. JT1.1
	20.	EWT LP Interrogatory Responses from Proceeding (EB-2011-0140), April 18, 2013 and Hydro One Response to Undertaking JT2.10 (exclusivity language from agreement between EWT LP and BLP)	Ex. KT2.1 from Technical Conference and Ex. JT2.10
	21.	Notice of Commencement, dated May 28, 2018; Draft Notice of Commencement of Hydro One EA Terms of Reference and Correspondence from MOECC in response (dated May 10 and 17, 2018)	Hydro One Additional Evidence for Motion, Att. 18; and Ex. J2.2 (Attachments 19 and 20). Notice of Commencement was issued after Undertaking Responses

	TAB	ITEM	REFERENCE
	22.	Excerpts from MOECC evidence for motion; and MOECC testimony at Technical Conference, May 16, 2018; and response to Undertaking JT 1.30	MOECC Evidence for Motion, pp. 1-9; and 1Tr.160-193; and Ex. JT1.30 (without attachments)
	23.	Hydro One testimony at Technical Conference in response to questions from MOECC, May 17, 2018	2Tr.202-216
	24.	Hydro One Board of Directors Presentation titled “East West Tie – Board Approval to Submit Leave to Construct”, dated December 8, 2017 and Hydro One Board of Directors Presentation titled “East West Tie – Board Approval to Submit Leave to Construct”, dated February 13, 2018	Ex. JT2.19, Attachment 3
	25.	November 27, 2017 letter from Parks Canada to Hydro One re. Pukaskwa National Park and Hydro One response to Undertaking JT2.7 (correspondence with Parks Canada re. Pukaskwa National Park routing)	Ex. C-1-2, Attachment 2 and Ex. JT2.7, Attachment 9
	26.	Hydro One Response to Undertaking JT2.13 (tower collapse)	Ex. JT2.13
	27.	Excerpts from IESO System Impact Assessment Report for LSL Project, March 28, 2018	Ex. F-1-1, Attachment 3, pp. 1-3
AUTHORITIES	28.	Rules 1 to 20 of OEB Rules of Practice and Procedure	
	29.	<i>Statutory Powers Procedure Act</i> (Ontario)	
	30.	<i>Bastien v. Egalite</i> , 2016 ONSC 7652	
	31.	EB-2011-0087 Decision, dated December 8, 2011	
	32.	<i>Georges v. Nahri</i> , 2016 ONSC 2294	
	33.	Decisions and Correspondence from Sagatay Transmission LP Leave to Construct Application and Appeal (EB-2016-0017 and EB-2017-0258)	

	TAB	ITEM	REFERENCE
	34.	EB-2008-0096 Decision and Order, June 26, 2008	
	35.	Sections 90 to 104 from <i>Ontario Energy Board Act, 1998</i>	
	36.	OEB Filing Requirements for Electricity Transmission Applications – Chapter 4 – Applications under section 92 of OEB Act	

TAB 1

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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TAB 2



EB-2017-0364

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 *OEB 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 *OEB Act* for an Order granting approval of the forms of the agreement offered or to be offered to affected landowners.

**PROCEDURAL ORDER NO. 1
HEARING OF MOTION**

April 27, 2018

On February 15, 2018, Hydro One Networks Inc. (Hydro One) filed with the Ontario Energy Board (OEB) an application for leave to construct a 230 kV transmission line running between Wawa and Thunder Bay, which it refers to as the Lake Superior Link.

On February 27, 2018, Upper Canada Transmission Inc., operating as NextBridge Infrastructure (NextBridge), filed a motion (Motion) with the OEB asking that Hydro One's Lake Superior Link application be dismissed, or in the alternative, not be processed because it is not complete or compliant with OEB Filing Requirements. NextBridge currently has a competing application for leave to construct a 230 kV transmission line running between Wawa and Thunder Bay, referred to as the East-West Tie line.¹

¹ The OEB assigned File No. EB-2017-0182 to NextBridge's application for the East-West Tie line project. Hydro One has also filed a related application for leave to construct the facilities necessary to upgrade existing transmission stations associated with the East-West Tie line project. That application has been assigned OEB File No. EB-2017-0194.

On March 6, 2018, Hydro One filed a written response to the Motion, arguing that the NextBridge Motion is without merit and should not be heard. The OEB determined that it will proceed to hear the Motion.

On April 6, 2018, the OEB issued a Notice of Hearing of Motion (Notice) setting out the process for hearing the Motion, as well as other questions that the OEB has asked the parties to address as part of the Motion. In the Notice, the OEB deemed parties granted intervenor status in the East-West Tie line proceeding as intervenors for the purpose of the Motion. Those parties that were granted cost eligibility status in the East-West Tie line proceeding are also eligible for an award of costs for their participation in the Motion. The OEB also set out a timetable for any other parties to seek leave to intervene in the Motion.

Intervention Requests

The OEB received intervenor requests from the following parties:

- Association of Major Power Consumers in Ontario (AMPCO)
- Bamkushwada L.P. and Five First Nations (BLP First Nations)
- Batchewana First Nation of Ojibways (Batchewana First Nation)
- Biinjitiwaabik Zaaging Anishinaabek (BZA)
- Ontario Ministry of the Environment and Climate Change (MOECC)
- Power Workers' Union (PWU)
- Vulnerable Energy Consumers Coalition (VECC)

AMPCO, BLP First Nations, Batchewana First Nation, BZA and VECC also applied for cost award eligibility.

The OEB received no submissions opposing these requests.

The OEB grants intervenor status to all parties listed above. The OEB also finds that AMPCO, BLP First Nations, Batchewana First Nation, BZA and VECC are eligible to apply for an award of costs under the OEB's *Practice Direction on Cost Awards*. Being eligible to apply for recovery of costs is not a guarantee of recovery of any costs claimed. Cost awards are made by way of an OEB order, typically at the end of a proceeding.

The list of parties for the Motion is attached as Schedule B to this procedural order.

Intervenor Evidence

BLP First Nations, Batchewana First Nation and MOECC have indicated that they wish to file evidence on the Motion.

BLP First Nations indicated that it intends to file evidence with respect to routing through Pukaskwa national park, the in-service date, Indigenous consultation and First Nation rights and jurisdiction.

Batchewana First Nation indicated that it intends to provide additional information about its original reserve and the history of the Batchewana First Nation, including its assertion with respect to its original reserve.

MOECC indicated that it is prepared to provide evidence on the status of discussions between Hydro One and MOECC regarding *Environmental Assessment Act* (EAA) requirements and possible exemptions.

The OEB finds that it can be assisted by the provision of the evidence as proposed by intervenors, provided the evidence is relevant to the issues listed in Schedule A. This is the same Schedule A that was attached to the OEB's Notice in this proceeding issued on April 6, 2018.

Technical Conference

Intervenors who file evidence should be prepared to attend a technical conference in which parties may ask questions of that evidence. Attendance may be in person or by teleconference. The OEB finds that a technical conference is an efficient procedural step which allows parties to understand and test the evidence in preparation for the oral hearing of the motion.

As per the Notice, the OEB had previously scheduled a transcribed technical conference to be held on May 15, 2108 to provide parties with the opportunity to ask questions arising from the evidence or materials filed. However, as intervenor evidence is now expected to be filed, the transcribed technical conference will now take place on May 16, 2018 at 9:30 a.m. and if necessary, will continue on May 17, 2018.

Oral Hearing of the Motion

As indicated in the Notice, the OEB will hear oral submissions on the Motion on May 24 and 25, 2018. There will be no further opportunity at the oral hearing of the Motion for parties to ask questions regarding the evidence filed or the answers provided at the

technical conference. After hearing the oral submissions, the OEB, however, may have questions of clarification regarding the submissions and evidence filed. The hearing schedule for May 24 and 25, 2018 will be made available in advance to all parties.

Procedural Questions about the Motion

On April 16, 2018, Hydro One wrote to the OEB posing a number of questions about the procedure for the Motion regarding:

1. What evidence will be before the OEB on the Motion and, in particular, the status of evidence filed in the NextBridge's East-West Tie application (EB-2017-0182) or Hydro One's Lake Superior Link application (EB-2017-0364).
2. Whether the OEB will provide for written interrogatories and what the scope of the technical conference will be.
3. The oral hearing and whether it would include oral evidence and cross-examination.
4. Whether intervenors would be required to file evidence on the Motion.

In response to these issues, the OEB provides further clarification as follows:

1. The evidence before the OEB in this Motion proceeding will be:
 - a. NextBridge's Motion filed on February 27, 2018 and any additional evidence to be filed by NextBridge by April 30, 2018
 - b. Hydro One's Lake Superior Link application (EB-2017-0364) filed on February 15, 2018
 - c. Hydro One's responses to the OEB's questions in the Notice to be filed by May 7, 2018
 - d. Intervenor evidence to be filed by May 7, 2018
 - e. The transcript of the technical conference scheduled on May 16 and 17, 2018 and any exhibits filed at the technical conference
2. The OEB has provided for two days for the technical conference to enable parties to ask questions and receive answers more expeditiously than if a written interrogatory process was used. The scope of the technical conference is defined by the issues that are listed in Schedule A.
3. The oral hearing on May 24 - 25, 2018 is reserved for legal argument on the Motion and is not intended for oral evidence or cross-examination. The OEB expects the parties to present their legal argument either orally at the hearing on May 24 - 25, 2018 or in writing prior to the hearing on May 24 - 25, 2018.
4. Intervenors are not required to file evidence on the Motion. However, some intervenors have indicated that they intend to file evidence on the Motion. This order provides for a schedule to file that evidence and a process for parties to ask questions about that evidence.

It is necessary to make provision for the following matters related to this proceeding. The OEB may issue further procedural orders from time to time.

IT IS THEREFORE ORDERED THAT:

1. AMPCO, BLP First Nations, Batchewana First Nation, BZA, MOECC, PWU and VECC are granted intervenor status in the Motion. The parties to the Motion are listed in Schedule B.
2. Intervenors that have already indicated that they intend to file evidence on issues as set out in the Notice, shall file that evidence with the OEB and deliver it to all other parties by **May 7, 2018**.
3. Intervenors who filed evidence shall attend the technical conference in person or by teleconference to provide parties the opportunity to ask questions arising from the evidence or materials filed by intervenors.
4. The transcribed technical conference on the Motion will take place on **May 16, 2018** beginning at **9:30 a.m.** and, will continue on **May 17, 2018** if necessary.
5. Intervenors who wish to submit their legal argument in writing rather than orally, must do so **by 9:30 a.m. on May 24, 2018**.

All filings to the OEB must quote the file number **EB-2017-0364**, be made in searchable /unrestricted PDF format electronically through the OEB's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>. Two paper copies must also be filed at the OEB's address provided below. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <http://www.oeb.ca/Industry>. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Zora Crnojacki at Zora.Crnojacki@oeb.ca and OEB Counsel, Lawren Murray at Lawren.Murray@oeb.ca.

ADDRESS

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DATED at Toronto, April 27, 2018

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

Schedule A

To

Procedural Order No. 1

EB-2017-0364

**(Exact Reproduction of Schedule A to The Notice of Hearing of Motion,
Titled "Issues for the Motion", issued on April 6, 2018)**

April 27, 2018

Schedule A

Issues for the Motion

1. Hydro One shall file evidence addressing the following matters:

Routing

- a. Please provide copies of all Hydro One existing arrangement(s) with Parks Canada that pertain to the use of the corridor for Hydro One's existing transmission line in Pukaskwa National Park.
- b. What is the status of discussions between Hydro One and Parks Canada regarding permission for Hydro One to reinforce its existing transmission towers in Pukaskwa National Park?
- c. When is a final decision expected from Parks Canada?
- d. How would cost estimates and the proposed in-service date for the Lake Superior Link change if Parks Canada were to refuse to permit Hydro One to reinforce its existing line through Pukaskwa National Park?
- e. What reliability impacts to transmission service might arise from the reinforcement of the existing transmission towers in Pukaskwa National Park, both during construction and in the long-term operation of the line?

Environmental Assessment Work

- f. What is the status of discussions between Hydro One and the Ministry of Environment and Climate Change regarding any exemption to *Environmental Assessment Act* requirements?
- g. What are the implications for Hydro One's proposed project if no exemption is forthcoming or if it cannot avail itself of the environmental assessment work performed by NextBridge?

Indigenous Consultation

- h. What Indigenous consultation obligations arise from Hydro One's proposal to build the Lake Superior Link, and specifically, from the proposed reinforcement of transmission towers in Pukaskwa National Park? How will such obligations be satisfied within the proposed project timelines?
- i. NextBridge was delegated by the Crown to carry out the procedural aspects of Indigenous consultation for the East-West Tie line project in November 2013. Has Hydro One received a similar delegation for its proposed Lake Superior Link project?

2. The OEB invites parties to address the following questions:

Relief requested by NextBridge

- a. Should the OEB grant an order dismissing Hydro One's Lake Superior Link application?
- b. Should the OEB issue a decision or order determining that the Lake Superior Link application will not be processed because it is incomplete?
- c. Should the OEB issue a decision or order determining that the Lake Superior Link application does not comply with the OEB's *Filing Requirements for Electricity Transmission Applications* and suspending that application until Hydro One has complied with those *Filing Requirements*?

Routing

- d. Hydro One's transmission licence allows the OEB to order it to expand or reinforce its transmission system in order to ensure and maintain system integrity or reliable and adequate capacity and supply of electricity. What legal or other issues may arise if the OEB were to require Hydro One to reinforce the section of its transmission system that runs through the Pukaskwa National Park and to connect with the proposed NextBridge transmission line at both borders of the Park?

In-Service Date

- e. What are the implications of Hydro One's proposed in-service date of 2021 in the context of the Priority Project OIC and subsequent correspondence and reports?
- f. Should the IESO be asked to provide any updated information regarding the in-service date necessary to serve the need and any impacts of a delay to the in-service date to 2021 or beyond?

Environmental Assessment Work

- g. Can NextBridge's environmental assessment work for the East-West Tie line project be used by Hydro One for the purpose of complying with *Environmental Assessment Act* requirements?

TAB 3

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.

NEXTBRIDGE - ADDITIONAL MATERIAL

As part of the Board’s April 6, 2018 Notice of Hearing of Motion (“Notice”), the Board concluded that it was appropriate and expedient to explore certain questions relating to factors that have a particular bearing on the proposed timelines and costs identified in Hydro One’s application.¹ In the Notice, the Board invites the parties to address the following specific questions set forth in Schedule A.

Questions 2a-c in Schedule A to the Notice relate to the relief requested by NextBridge and ask the following:

- a. Should the OEB grant an order dismissing Hydro One’s Lake Superior Link application?
- b. Should the OEB issue a decision or order determining that the Lake Superior Link application will not be processed because it is incomplete?
- c. Should the OEB issue a decision or order determining that the Lake Superior Link application does not comply with the OEB’s *Filing Requirements for Electricity Transmission Applications* and suspending that application until Hydro One has complied with those *Filing Requirements*?

Question 2g in Schedule A to the Notice relates to environmental assessment work and asks the following:

¹ EB-2017-0364 OEB Notice of Hearing of Motion date April 6, 2018 at p.3.

<p>April 20, 2018</p>	<p>MOECC responds to Hydro One's April 19, 2018 clarification letter to Messrs. Angus and Hebert of Common Voice Northwest confirming that MOECC is not working with Hydro One to finalize a regulatory measure authorizing use of NextBridge EA work:</p> <p>To confirm, the Ministry of the Environment and Climate Change (ministry) is not working with Hydro One to finalize a regulatory measure allowing the use of relevant portions of the Environmental Assessment work undertaken by NextBridge Infrastructure, while addressing required approvals for the revised route through the Park.</p> <p>MOECC goes on to reiterate that it considers the Lake Superior Link to be a new undertaking requiring completion of an Individual EA:</p> <p>The ministry would like to emphasize, as outlined in our November 14, 2017 letter to Hydro One and reiterated in the March 16, 2018 correspondence, Hydro One's proposed Lake Superior Link project is considered a new undertaking for the purpose of the Environmental Assessment Act. As such, to initiate the Individual Environmental Assessment process, Hydro One is required to submit a Notice of Commencement for a Terms of Reference to the Director of the Environmental Assessment and Permissions Branch.</p> <p>A copy of this correspondence (excluding attachments) is included as Appendix 9 to this evidence.</p>
<p>April 25, 2018</p>	<p>Hydro One responds to MOECC April 20, 2018 correspondence describing discussions Hydro One has had with MOECC in relation to regulatory options.</p> <p>A copy of this correspondence is included as Appendix 10 to this evidence.</p>

Facts Related to Hydro One Assumptions 1, 2 and 3

Regulatory Measure related to Use of NextBridge EA work

In the place of Hydro One completing its own EA work, Hydro One seeks to use the EA work completed by NextBridge in support of the Lake Superior Link project.¹¹ Hydro One communicated that it is currently working with the Ministries of Energy and Environment and Climate Change to finalize a regulatory measure to allow Hydro One

¹¹ HYDRO ONE Exhibit B, Tab 1, Schedule 1 at p.10.

the use of relevant portions of the EA work completed by NextBridge.¹² The Ministries of Energy and Environment and Climate Change have both confirmed that they are not in fact working to finalize a regulatory measure related to EA work however.¹³

Even if Hydro One were engaged with MOE and MOECC in relation to finalizing a regulatory measure to allow Hydro One to use portions of the Environmental Assessment work completed by NextBridge, a position which the ministries have both confirmed is not the case, the environmental assessment work completed belongs to NextBridge, and is not available for use as contemplated by Hydro One without NextBridge's consent. NextBridge is the owner of the environmental assessment and the analysis and data that underlies it¹⁴. NextBridge contracted environmental consultants to complete environmental assessment data collection and analysis activity and prepare an environmental assessment report and amendment based on that activity. It is a term of the consulting services agreement that NextBridge owns the copyrights and works of authorship resulting from the consulting agreement. NextBridge therefore owns the exclusive rights associated with use of the environmental assessment reports and underlying analysis and data. Consent from relevant First Nation and Métis groups would also be required in relation to authorizing Hydro One to use the traditional land use data and information collected as part of the NextBridge EA work.

In August 2010 the Board published a policy for a framework for new transmission investment in Ontario (EB-2010-0059), attached here as Appendix 11 to this evidence. NextBridge relied on this Policy in seeking designation and completing development work in relation to the EWT Line Project. The Policy does not expressly or impliedly provide that EA or other work completed as part of project development work by a

¹² Hydro One letter to Common Voice Northwest dated March 14, 2018 (Appendix 5 to this evidence), at p.2.

¹³ MOECC letter to Hydro One dated March 16, 2018 (Appendix 6 to this evidence) and MOE letter to NextBridge dated March 21, 2018 (Appendix 7 to this evidence).

¹⁴ Excepting the traditional land use data that has been collected and provided to NextBridge by 9 First Nations and the Métis Nation of Ontario, which NextBridge is expressly authorized to use.

designated transmitter loses its character as proprietary work product and becomes public property. To the contrary, the Policy highlights that an undesignated transmitter, while authorized to complete development work, would be undertaking that development at its own cost, which would not be recoverable from ratepayers.¹⁵

A regulatory measure related to use of the NextBridge EA work is not under negotiation between MOECC, MOE and Hydro One and in any event, the NextBridge EA work is not available for use by Hydro One without NextBridge consent.

Regulatory Measure Related to Exemption from Typical EA requirements

Hydro One's application further assumes that, in addition to obtaining authorization from MOECC through a regulatory measure to use NextBridge EA work, a regulatory measure is also available to exempt the Hydro One Lake Superior Link project from typical EA requirements.¹⁶

As part of the Lake Superior Link project, Hydro One has proposed routing changes of approximately 89 km¹⁷, or approximately 20% of the project route, including:

- Traversing Pukaskwa National Park (approximately 35km)¹⁸;
- Segments on each side of Pukaskwa National Park where the NextBridge EWT Line Project route is not proposed to travel (approximately 34 km to the northwest and 19km to the south-east, for a total of 53 km)¹⁹;
- Proposed T1M relocation to avoid infrastructure crossings (2-3 km²⁰); and

¹⁵ EB-2010-0059 Board Policy: Framework for Transmission Project Development Plans (August 26, 2010), at p.17 (Appendix 11 to this evidence).

¹⁶ HYDRO ONE Exhibit B, Tab 1, Schedule 1 at p.10.

¹⁷ HYDRO ONE Exhibit C, Tab 1, Schedule 1 at p.8.

¹⁸ HYDRO ONE Exhibit B, Tab 2, Schedule 1 at p.4.

¹⁹ Calculations are approximate, based on GIS analysis of existing Hydro One corridor route as shape files are not available related to the Lake Superior Link project at this time.

²⁰ HYDRO ONE Exhibit B, Tab 2, Schedule 1 at p.4.

- Temporary workspaces and access roads where locations differ from NextBridge's EWT Line Project route and construction and access proposal.

Three months before Hydro One submitted its application for leave to construct the Lake Superior Link containing Hydro One Assumptions 1, 2, and 3, the MOECC communicated to Hydro One that, in light of the changes it proposed to NextBridge's project route, Hydro One's project as a whole would likely be considered a new undertaking for the purposes of the *Environmental Assessment Act (EA Act)*, and that Hydro One's project would not likely be able to take advantage of the proposed NextBridge EA.²¹ Since that time, the MOECC has definitively confirmed that the Lake Superior Link project is considered a new undertaking for the purpose of the *EA Act* and as such, Hydro One is required to submit a Notice of Commencement for a Terms of Reference to the Director of the Environmental Assessment and Permissions Branch to initiate the Individual Environmental Assessment process in relation to the Project.²²

That Hydro One may choose to pursue an alternative regulatory mechanism (i.e. a declaration order) at a future time instead of completing the Individual EA process does not alter the fact that MOECC considers an Individual EA to be required in relation to the Lake Superior Link project.

A regulatory measure to exempt the Hydro One Lake Superior Link project from typical EA requirements does not currently exist and has not been applied for by Hydro One. MOECC has clearly stated that an Individual EA process is required by Hydro One in relation to the Lake Superior Link project.

Non-MOECC EA requirements

Whatever MOECC may or may not be prepared to exempt Hydro One from completing in relation to Ontario EA requirements, MOECC is not the only provincial ministry whose

²¹ MOECC letter to Hydro One dated November 14, 2017 (Appendix 2 to this evidence).

²² MOECC letter to Hydro One dated April 20, 2018 (Appendix 9 to this evidence).

jurisdiction is engaged by the Lake Superior Link project. The Class EA requirements of both the Ministry of Natural Resources and Forestry and Infrastructure Ontario are also engaged by the Hydro One Lake Superior Link project, requiring additional ministerial decision making related to satisfaction of Class EA requirements.

MOECC is also not in a position to exempt Hydro One from completing federal EA requirements. Parks Canada outlined to Hydro One a range of next steps which included, among other things, submission of a written plan for construction and completion of either a Basic or Detailed Impact Assessment (IA) under section 67 of the CEAA 2012.²³ A Basic IA is usually conducted using a standard Parks Canada template that enables an IA practitioner to lay out how a proposed project will interact with the environment, particularly with valued components such as specific natural or cultural resources. The length of time typically required to complete a Basic IA would be a minimum of 3 months, with the level of detail required contingent on the level of complexity and risk posed by the project. Generally, projects that do not generate significant concern from the public and stakeholders in relation to potential effects of the project proposal are assigned to this pathway. A Detailed IA is the most comprehensive level of assessment and is intended for complex projects that require in-depth analysis of project interactions with valued components that may affect a particularly sensitive environmental setting or threaten a particularly sensitive valued component. These types of projects may lead to high levels of concern from public, stakeholders and Indigenous peoples in relation to the potential for adverse effects. A Detailed IA may require evaluation of alternatives, expert advice, and development of a follow-up monitoring program. In addition, this level of IA requires public engagement and consultation which includes notification to relevant parties and an opportunity to review and comment on any draft impact assessment. The length of time typically required to complete a Detailed IA ranges from 6-12 months. It is not clear whether Hydro One has initiated preparing such plans and completing such assessments. Similar federal EA

²³ HYDRO ONE Exhibit C, Tab 1, Schedule 2, Attachment 2.

processes would also apply in relation to the areas where the Lake Superior Link is proposed to cross federal reserve lands, specifically the Pays Plat First Nation Reserve and the Michipicoten First Nation Reserve.

EA and Permitting requirements and timelines

Construction of a new 230kV transmission line that is over 50km in length requires completion of an Individual EA for the undertaking.²⁴ Hydro One acknowledges that the Lake Superior Link is subject to an Individual EA.²⁵ Depending on the complexity of the project, the conduct of an Individual EA can take anywhere from 15 months to 3 years to complete from start to finish, allowing time for engagement, conduct of studies across multiple seasons, and response to comments from stakeholders and regulatory agencies. Based on the fact that no other relief is available, Hydro One, like any other proponent, must start at the beginning of the process with issuance of a Notice of Commencement of Preparation of a Terms of Reference, and follow the prescribed steps. The MOECC's Code of Practice for Preparing and Reviewing Terms of Reference for Environmental Assessments in Ontario includes a detailed schematic of the process and is included here as Appendix 12. Consultation expectations are also outlined for individual EAs in the same Code of Practice, attached here at Appendix 13.

Attached to this evidence as Appendix 14 is a potential schedule that incorporates the timelines for environmental assessment of the Lake Superior Link Project in accordance with the MOECC's published Environmental Assessment Process timelines.²⁶ This potential schedule assumes minimum notice periods, no submission of a Draft EA for MOECC or public review and comment, no delays, no requests for additional

²⁴ *Electricity Projects Regulation, Ontario Regulation 116/01.*

²⁵ HYDRO ONE Exhibit C, Tab 1, Schedule 2 at p.2.

²⁶ As of April 30, 2018, the MOECC online list of Environmental Assessment projects, available at https://www.ontario.ca/search/search-results?external_tag=Environmental%20Assessment%20Project, does not refer to any Notice of Commencement being filed in relation to the Lake Superior Link project, or make any reference to the Lake Superior Link project at all.

information from any party and no extensions from minimum timelines to reflect holiday periods or otherwise. In accordance with this schedule, the earliest possible date for Individual EA approval of the Lake Superior Link project is July 2019. If Hydro One experiences land access limitations, has to complete multi-year environmental studies, is requested by MOECC to complete a full alternatives assessment as NextBridge was, or experiences any number of other unanticipated circumstances that routinely arise in the context of project development, then the timelines would be considerably longer.

Even by its own evidence, Hydro One does not anticipate obtaining EA approval as needed before August 2019 – Hydro One states that:

For the route alternative proposed by Hydro One, it is assumed that an approval process can be agreed upon which will allow approximately 12 months for Hydro One to complete the necessary study, consultation and reporting to meet the EA obligations and approximately six months for regulatory approval.²⁷

The Lake Superior Link project schedule and cost proposal are expressly contingent on this assumption.²⁸

In the circumstances and based on the information available, Hydro One cannot obtain EA approval for the Lake Superior Link project by June 2019 as Hydro One states is required in order to proceed with the project in accordance with the application.

Consultation

Meaningful engagement is an important part of the development of any project, and takes time to execute properly. Consultation includes engaging with local elected officials, municipalities and related associations, Indigenous communities, government agencies, affected landowners, local interest groups and the general public, and represents a required component of environmental assessment processes.

²⁷ HYDRO ONE Exhibit C, Tab 1, Schedule 2 at p.2.

²⁸ *Ibid.*

At the time of filing its application in February 2018, Hydro One had not yet undertaken any consultation in relation to the Lake Superior Link Project – in accordance with Hydro One’s project schedule, First Nations & Métis Consultation and Consultation with Stakeholders was scheduled to start February 2018.²⁹

That the Lake Superior Link project has been developed by Hydro One in the absence of consultation and engagement with stakeholders and Indigenous groups is contrary to Hydro One’s own advice and recommendation. Attached to this evidence as Appendix 15 is an excerpt from the Hydro One application for designation to develop the EWT Line Project, submitted January 4, 2013 (Hydro One Designation Application).³⁰ As part of the Hydro One Designation Application, Hydro One highlighted that experienced developers understand that input from the environmental assessment, public consultations and First Nations and Métis consultation can significantly affect line routing and design.³¹ Hydro One goes on to declare that a new line cannot be meaningfully designed in the absence of these critical inputs³², and that any transmitter that commits to a design, without first considering these fundamentals, risks serious delays in project development and construction to accommodate design and route changes.³³ Relevant passages are excerpted below.

Historically, the first step in a transmission project has been to determine the technical design for the new line, assuming that the necessary right of way would be readily available regardless of the height of the towers, the span lengths, the width of the corridor and the location of the line. However, this approach has often proven not to be successful. Experienced developers now understand that the input from the environmental assessment, public consultations and First Nations and Métis consultation can significantly affect the line routing and design. Indeed a new line cannot be meaningfully designed in the absence of these critical inputs. Any transmitter that commits to a design, without first considering these fundamentals, risks serious delays in project development and construction to accommodate design and route changes. For example, a theoretical desktop design developed in the absence of environmental studies

²⁹ HYDRO ONE Exhibit B, Tab 1, Schedule 1 at p.12; HYDRO ONE Exhibit B, Tab 11, Schedule 1 at p.1.

³⁰ Hydro One applied for designation to build the EWT Line Project in partnership with Great Lakes Power Transmission EWT LP and Bamkushwada LP, under the name “EWT LP”. EWT LP was not selected to complete the development work for the EWT Line Project.

³¹ Hydro One Designation Application at Part B- Exhibit 6, p. 8 of 21, excerpted at Appendix 15 to this evidence.

³² *Ibid.*

³³ *Ibid.*

and consultation may have latent fatal flaws that prevent the Minister of the Environment from giving approval to proceed. Any design, regardless of its theoretical technical excellence and cost-effectiveness, that is environmentally unacceptable to the Minister cannot legally be built.³⁴

...

Design assumptions that do not take into account the public preferences are rarely validated, especially where the developer has finalized its designs and routing in advance of public consultation.³⁵

Hydro One considers the Lake Superior Link to constitute a “transfer of proponentcy” scenario.³⁶ Proponent-specific relationships are critical in the context of consultation. Even where an undertaking is identical in all things but for the proponent, which is not the case here, a record of consultation is proponent-specific and is not appropriately transferrable to another proponent. MOECC has been clear that it does not consider the Lake Superior Link to be a transfer of proponentcy, but rather a new undertaking³⁷, which crystalizes the need for extensive project-specific consultation related to the Lake Superior Link project by Hydro One.

Introducing consultation activities in relation to an additional project proposal is likely to put a strain on community and stakeholder resources (to review applications, attend meetings and open houses) and may lead not just to consultation fatigue, confusion and frustration, but also delay.

Facts Related to Hydro One Assumption 4

Hydro One’s application is expressly contingent on finalizing agreements with directly impacted Indigenous communities within a short period of time (in the order of 45 days) from receipt of OEB approval. With respect to Indigenous economic participation, agreements would need to be negotiated with the potentially affected Indigenous communities in advance of meaningfully engaging in relation to the project. Hydro One

³⁴ *Ibid.*

³⁵ Hydro One Designation Application at Part B- Exhibit 6, p. 9 of 21, excerpted at Appendix 15 to this evidence.

³⁶ HYDRO ONE B.7.1 Table 5 at p.11.

³⁷ MOECC letter to Hydro One dated April 20, 2018.

acknowledges the need to explore and discuss various benefits, including, but not limited to capacity funding to participate in the engagement process, procurement and subcontracting opportunities, job training, employment and equity participation.³⁸ Hydro One does not intend to implement economic participation activity with Indigenous communities until Hydro One is designated to construct the line.³⁹

In NextBridge's experience, it is unrealistic to meaningfully engage and negotiate economic participation in relation to a new project with eighteen First Nations and Métis groups within the timelines proposed by Hydro One.

³⁸ HYDRO ONE H.1.1 at p.5.

³⁹ HYDRO ONE B.1.1 at p.11; HYDRO ONE H.1.1 at p.3; and HYDRO ONE H.1.1 at p.5;

Memorandum

DATE: April 30, 2018

TO: NextBridge Infrastructure LP

FROM: Robert E. Nickerson, P.E., Consulting Engineer

RE: Review of Proposed Structure Modifications for the Ontario East-West Tie Line Project by Hydro One Networks Inc.; EB-2017-0364

Overview

I have been requested by NextBridge Infrastructure LP (NextBridge) to review Hydro One Networks, Inc.'s (Hydro One) proposal to replace a two circuit tower design with a quad circuit tower design for 87 towers for approximately 35 kilometers (km) in Pukaskwa National Park.

My professional background is in the analysis, design, and full-scale testing of transmission structures. My career includes design of latticed towers and tubular poles for a fabricator, research, and full-scale testing at the Electric Power Research Institute (EPRI) Mechanical Research Center and as independent consultant working with utilities in developing upgrades for existing transmission lines and the design of new latticed structures for new lines. My biography and experience are attached to this memorandum.

My review included Hydro One's Lake Superior Link Leave to Construct Application (Application), along with the IESO's System Impact Assessment Report (Additional Evidence) and Hydro One's tower designs that were provided to me by NextBridge. It is my understanding the tower designs were shown by Hydro One to the public at an open house event on March 15, 2018 in Thunder Bay at the Victoria Inn. (See pictures and drawings attached.)¹ The drawings are an illustration of what is believed to be Hydro One's basic design.

Unfortunately, as explained in this memorandum, even with this information, the Hydro One Application does not provide sufficient information to determine that it has followed a prudent design and testing regime for this relatively unique quad circuit tower design, particularly since Hydro One proposes to use existing foundations and the fact that the towers are located in a region that has extreme weather/with severe icing.

¹ The attachments to this memorandum initially provide the picture of the tower drawing presented at the open house, then the original tower drawing used for the existing two circuit transmission line through the Park, and, thereafter, I present a series of drawings developed by NextBridge, including a summary of the side slopes through the Park, to technically depict the quad circuit design, including showing the likely range of some anchor guys.

References to Hydro One Network Inc.'s Application and Evidence

Hydro One proposes the following:

Within the Pukaskwa National Park, the existing Hydro One, double-circuit X7S structures will be replaced with new guyed, four circuit lattice-steel towers. The towers have been designed to support the existing Drake 795 conductor and the new Grackle 1192 conductors and also cause minimal impact to the National Park. The new four circuit structures have been designed to stand on the existing foundations utilized by the current double-circuit structures, while the tower guys will restrain the higher overturning moment caused by the four circuits on the longer crossarms.

Application, Exhibit C, Tab 2, Schedule 1, page 3.

Later in the Application Hydro One states "... anti-cascade structures will be installed every 10 km. These structures can withstand all conductors broken on one side at maximum ice condition in the area." Exhibit C, Tab 2, Schedule 1, page 4. In Table 4 at Exhibit B, Tab 7, Schedule 1, page 8 Hydro One also states "Scheduled 15-days continuous double-circuit outage to replace (87) towers in Pukaskwa National Park."

Further in the Additional Evidence at page 2, Executive Summary, Findings, the IESO findings include the following:

7. Extreme contingencies that result in the loss of the four 230 kV circuits of the East-West Tie such as failure of a quadruple circuit tower can result in separation between the Northwest transmission zone and the rest of the IESO-controlled grid. Following such events, timely system restoration is critical to avoid the risk of supply shortages to the customers in the zone; and

8. Outages to the existing East-West Tie circuits will be required to install the project, especially the 35 km section between Wawa TS and Marathon TS where the existing double circuit towers of W21M and W22M will be replaced with quadruple circuit towers to accommodate the new W35M and W36M circuits. An outage plan that contains the details of this replacement has not been presented to the IESO at the time of this report."

These specific sections are highlighted for reference later in the memorandum.

Industry Accepted Process to Design, Full-Scale Test, and Verify the Integrity of Existing Foundations

It is accepted industry practice that unique and new transmission tower configurations (such as that proposed by Hydro One), should be designed and full-scale tested to verify the ability of the structure to support design loads and meet code requirements. The process to design and fully test transmission towers generally involves the following steps or tasks:

- Develop phase spacing and clearance requirements that meet or exceed required codes. These should include climbing clearances required for live line maintenance as well as phase to ground clearances.
- Develop loading conditions that must be supported by the structure including extreme events, broken wire loading, unbalanced ice, and construction loading.
- Develop a geometric model that meets clearance requirements and defines the points of attachments for the conductor insulators and overhead ground wire.
- Verify that structure geometry meets or exceeds galloping clearances.
- Design the structure to meet the loading conditions and clearances.
- Complete fabrication drawings including details, erection, layouts, and bill of materials.
- Conduct a full-scale test of the prototype structure to validate the design assumptions and detailing.
- Finalize the design based on changes required to support the test loads.
- Finalize the details based on any changes during testing.
- Issue detail drawing package with “Released for Construction”.
- If existing foundations are to be utilized, a thorough inspection of each foundation should be completed. Foundation inspections should include a review of the original design and any original construction documentation.

For one tower structure design, this process could take well over one year. In addition, if the inspection of the foundations show that some or all of the foundations require repair or replacement, the effort and time necessary to develop an acceptable plan to mitigate and implement repairs to the foundations could also take a year. Thus, unless Hydro One can provide information and evidence that it has completed all of the above steps and tasks with acceptable results, it is likely Hydro One is over a year or more away from being able to provide the Ontario Energy Board (OEB) and stakeholders with the information and evidence needed to show it can safely and reliably construct and operate the new quad circuit towers on either existing foundations or new foundations, if needed.

The Application and Additional Evidence does not provide any information that Hydro One has completed any of these tasks or steps. If Hydro One has completed these tasks for its proposed design, I would want to review the supporting data and conclusions. I am concerned that a new quad circuit tower, as proposed by Hydro One, is not appropriate, safe, and reliable given the likely loading on the lines, icing conditions experienced at the

Conclusion

In conclusion, using the Hydro One existing line section in the Park with guyed quad circuit structures and existing foundations poses high risks. For example, a thorough review of all foundations above and below grade is critical. The stub angle design needs to be reviewed since, as detailed herein, it likely will not support the existing design loads, and with greater axial loads it would need to be modified. While it may appear expedient to use the existing line and foundations to reduce initial costs, future maintenance efforts and costs will likely be greater with forty year old foundations and existing conductors and insulators. Also, without a full understanding that the new quad circuit tower designs have been fully tested, it is questionable whether Hydro One has accurately accounted for the costs of the design, as it appears the design is far from final. New guy anchor installation may require additional ROW. Acquisition of new ROW would impact the project by potentially delaying the installation of the guy anchors. Installation and testing of the guy anchors will also impact the Park. Further, the potential impact to the Park could be significant if a major failure such as a longitudinal cascade occurs. Without a failure containment structure, there is a significant risk associated with Hydro One's proposal. Since the guy system is critical to the support of the proposed quad tower, a failure of one guy could result in a transverse failure under high wind loading. A failure containment structure would not prevent this type of tower failure.

As mentioned, the IESO recognizes the significant impact of the loss of only one structure on the 35km section and states "[e]xtreme contingencies that result in the loss of the four 230 kV circuits of the East-West Tie such as failure of a quadruple circuit tower can result in separation between the Northwest transmission zone and the rest of the IESO-controlled grid." The IESO acknowledges the risks of failure in the 35km section in the Park which would affect four circuits (two important lines) yet Hydro One is proposing to build a new quad structure on forty year old foundations. Hydro One has not provided information and evidence demonstrating that it has conducted industry accepted steps and tasks related to the consideration of a new tower design. As explained herein, there are fundamental processes, including industry accepted testing, that need to be completed prior to understanding the implications of Hydro One's proposal on the ability of the designs to be constructed and operated reliably.

Memorandum

DATE: April 30, 2018

TO: NextBridge Infrastructure LP

FROM: Andrew Pietrewicz

RE: Ontario Lake Superior Link Project by Hydro One Networks Inc.; EB-2017-0364

I was requested by NextBridge Infrastructure LP (NextBridge) to review Hydro One Networks, Inc.'s (Hydro One) proposal to build the Lake Superior Link (LSL). This Memorandum summarizes the results of my review.

My professional background involves various director-level positions at Ontario's Independent Electricity System Operator (IESO) and Ontario Power Authority. In these positions I oversaw the development of an extensive array of long-term integrated planning assessments, plans and advisory products, including in the areas of electricity demand forecasting, conservation integration, resource adequacy assessment, power system production simulation, economic, financial and other decision analysis, and planning integration. My biographical summary and experience are attached to this memorandum.

My review included Hydro One's LSL Leave to Construct Application (Application) with the IESO's System Impact Assessment Report (Additional Evidence), the IESO's December 15, 2015 Assessment of the Rationale for the East-West Tie Expansion (Third Update Report), and the IESO's December 1, 2017 Updated Assessment of the Need for the East-West Tie (EWT) Expansion (collectively IESO Needs Assessments), and applicable reliability standards and criteria.

Hydro One's LSL Application proposed two significant departures from what was studied by the IESO in its Need Assessments: a new quad circuit transmission configuration and a new in-service date – December 2021. Hydro One explains its new configuration as follows:

Upon reaching the boundary of the National Park, the new double circuit line will terminate on a dead-end structure and the two circuits will transfer to new, four-circuit structures shared with the existing East-West Tie Line (circuits W21M/W22M). The new line will then continue through the Park, supported by the four-circuit structures shared with the existing line for approximately 87 spans. Then, reaching the Park's southeastern boundary, the two new circuits will separate from the existing structures and return to being supported by double circuit, guyed masts, adjacent to the existing East-West Tie Line.

Hydro One also states the in-service date for the LSL is December 2021. Application Exhibit B, Tab 1, Schedule 1 at Page 8.

Hydro One claims that a 2021 in-service date is appropriate because of “. . . the low probability of coincidental events resulting in a capacity shortfall, this delay [to December 2021] is manageable through existing operational practices.” Exhibit B, Tab B, Schedule 1, Page 8.

A fundamental deficiency in Hydro One’s claims that the new quad circuit transmission structures in the Park and 2021 in-service date are appropriate is neither was studied in the context of the IESO’s Need Assessment for the EWT. The IESO Needs Assessment is not a plug-and-play study in which different transmission configuration and in-service date can be substituted without thorough consideration, study, and analysis.

I am familiar with the IESO EWT Need Assessments from my time at the IESO. The Assessments confirmed that a new double circuit EWT cost-effectively addresses the reliability, load, and economic development needs of Northwest Ontario by the end of 2020. The 2017 Updated Needs Assessment set forth certain findings that the new EWT would address, including:

- . . . there must be sufficient capacity in the Northwest to not only adequately supply the expected demand in the Northwest while staying under this planning limit, but also to reduce flows on the Manitoba and Minnesota ties to zero (or the scheduled transfer level) within 30 minutes. (Page 13)
- . . . following the loss of the E-W Tie from Wawa TS to Marathon TS, the Northwest will be separated from the rest of Ontario and power will automatically flow from Manitoba and Minnesota to supply the Northwest. Action must then be taken to re-dispatch resources within the Northwest to return to scheduled flow levels and there must be sufficient capacity in the Northwest to do so. (Page 13)
- A 100 MW capacity need already exists today, and this need continues to grow to approximately 240 MW by the original 2020 in-service date. By 2022, the capacity need exceeds 260 MW, and grows to approximately 400 MW by 2024. The need for additional capacity increases to about 500 MW by 2035 as demand continues to grow and as supply changes. (Page 13)
- In this update, expected westbound flows exceed the existing E-W Tie capability approximately 5% of the time. This is based on application of the winter rating of 175 MW throughout the year. Applying the more restrictive limit of 155 MW during the summer months would result in a higher level of westbound congestion. Eastbound congestion is expected to occur approximately 6% of the time in 2023. (Page 14).
- The E-W Tie Expansion provides additional benefits, beyond meeting the reliability requirements of the Northwest, which are unique to a transmission solution. These include system flexibility, removal of a barrier to resource development, reduced

congestion payments, reduced line losses, increased economic imports from Manitoba, decreased carbon emissions, and improved operational flexibility. These benefits are additive to the economic benefits and form an important part of the rationale for the project. (Page 18).

I do not view Hydro One's proposed in-service date of December 2021 as compatible with addressing these issues identified in the 2017 IESO Needs Assessment.

I further do not recommend that a new IESO Needs Assessment be completed that considers Hydro One's new proposal for quad circuit transmission towers and December 2021 in-service date. First, an Updated Needs Assessment was just completed in December 2017, which confirmed a 2020 in-service date, and, therefore, re-studying the same issue of need a few months later will not likely involve materially different assumptions or inputs that would move the need an entire year or more. Second, although a System Impact Assessment (SIA) has been issued on Hydro One's LSL proposal, that SIA raised several concerns with the reliability implications of the quad circuit towers that in the context of a Needs Assessment would take months of careful consideration to determine whether it is consistent with and meets the needs of Northwest Ontario. Based on my experience, I do not see Hydro One's proposal as addressing the needs of Northwest Ontario in an equal or superior manner to the NextBridge transmission design which has been recently confirmed as cost-effective and appropriately meeting the needs of Northwest Ontario.

TAB 4

Ministry of Energy

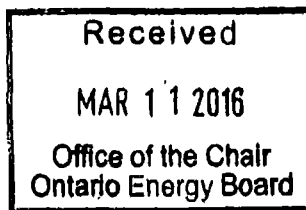
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MAR 10 2016

MC-2016-569

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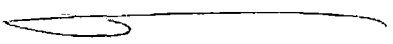
Dear Ms LeClair:

The East-West Tie, identified as a priority project in the 2013 Long-Term Energy Plan, is a cornerstone of this government's policy to support expansion of transmission infrastructure in northwestern Ontario. The East-West Tie continues to be the Independent Electricity System Operator's recommended alternative to maintain a reliable and cost-effective supply of electricity to northwestern Ontario for the long term.

Under the authority of section 96.1(1) of the *Ontario Energy Board Act, 1998*, ("the Act") the Lieutenant Governor in Council made an order declaring that the construction of the East-West Tie transmission line is needed as a priority project. The Order in Council took effect on March 4, 2016 and is attached to this letter.

Please do not hesitate to contact my office with any questions.

Sincerely,



Bob Chiarelli
Minister



Executive Council
Conseil des ministres

Order in Council Décret

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that:

Sur la recommandation du soussigné, le lieutenant-gouverneur, sur l'avis et avec le consentement du Conseil des ministres, décrète ce qui suit:

WHEREAS Ontario considers it necessary to expand Ontario's transmission system in order to maintain a reliable and cost-effective supply of electricity in the Province's Northwest, increase operational flexibility, reduce congestion payments and remove a barrier to resource development in the region;

AND WHEREAS Ontario considers the expansion or reinforcement of the electricity transmission network in the area between Wawa and Thunder Bay composed of the high-voltage circuits connecting Wawa TS with Lakehead TS (the "East-West Tie Line Project"), with an in service date of 2020, to be a priority;

AND WHEREAS the Lieutenant Governor in Council may make an order under section 96.1 of the *Ontario Energy Board Act, 1998* (the "Act") declaring that the construction, expansion or reinforcement of an electricity transmission line specified in the order is needed as a priority project;

AND WHEREAS an order under section 96.1 of the Act requires the Ontario Energy Board, in considering an application under section 92 of the Act in respect of the electricity transmission line specified in the order, to accept that the construction, expansion or reinforcement is needed when forming its opinion under section 96 of the Act;

NOW THEREFORE it is hereby declared pursuant to section 96.1 of the Act that the construction of the East-West Tie Line Project is needed as a priority project, and that the present order shall take effect on the day that section 96.1 of the Act comes into force.

Recommended: _____

Minister of Energy

Concurred: _____

Chair of Cabinet

Approved and Ordered: _____

MAR 02 2016

Date

Administrator of the Government

O.C./Décret 326/2016

TAB 5

Ministry of Energy

Ministère de l'Énergie

Office of the Minister

Bureau du ministre

4th Floor, Hearst Block
900 Bay Street
Toronto ON M7A 2E1
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Filed: 2018-02-15
EB-2017-0364
Exhibit B-03-01
Attachment 1
Page 1 of 1

AUG 04 2017

MC-2017-1148

Mr. Peter Gregg
President and CEO
Independent Electricity System Operator (IESO)
1600-120 Adelaide Street West
Toronto ON M5H 1T1

Dear Mr. Gregg:

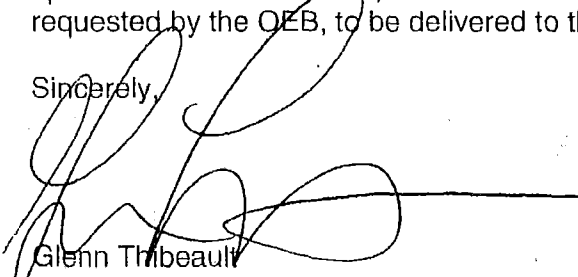
I am writing with regard to the East West Tie transmission project currently under development by Upper Canada Transmission Inc. (operating as NextBridge Infrastructure).

I have been made aware that NextBridge filed an application with the Ontario Energy Board (OEB) to obtain Leave to Construct in respect of the East West Tie project. This application includes updated cost estimates for completing the project that are significantly higher than both the previous estimates by NextBridge and cost estimates used by the Independent Electricity System Operator (IESO) in its prior need assessments for the project. The scale of the cost increases is very concerning to the Ontario Government and it would be appropriate for the IESO to review all possible options to ensure that ratepayers are protected.

As you know, the Government of Ontario passed an Order-in-Council on March 4, 2016 to name the project as a priority under S.96.1 of the Ontario Energy Board Act and this action has the effect of scoping the OEB's Leave to Construct hearing. The decision to pass this Order-in-Council was based in part on the IESO's need assessments, including the last update completed in December 2015 which indicated that the transmission project was needed and the lowest cost alternative to ensuring a reliable and adequate supply of electricity in Ontario's northwest.

Given the new cost information in NextBridge's submission and the time since the previous assessment, it is prudent for the IESO to update its assessment on the basis of the latest costs and system needs. To this end, I request that the IESO prepare an updated need assessment, consistent with the scope of previous need assessments requested by the OEB, to be delivered to the Ministry by December 1, 2017.

Sincerely,


Glenn Thibeault
Minister

c: Rosemarie Leclair, Chair and CEO, Ontario Energy Board

TAB 6

Updated Assessment of the Need for the East-West Tie Expansion

Submitted to the Ministry of Energy

December 1, 2017



Connecting Today.
Powering Tomorrow.

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1.0 KEY FINDINGS/RECOMMENDATIONS

This report has been prepared in response to the August 4, 2017 direction from the Minister of Energy ("Minister") requesting the IESO to prepare an updated need assessment, similar in scope to the previous update reports prepared for the Ontario Energy Board ("OEB"). This report confirms the rationale for the East-West Tie ("E-W Tie") Expansion project based on updated information and study results. This project continues to be the IESO's recommended option to maintain a reliable and cost-effective supply of electricity to the Northwest for the long term.

The E-W Tie Expansion project provides approximately \$200 million in net cost savings compared to the least-cost local generation alternative. The IESO also considered high and low sensitivities on a number of key parameters, such as the assumed cost of the generation alternative. Based on the sensitivities tested for the Reference outlook, the E-W Tie Expansion project, compared to the least-cost local generation option, ranges from a net cost savings of approximately \$500 million to a net cost of just under \$100 million.

The IESO continues to recommend an in-service date of 2020 for the E-W Tie Expansion project. Discussions with the transmitters confirmed their ability to meet this date, dependent on timely regulatory approvals. The IESO will continue to support the implementation of the project and monitor electricity supply and demand in the Northwest until the E-W Tie Expansion project comes into service.

2.0 INTRODUCTION

The Ontario Government's 2010¹ and 2013² Long-Term Energy Plans ("LTEP") have both identified the expansion of the E-W Tie transmission line as a priority project. The E-W Tie Expansion project is intended to increase the transfer capability into the Northwest by adding a new transmission line roughly parallel to the existing E-W Tie transmission line, which extends between Wawa and Thunder Bay.³

The Minister's letter to the OEB of March 29, 2011 was the impetus for the OEB undertaking a designation process to select the most qualified and cost-effective transmitter to undertake development work for the E-W Tie project. Early in that proceeding (EB-2011-0140), the OEB

¹ Ontario's 2010 Long-Term Energy Plan: Building Our Clean Energy Future, Figure 12, page 47.

² Ontario's 2013 Long-Term Energy Plan: Achieving Balance, page 52.

³ The route deviates from that of the existing E-W Tie by travelling around Pukaskwa National Park rather than through, and travelling north of Loon Lake and west of Ouimet Canyon Provincial Park.

1 requested that the former Ontario Power Authority ("OPA")⁴ – now the Independent Electricity
2 System Operator ("IESO") and hereinafter referred to as the IESO – provide a report
3 documenting the preliminary assessment of the need for the E-W Tie Expansion. In response,
4 the IESO filed its original report in June 2011, titled "Long Term Electricity Outlook for the
5 Northwest and Context for the East-West Tie Expansion" ("June 2011 Report"). As a result of
6 the designation proceeding, Upper Canada Transmission, Inc. (o/a "NextBridge Infrastructure")
7 was selected as the proponent to develop the E-W Tie.

8 The OEB's Phase 2 Decision and Order Regarding Reporting by Designated Transmitter, and
9 the subsequent update due to the deferral of the in-service date from 2018 to 2020,
10 dated September 26, 2013 and January 22, 2015⁵ respectively, required the IESO to provide
11 updates to the OEB on the need for the E-W Tie Expansion. In response, three previous E-W Tie
12 reports were prepared by the IESO for the OEB: i) the first update report, was filed in
13 October 2013, titled "Updated Assessment of the Rationale for the East-West Tie Expansion"
14 ("October 2013 Report"); ii) the second update report titled "Assessment of the Rationale for the
15 East-West Tie Expansion" was filed with the OEB on May 5, 2014 ("May 2014 Report"); and iii)
16 the third update report titled "Assessment of the Rationale for the East-West Tie Expansion"
17 was filed on December 15, 2015 ("December 2015 Report").

18 Following the December 2015 Report, the former Ontario Minister of Energy, Bob Chiarelli,
19 issued a letter to the OEB stating that the E-W Tie Expansion continues to be the IESO's
20 recommended alternative to maintaining a reliable and cost-effective supply of electricity in
21 Northwestern Ontario for the long term and that the government had accordingly issued an
22 Order in Council ("OIC") on March 10, 2016 declaring that the E-W Tie Expansion was needed
23 as a priority project. Consequently, on December 6, 2016, the OEB issued an additional revision
24 to their Phase 2 Decision and Order Regarding Reporting by Designated Transmitter relieving
25 the IESO of the obligation of completing a 2016 need update report.

26 On July 31, 2017, NextBridge and Hydro One Networks Inc. ("Hydro One") filed Leave to
27 Construct ("LTC") applications⁶ with the OEB for the E-W Tie Expansion project. Their

⁴ On January 1, 2015, the Ontario Power Authority ("OPA") merged with the Independent Electricity System Operator ("IESO") to create a new organization that combines the OPA and IESO mandates. The new organization is called the Independent Electricity System Operator. Any assessments prior to January 1, 2015 were provided by the former OPA.

⁵ OEB Decision and Order Regarding Reporting by Designated Transmitter dated September 26, 2013, page 4, and January 22, 2015, page 5.

⁶ The OEB assigned file numbers EB-2017-0182 and EB-2017-0194 to the NextBridge and Hydro One applications respectively.

1 applications included new evidence provided by the IESO related to the preferred staging of the
2 project's station facilities. Staging the construction of the station facilities was recommended to
3 reduce the cost of the project, by deferring costs until the facilities are needed. The OIC, issued
4 under the authority of section 96.1(1) of the *Ontario Energy Board Act, 1998*, satisfies the usual
5 need requirement for obtaining section 92 approval.

6 The project costs included by NextBridge in its LTC application are higher than what was
7 assumed in the IESO's December 2015 Report. Therefore, on August 4, 2017 the Minister
8 requested the IESO to prepare an updated need assessment, consistent with the scope of
9 previous need assessments requested by the OEB. The 2017 LTEP, published in October 2017,
10 also addressed the need to review all options for meeting capacity needs in the Northwest to
11 ensure ratepayers are protected as the E-W Tie Expansion project continues to be developed.⁷

12 This report provides an updated assessment of the E-W Tie Expansion project, reflecting
13 changes that have taken place since the December 2015 Report, namely revised project costs and
14 an updated demand and supply outlook for the Northwest.

15 **3.0 CHANGES TO THE PLANNING ASSUMPTIONS**

16 Major changes to the planning assumptions since the December 2015 Report are identified here
17 in order to provide context for the updated results and the information presented in subsequent
18 sections of this report.

19 **Cancellation of TransCanada's Energy East Pipeline Project**

20 The December 2015 Report included demand associated with TransCanada's Energy East
21 project, in both the Reference and High demand outlooks. On October 5, 2017, TransCanada
22 announced the termination of the Energy East project.⁸ As a result, the anticipated demand
23 associated with the Energy East project is no longer considered in any of the demand outlooks.

24 The Energy East project accounted for approximately 110 MW of peak demand and 1 TWh of
25 energy demand in the December 2015 Report's Reference demand outlook.

⁷ Ontario's 2017 Long-Term Energy Plan: Delivering Fairness and Choice, page 39.

⁸ "TransCanada Announces Termination of Energy East Pipeline and Eastern Mainline Projects",
<https://www.transcanada.com/en/announcements/2017-10-05-transcanada-announces-termination-of-energy-east-pipeline-and-eastern-mainline-projects/>.

Updated Load Supply Needs

The analysis in the December 2015 Report included a westbound E-W Tie limit of 155/175 MW⁹ based on the thermal limitation of the underlying 115 kV circuit from Marathon TS to Lakehead TS. It is assumed that this limit remains the planning limit for the existing E-W Tie. This limit, however, relies on support from Manitoba following contingencies on the E-W Tie. The magnitude of support required is the highest for the loss of the E-W Tie from Wawa TS to Marathon TS since that contingency separates Northwestern Ontario from the rest of the province and leaves it connected only to Manitoba and Minnesota.

Relying on short-term support from neighbouring jurisdictions is an assumption made when operating the system province-wide. However, this support should not be relied on for an extended period of time without an agreement with the neighboring jurisdiction. The current practice is to operate the system such that we're not counting on this support for more than 30 minutes following a disturbance.¹⁰

The requirement to return the flow on the Manitoba and Minnesota interfaces to zero, or to the scheduled flow, within 30 minutes following a contingency on the E-W Tie is a requirement that is now being included in this update report when determining whether the Northwest has adequate resources to reliably meet its outlook for demand.

Staging of Station Facilities

In September 2014, as a result of the findings of the May 2014 Report, the IESO wrote a letter to the OEB recommending the deferral of the in-service date of the E-W Tie Expansion from 2018 to 2020. The letter indicated that the additional time would allow for the optimization of equipment and system design, including the staged construction of station facilities. Prior to Hydro One's LTC application being filed in July 2017, the IESO worked closely with Hydro One to evaluate the technical and economic feasibility of different staging alternatives for the required station facilities. The IESO's evidence outlines the staging alternatives that were compared and the rationale behind the recommended staged implementation of the station facilities.

⁹ The planning limit for the existing E-W Tie is a thermal limitation, 155 MW reflects summer conditions and 175 MW reflects winter conditions.

¹⁰ Market Manual 7.4: IESO Grid Operating Policies

1 The recommended staging includes an initial stage that provides 450 MW of transfer capability,
2 with a station facility cost of \$147 million. The second stage would be implemented only once
3 the full 650 MW transfer capability of the line is needed, at an additional cost of \$60 million.

4 **Updated Transmission Cost Estimates**

5 For this update, the IESO used the updated capital cost estimates for the new line and the
6 station upgrades that the transmitters filed with the OEB on July 31, 2017 in their LTC
7 applications. Based on its filed evidence, NextBridge estimates a cost of \$777 million for the
8 E-W Tie line, an increase from the previous planning estimate of \$500 million used in the
9 December 2015 Report. NextBridge has stated that the cost increase reflects unbudgeted costs,
10 new scope requirements, other unforeseeable factors such as the delay to the in-service date,
11 and development phase project refinements.

12 As previously outlined, the cost of the station facilities required for the 650 MW E-W Tie
13 Expansion project is approximately \$207 million, up from the previous planning estimate of
14 \$150 million. This estimate accounts only for costs directly attributable to the E-W Tie
15 Expansion project. As outlined in the IESO's evidence filed with the OEB in support of Hydro
16 One's LTC application, facilities required to address the existing high voltage problem at
17 Lakehead TS are required regardless of whether the E-W Tie project proceeds and are not
18 considered as part of the cost of the E-W Tie station facilities.

19 The total project cost for the initial 450 MW stage is \$924 million, and implementing the full
20 650 MW would increase overall costs to \$984 million.

21 **4.0 NORTHWEST DEMAND OUTLOOK**

22 Throughout the planning and development of the E-W Tie Expansion project, the IESO has held
23 regular discussions with stakeholders, customers and communities in the Northwest and the
24 IESO continues to monitor developments that may affect electricity demand in the region. The
25 demand outlook in this report reflects updated information and engagement which has taken
26 place since the Minister's request for the IESO to provide a need update. Engagement with
27 stakeholders and communities in the Northwest continues to provide valuable insight into the
28 status of future developments. The IESO's outlook considers the likelihood of identified projects
29 proceeding under three potential economic outlooks.

30 The Reference, Low and High demand outlooks reflect the inherent uncertainties related to
31 industrial development in the Northwest. As noted in the previous three need update reports,
32 Northwest electrical demand is dominated by large, industrial customers and can fluctuate
33 significantly in response to changing economic and market conditions. The Northwest remains

1 a winter-peaking region, in contrast to Southern Ontario, where electricity demand usually
2 peaks during the summer months.

3 In this update, the demand outlook has materially decreased in magnitude. This is driven by
4 two significant developments: a continued decline in historical demand in the Northwest and
5 the cancellation of TransCanada's Energy East Pipeline project and its subsequent removal from
6 the Reference and High demand outlooks.¹¹

7 **4.1 Historical Northwest Demand**

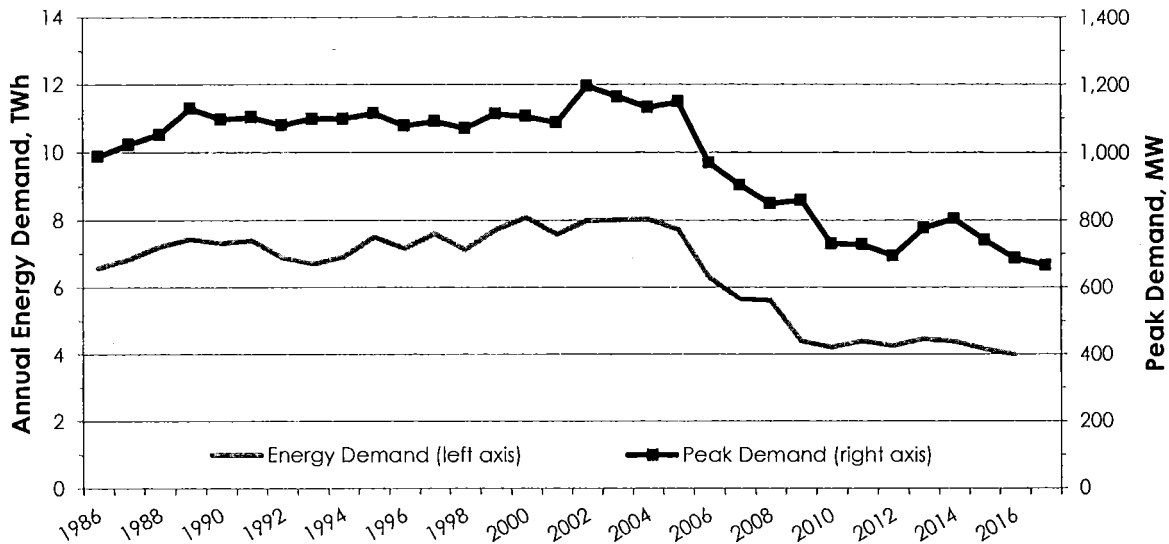
8 Historical electricity demand in the Northwest is presented in Figure 1 below. This update
9 includes actual energy and peak demand data from 2015 and 2016 and preliminary data from
10 2017, which was not available when the December 2015 Report was prepared. While the winters
11 of 2013 and 2014 saw an increase in demand in the Northwest, this was primarily driven by
12 extreme low temperatures in the Northwest caused by a southward shift of the North Polar
13 Vortex.¹² This resulted in a higher than average electric heating demand, driving winter peak
14 demand to its highest level in five years.

15 Historical data now available for 2015 and 2016 and preliminary data available for 2017 shows a
16 continuation of the declining trend for electrical demand in the Northwest due to the impacts of
17 continued population decline, conservation, distributed generation and continued decline of the
18 pulp and paper industry. This provides a lower starting point than in the December 2015
19 Report.

¹¹ The Energy East project was never included in the Low demand scenario.

¹² "Thunder Bay has coldest winter in 35 years, stats say", <http://www.cbc.ca/news/canada/thunder-bay/thunder-bay-has-coldest-winter-in-35-years-stats-say-1.2580059>.

Figure 1. Historical Northwest Electricity Demand



4.2 Drivers of Northwest Demand

The IESO continues to work with interested parties to understand the drivers of demand in the Northwest, engaging with stakeholders such as Common Voice Northwest ("CVNW"), mining companies, industry associations, and the Ontario Ministry of Northern Development and Mines. The updated outlook reflects changes in the status of developments throughout the Northwest.

In comparison to the December 2015 Report, the Northwest demand outlook has been impacted by a few key factors including: updated information on the status of mining developments; cancellation of TransCanada's proposed Energy East project; and continuing decline in the pulp and paper sector.

Mining Sector

The IESO has continued to engage mining companies with developments in Ontario and review technical documents to understand the feasibility, timing, and likelihood of potential mining developments. Factors such as commodity prices, access to capital and environmental considerations are indicators of potential growth in the sector. A mining project in the Fort Frances area has advanced to construction and initial production, and various other projects throughout the region have had success raising capital and advancing both their feasibility and environmental assessments. However, several other projects have experienced set-backs due to factors such as low commodity prices. The demand outlook considers the latest available information on the location, size, and stage of development of mining projects in the Northwest.

Pulp and Paper Sector

Ontario's pulp and paper sector has been in decline for over 10 years and this decline has continued since the December 2015 Report was published. While there is potential for demand stabilization, a return to the demand levels of a decade ago is considered unlikely.

TransCanada Energy East Pipeline

Demand associated with the Energy East Pipeline project which was previously included in both the Reference and the High demand outlooks has been removed.

Remote Communities

Connection of remote communities is assumed to begin in 2024, a delay of four years compared with the December 2015 Report.

Other Components of the Demand Outlook

Minimal or no change has been made to account for the remaining components of the Northwest demand outlook since the December 2015 Report:

- Forestry sector
- Natural growth in residential, commercial and other industrial sectors

The IESO continues to work with local distribution companies ("LDCs") to implement the Conservation First Framework, consistent with both the 2013 and 2017 LTEPs and the March 31, 2014 Conservation First Directive from the Ministry of Energy to the IESO. LDC progress towards meeting the conservation targets was tracked through Conservation and Demand Management ("CDM") Plans and evaluation, measurement and verification ("EM&V") activities, and the conservation assumptions for the Northwest were updated accordingly.

4.3 Northwest Demand Outlooks

An updated demand outlook for the Northwest was developed, taking into account the impacts of the drivers described above. Consistent with the previous three update reports, the IESO has represented demand growth uncertainty in the region by developing three outlooks to explore the robustness and flexibility of options to meet the need in the Northwest under a range of outcomes. Key aspects of the outlooks are as follows:

- **Reference demand outlook** - In this outlook, mining sector demand includes proposed mines that have passed significant development milestones. Mining loads are assumed to persist for the expected lifetime of the proposed developments. This outlook assumes

1 modest growth in the forestry sector in the short term and assumes stabilization of the
2 pulp and paper sector.

- 3 • **High demand outlook** - This outlook considers the impact of stronger and faster
4 development in the mining sector which could potentially be driven by factors such as
5 increased commodity prices. This outlook also reflects modest growth in the forestry
6 sector and the stabilization of the pulp and paper sector.
- 7 • **Low demand outlook** - This outlook describes a more restrained outlook in the mining
8 sector and continuing decline in the pulp and paper sector.

9 The demand assumptions for Remote Communities, residential, commercial and other
10 industries (other than those mentioned above) are the same in each outlook. The Energy East
11 Pipeline project is not included in any outlook.

12 The resulting Northwest peak and annual energy demand outlooks, net of savings from
13 planned conservation, are shown below in Figure 2 and Figure 3. The Reference demand
14 outlook shows demand in the Northwest increasing quickly in the medium term, due to
15 advancing mining developments that are expected to come online, followed by more gradual
16 growth in the long term. The range between the High and Low outlooks reflects the uncertainty
17 in the assumptions underlying the electricity demand growth in the Northwest.

18 For comparison, the Reference outlook prepared for the December 2015 Report has also been
19 included in Figures 2 and 3. The current Reference outlook has a slower near-term growth rate
20 than the December 2015 Reference outlook and is lower in the long term due to the continued
21 decline in Northwest historical electrical demand and the cancellation of the Energy East
22 Pipeline project.

Figure 2. Northwest Net Peak Demand Outlooks

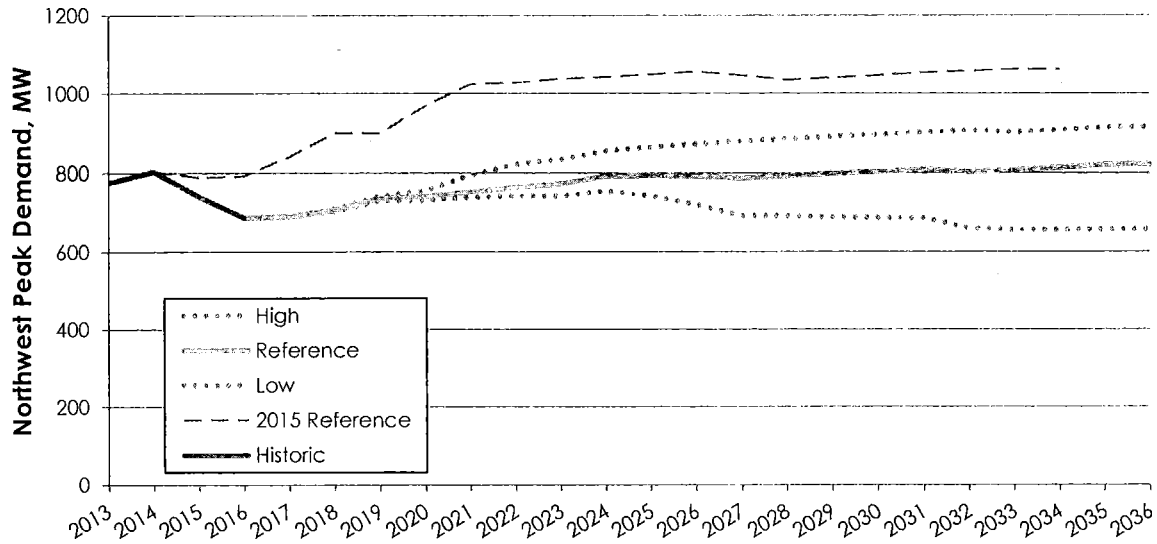
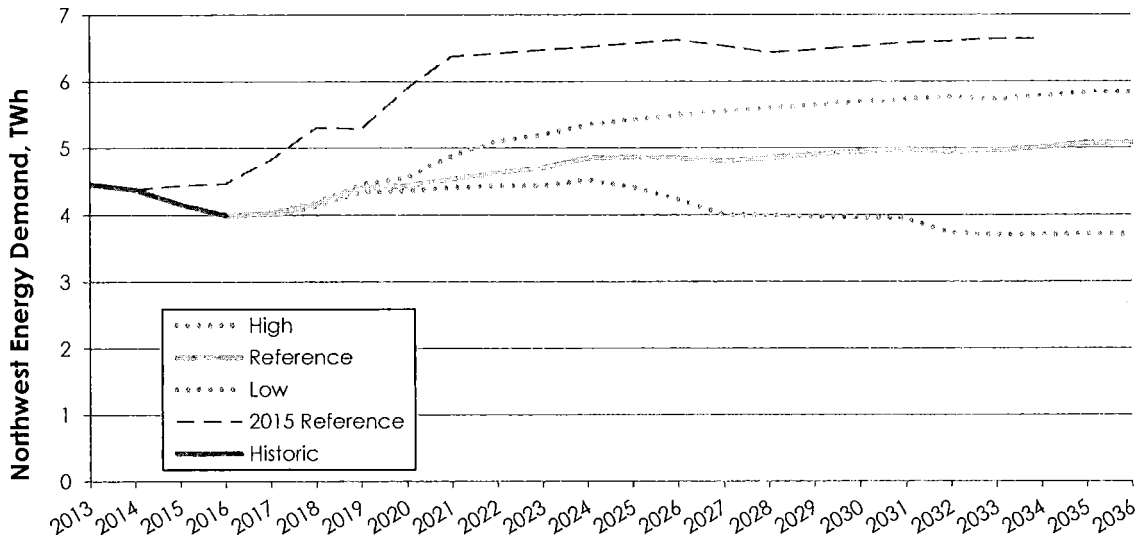


Figure 3. Northwest Net Energy Demand Outlooks



5.0 EXISTING RESOURCES TO SUPPLY NORTHWEST DEMAND

The Northwest relies upon both internal resources (generation located in the Northwest) and external resources (generation outside the Northwest accessed through existing ties) to meet its electricity supply and reliability requirements. An update on the Northwest supply outlook since the December 2015 Report is provided below.

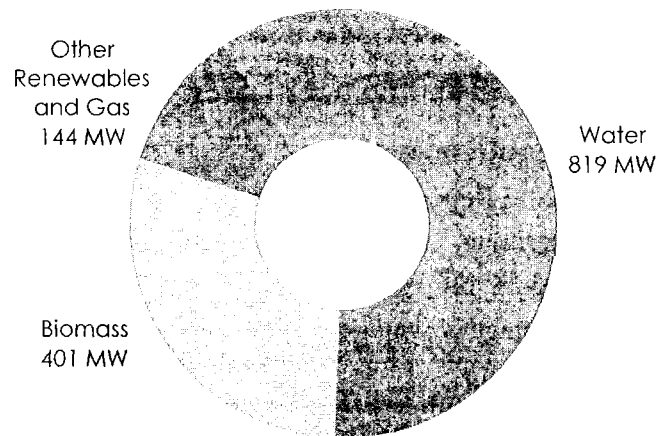
5.1 Internal Resources in the Northwest

The IESO has updated its assumptions regarding supply resources in the Northwest, where new information is available. The following material changes have been made since the December 2015 Report:

- Improved representation of water resources in the Northwest to better reflect run-of-river limitations.
- Incorporation of additional historical water data for the Northwest to better inform the probability of low water conditions.
- Some small-scale distribution-connected generation that began operation prior to 2017 is now included in the demand outlook as embedded generation; these resources have been removed from the supply-side model.

The installed capacity of internal resources in the Northwest for the year 2018 is approximately 1,360 MW and is shown by fuel type in Figure 4.

Figure 4. Northwest Internal Resources - Installed Capacity



5.2 External Resources Supplying the Northwest

Additional supply is provided to the Northwest through the existing E-W Tie; a 230 kV double-circuit transmission line that extends between Wawa TS and Lakehead TS, linking the Northwest system to the rest of Ontario.

The E-W Tie planning limit, consistent with the December 2015 Report, is 155/175 MW which respects the loss of the E-W Tie from Marathon TS to Lakehead TS. Staying under this limit ensures that, following contingencies on the E-W Tie, voltage levels in the Northwest are within

1 acceptable ranges, and equipment, including the Manitoba and Minnesota ties, stays within
2 thermal limits.

3 However, as previously discussed, this E-W Tie planning limit relies on support from Manitoba
4 following contingencies on the E-W Tie, which cannot be counted on for more than 30 minutes.
5 As a result, there must be sufficient capacity in the Northwest to not only adequately supply the
6 expected demand in the Northwest while staying under this planning limit, but also to reduce
7 flows on the Manitoba and Minnesota ties to zero (or the scheduled transfer level) within
8 30 minutes.

9 For example, following the loss of the E-W Tie from Wawa TS to Marathon TS, the Northwest
10 will be separated from the rest of Ontario and power will automatically flow from Manitoba
11 and Minnesota to supply the Northwest. Action must then be taken to re-dispatch resources
12 within the Northwest to return to scheduled flow levels and there must be sufficient capacity in
13 the Northwest to do so.

14 **6.0 THE NEED FOR ADDITIONAL SUPPLY FOR THE NORTHWEST**

15 As described in previous reports, the outlook for supply needs in the Northwest comprises both
16 capacity and energy components. The IESO updated its assessment of resource adequacy in the
17 Northwest system, which is described below.

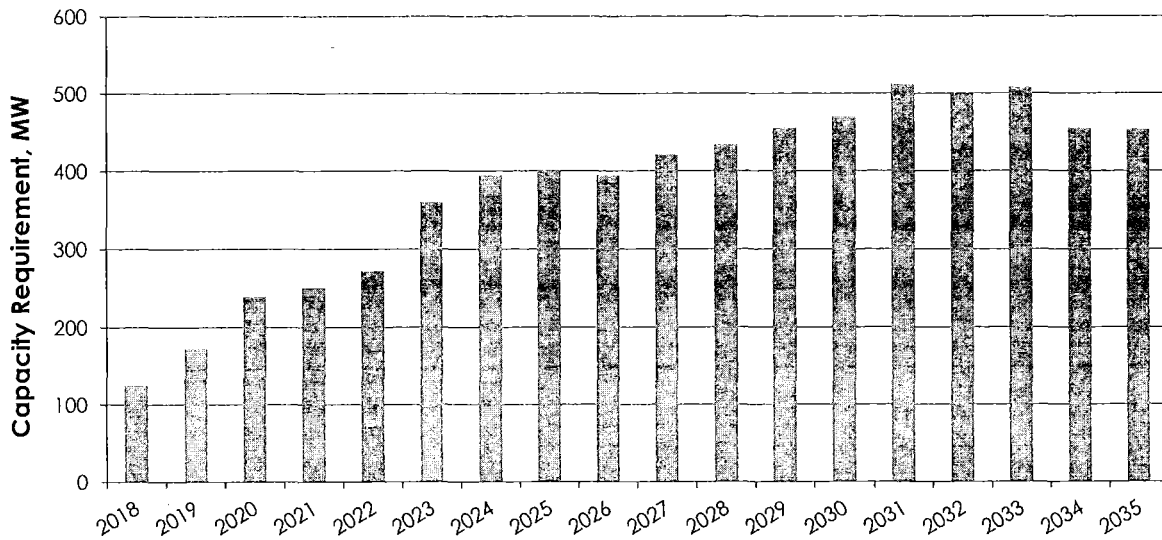
18 **6.1 Capacity Adequacy Requirement**

19 Consistent with the December 2015 Report, the IESO conducted a reliability assessment using a
20 probabilistic approach to determine capacity requirements in the Northwest. As water
21 conditions have a strong impact on overall supply availability in the Northwest, the
22 probabilistic approach reflects a range of water conditions.

23 The updated capacity need, based on the Reference demand outlook with no E-W Tie
24 Expansion, is shown in Figure 5. A 100 MW capacity need already exists today, and this need
25 continues to grow to approximately 240 MW by the original 2020 in-service date. By 2022, the
26 capacity need exceeds 260 MW, and grows to approximately 400 MW by 2024. The need for
27 additional capacity increases to about 500 MW by 2035 as demand continues to grow and as
28 supply changes.

29 As noted in earlier need update reports, there is a projected capacity need in the interim years
30 before the E-W Tie Expansion in-service date, based on an assessment of applicable planning
31 criteria. The near-term need is higher than in the December 2015 Report because it includes the
32 capacity needed to reduce the flow from Manitoba to zero (or the scheduled flow level)
33 following a contingency on the E-W Tie.

Figure 5. Expected Incremental Northwest Capacity Requirement under Reference Demand

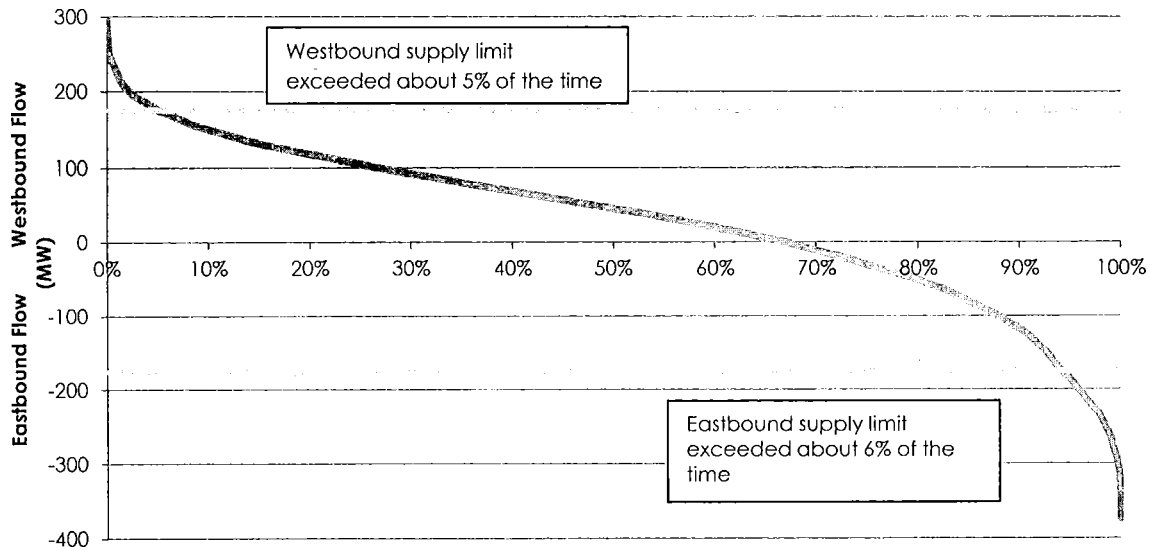


6.2 Energy Requirement

The expected energy requirement in the Northwest is defined by the energy demand outlook, as well as the supply capabilities of local generation and the existing E-W Tie. Figure 6 provides an updated E-W Tie flow duration curve, for all hours of the year 2023,¹³ based on the updated Reference demand outlook and median water conditions. In this update, expected westbound flows exceed the existing E-W Tie capability approximately 5% of the time. This is based on application of the winter rating of 175 MW throughout the year. Applying the more restrictive limit of 155 MW during the summer months would result in a higher level of westbound congestion. Eastbound congestion is expected to occur approximately 6% of the time in 2023. The westbound energy requirement is expected to increase with the demand outlook over the planning horizon.

¹³ The year 2023 has been shown for illustrative purposes. The energy assessment was carried out for years 2022 to 2035.

Figure 6. Unconstrained Flow and Planning Limits on the Existing E-W Tie for the Year 2023



7.0 ANALYSIS OF ALTERNATIVES TO MEET NORTHWEST SUPPLY NEEDS

In this updated need assessment, a number of alternatives to the E-W Tie Expansion were assessed taking into consideration updated information since the December 2015 Report. The two lowest cost options to meet the Northwest capacity and energy needs were identified to be:

- meeting Northwest needs through the addition of new local natural gas-fired generation, and
- expanding the existing E-W Tie. These options are described further below:

(1) **No E-W Tie Expansion** - In this option, all of the identified capacity and energy needs are met through the addition of new natural gas-fired simple cycle gas turbine ("SCGT") generation in the Northwest, with the size of units and the timing of installation defined to meet the needs as they arise during the planning period. Under the Reference demand outlook, a total of 500 MW of generation is added. As in the previous update, it was assumed that, due to the difficulty and cost associated with obtaining firm gas service in the Northwest, all new-build natural gas-fired generation utilizes on-site reserve fuel.

(2) **E-W Tie Expansion** - In this option, the E-W Tie Expansion project provides a foundation for meeting the Northwest needs, with additional generation installed to meet any incremental supply requirements. In this update, a staged implementation of the E-W Tie Expansion was adopted, with the interim 450 MW E-W Tie stage and the final stage, to provide the full 650 MW transfer capability, added as required to meet the

1 capacity needs throughout the study period. Under the Reference demand outlook only
2 the interim stage of the E-W Tie Expansion is required.

3 The assumptions and the results of the economic analysis comparing these two options are
4 presented in section 7.1. As in the previous update reports, the economic analysis includes an
5 assessment of the sensitivity of the results to changes in key variables to better understand their
6 impact on the economic merits of both options.

7 **No E-W Tie Expansion Option – Other Considered Alternatives**

8 A number of the non-gas options for meeting Northwest needs were discussed in the May 2014
9 and December 2015 Reports. These were re-examined in the IESO's 2017 assessment. These
10 options include utilizing existing biomass resources in the Northwest, building new non-
11 emitting generation including storage, and firm imports from Manitoba. Although
12 opportunities may exist to develop these resources to meet future provincial electricity needs,
13 they were found to be insufficient for meeting the identified need in the Northwest due to
14 technical and economic considerations.

15 New non-emitting resources such as wind and/or storage were also considered in this
16 assessment. These were identified to be uneconomic for meeting Northwest needs relative to
17 new natural gas-fired generation, and additional investments in transmission would be
18 required to connect these resources. In addition, without expansion of the bulk transmission
19 system, additional non-emitting generation resource development in the Northwest would
20 increase surplus energy and congestion during periods of increased energy production from
21 existing hydroelectric resources.

22 The use of the existing Manitoba intertie for either a short-term deferral of the need, or as part
23 of an integrated solution for the long term, was also revisited. As discussed in the December
24 2015 Report, without major system expansion, only about 150-200 MW of firm capacity imports
25 from Manitoba can be accommodated before running into constraints on the transmission
26 system between Kenora and Dryden. Due to the magnitude of the need, firm Manitoba imports
27 alone would not be sufficient to meet Northwest needs and would need to be paired with other
28 resources.

29 **7.1 Cost-Effectiveness Comparison of Generation and Transmission Alternatives**

30 Consistent with previous E-W Tie Expansion need update reports, an economic analysis of the
31 E-W Tie Expansion and the lowest cost generation option was conducted and their relative net
32 present value ("NPV") was compared. A sensitivity analysis was performed to test the
33 robustness of the results under a variety of conditions. Among the sensitivities tested were the

1 Reference, Low and High demand outlooks, ranges in the cost of the generation and
2 transmission alternatives, and other cost-related assumptions.

3 Changes in assumptions since the December 2015 Report are as follows:

- 4 • The Reference demand outlook was updated as per the changes identified in section 4.3.
5 Sensitivities to test the impacts of the updated Low and High demand growth outlooks
6 on the NPV were performed.
- 7 • Existing supply resources were updated as described in section 5.
- 8 • Operating conditions were used in the energy assessment to better reflect the potential
9 economic impact of each option.
- 10 • The transmission costs for the E-W Tie Expansion were assumed to be \$777 million for
11 the line and \$207 million for the stations (see section 3). A portion of the station cost is
12 deferred consistent with the staged expansion of the E-W Tie included in this update.
13 The second stage is only required under the High demand outlook.
- 14 • The study period extends to 2051, when the first asset replacement decision is expected;
15 this decision is associated with the generation alternative. Sensitivities of a 20-year and
16 70-year study period were assessed based on the typical planning horizon and the
17 lifetime of a transmission line, respectively.
- 18 • Natural gas prices were assumed to be an average of \$5.80/MMBtu throughout the study
19 period – inclusive of carbon price. Sensitivities were assessed with the combined gas and
20 carbon price ranging from \$4.50/MMBtu to \$10.50/MMBtu.
- 21 • The USD/CAD exchange rate was assumed to be 0.78. Sensitivities were assessed for
22 0.67 and 1.
- 23 • Additional sensitivities were analyzed including +20% and -15% for transmission capital
24 costs, a +/- 75 MW margin of error on the capacity need analysis, and the impacts of
25 electricity trade on energy prices.
- 26 • The NPV of all cash flow is expressed in 2017 \$CDN.

27 The following assumptions remain unchanged from the December 2015 Report:

- 28 • The NPV analysis was conducted using a 4% real social discount rate. Sensitivities at 2%
29 and 8% real social discount rate were also performed.
- 30 • The assessment is performed from an electricity ratepayer perspective.
- 31 • Median-water hydroelectric energy output was used for energy simulation in the
32 economic analysis.
- 33 • Dual-fuel gas-fired generation was assumed to be added to the Northwest due to
34 natural gas fuel supply limitations. Oil was assumed as the on-site reserve fuel. Other

options, such as compressed natural gas and liquefied natural gas stored on site, were also considered. However, these are expected to be higher cost than oil back-up.

- A sensitivity of +/- 25% was assessed on the capital and ongoing fixed costs for generation in the Northwest.
- The life of the station upgrades was assumed to be 45 years; the life of the line was assumed to be 70 years; and the life of the generation assets was assumed to be 30 years.
- New capacity in the Northwest and the rest of Ontario was added, as required, to satisfy Northeast Power Coordinating Council, Inc. ("NPCC") resource adequacy criteria.¹⁴ These capacity needs were determined as described in section 6.1.

Under the Reference case assumptions, the E-W Tie Expansion project is approximately \$200 million lower in net present cost compared to the no-expansion alternative. To test the robustness of this result against uncertainty in the assumptions, the IESO considered high and low sensitivities on a number of key parameters, of which changes to the demand outlook, discount rates, and assumed cost of the generation alternative had the largest impacts. Based on the sensitivities tested, the E-W Tie Expansion project, compared to new gas-fired generation in the Northwest, ranges from a net cost savings of approximately \$500 million to a net cost of about \$100 million.

The E-W Tie Expansion provides additional benefits, beyond meeting the reliability requirements of the Northwest, which are unique to a transmission solution. These include system flexibility, removal of a barrier to resource development, reduced congestion payments, reduced line losses, increased economic imports from Manitoba, decreased carbon emissions, and improved operational flexibility. These benefits are additive to the economic benefits and form an important part of the rationale for the project.

8.0 COMMUNITY INPUT

Stakeholder and community input is an important aspect of the planning process. Providing opportunities for input throughout the IESO's planning processes enables the views and preferences of stakeholders throughout the community to be considered in the development of demand outlooks and in the consideration and development of different alternatives to address identified needs.

¹⁴ NPCC Regional Reliability Reference Directory # 1. Design and Operation of the Bulk Power System.

1 As part of the E-W Tie need update process, stakeholders throughout the Northwest were
2 contacted to provide input into the outlook for electricity demand. The stakeholders directly
3 involved included mining customers and other large industrial power consumers, CVNW, the
4 Ministry of Northern Development and Mines, Union Gas Limited, TransCanada PipeLines
5 Limited, and Thunder Bay Hydro Electricity Distribution Inc. Stakeholder input helped inform
6 the status of developments in the region and their associated demand impacts. The list of
7 stakeholders contacted throughout the development of the demand outlooks was consistent
8 with previous update reports. The IESO also received written feedback from a variety of
9 stakeholders, speaking to their continued support for the East-West Tie Expansion.

10 Finally, the IESO hosted a planning forum in Thunder Bay in October 2017 where stakeholders
11 once again voiced their support for the project. Some have provided recommendations
12 regarding alternatives to be considered for meeting Northwest capacity needs. Stakeholders at
13 the forum also commented that the chosen solution should have the flexibility to accommodate
14 demand uncertainty, decreasing the impediment to additional developments.

15 9.0 CONCLUSIONS AND RECOMMENDATIONS

16 The IESO's updated assessment of Northwest capacity needs and the options to address them
17 demonstrates that the E-W Tie Expansion project continues to be the preferred option for
18 meeting Northwest supply needs under a range of system conditions.

19 The IESO continues to recommend an in-service date of 2020 for the E-W Tie Expansion project.
20 Discussions with the transmitters confirmed their ability to meet this date, dependent on timely
21 regulatory approvals. The IESO will continue to support the implementation of the project and
22 monitor electricity supply and demand in the Northwest until the E-W Tie Expansion project
23 comes into service.

TAB 7

Ministry of Energy

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Filed: 2018-02-15
EB-2017-0364
Exhibit B-03-01
Attachment 2
Page 1 of 1

DEC 04 2017

MC-2017-2125

Mr. Peter Gregg
President and CEO
Independent Electricity System Operator (IESO)
1600-120 Adelaide Street West
Toronto ON M5H 1T1

Dear Mr. Gregg:

Thank you for providing the updated needs assessment for the East-West Tie (EWT) in response to the request in my letter of August 4, 2017. The analysis is informative and provides detailed information on the need for the project and comparisons to alternatives.

The report clearly explains the need to pursue the completion of the EWT with a 2020 in-service date. The Government of Ontario continues to support this project to ensure long-term supply stability in the Northwest. This is underscored by the 2016 Order-in-Council declaring the project a priority and the inclusion of the EWT as one of several major transmission lines highlighted in *Delivering Fairness and Choice*, Ontario's 2017 Long-Term Energy Plan (LTEP). The 2017 LTEP upholds Ontario's commitment to reinforcing the grid in Northern Ontario to support economic growth in this region. The IESO's updated needs assessment affirms that the EWT is an appropriate transmission priority.

As you know, the Ontario Energy Board (OEB) has received an application for Leave to Construct for the project. I expect that the OEB will use its hearing processes to rigorously review any applications in accordance with its processes and mandate to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service. Given the IESO's recommended in-service date of 2020, I also expect the OEB will proceed in a timely manner in consideration of its performance standards for processing applications.

The continued effort of the IESO to conduct this study is appreciated.

Sincerely,


Glenn Thibeault
Minister

c: Rosemarie Leclair, Chair and Chief Executive Officer, OEB

TAB 8

Project Schedule

TASK	START	FINISH
Submit Section 92 Application to OEB		February 2018
Projected Section 92 Approval	February 2018	October 2018
Finalize EPC Contract with SNCL		November 2018
Environment Assessment and Consultation		
Obtain EA Approval from MOECC	January 2018	June 2019
Ongoing First Nations & Métis Consultation and Consultation with Stakeholders	February 2018	December 2021
Lines Construction Work		
Real Estate Land Acquisition	March 2018	March 2020
Detailed Engineering	April 2018	July 2019
Tender and Award Procurement	January 2019	September 2019
Construction	July 2019	November 2021
Commissioning	October 2021	December 2021
In Service		December 2021

Hydro One recognizes that the IESO has recommended an in-service date of 2020 for the East-West Tie Project¹ and that the proposed in-service date in this Application is one year beyond that recommended date. Hydro One believes that a delay to the in-service date to 2021 is manageable and should not impact the supply of electricity to the Northwest.

¹ Exhibit B, Tab 2, Schedule 1, Attachment 2

1 While the northwest supply capacity needed in 2020 is based on the planning criteria
2 and assumptions articulated in the IESO's Updated Need Assessment of December 1,
3 2017, Hydro One believes that the probability of low resources and the coincident loss
4 of the east-west tie double circuit with a duration of more than a few hours is very
5 small. In fact, the east-west tie operating transfer limits are managed today during
6 periods of extreme weather where the above circumstances could arise by a
7 combination of non-firm imports and other short-term options. The 2017 IESO report
8 indicates, in Section 6.1 (page 13), that;

9
10 *A 100 MW capacity need already exists today, and this need continues to*
11 *grow to approximately 240 MW by the original 2020 in-service date. By*
12 *2022, the capacity need exceeds 260 MW.²*
13

14 The 2015 need update report by the IESO had also identified capacity needs in the
15 interim period before the completion of the EWT Line, although in that report the
16 capacity need in 2020 was predicted to be around 150 MW instead of 240 MW, as
17 contained in the new (2017) report. The 2015 report indicated that in the interim
18 period, "...if necessary, [IESO will] deploy short-term options to bridge the gap until the
19 E-W Tie expansion comes into service".³
20

21 The 2017 IESO report does not indicate that the revised capacity need of 240 MW by
22 2020 is not manageable. Therefore, Hydro One believes that a potential small increase
23 in capacity need (according to the planning criteria and assumptions) to approximately
24 250 MW in 2021, before the completion of Lake Superior Link, is also manageable, if
25 necessary, by deploying short-term options.
26

² Exhibit B, Tab 2, Schedule 1, Attachment 2 – Page 13

³ Exhibit B, Tab 2, Schedule 1, Attachment 1 – Page 2

1 Hydro One believes that the financial benefits documented in **Exhibit B, Tab 9, Schedule**
2 **1**, to the electricity consumers of Ontario represent a significant off-setting benefit to
3 prudently justify the one year delay that, considering the low probability of coincidental
4 events resulting in a capacity shortfall, can be effectively mitigated through existing
5 operational practices.

UNDERTAKING – JT 2.9

Undertaking

To update Exhibit B, Tab 11, Schedule 1, Page 1.

Provide a Gantt project schedule for other details, as available.

Response

Minor updates are provided to the project schedule provided at EB-2017-0364 Exhibit B, Tab 11, Schedule 1.

TASK	START	FINISH
Submit Section 92 Application to OEB		February 2018
Projected Section 92 Approval	February 2018	October 2018
Finalize Execute EPC Contract with SNCL		November 2018
Environment Assessment and Consultation		
Obtain EA Approval from MOECC	January 2018	June July 2019
Ongoing First Nations & Métis Consultation and Consultation with Stakeholders	February 2018	December 2021
Lines Construction Work		
Real Estate Land Acquisition	March 2018	March 2020
Detailed Engineering	April March 2018	July 2019
Tender and Award Procurement	March 2018 January 2019	May 2020 September 2019
Construction	July 2019	November September 2021
Commissioning	October September 2021	December 2021
In Service		December 2021

Included as Attachment #1 to this undertaking response is a Gantt chart view of the project, showing major activities, critical path, and project float of approximately four months (two months of regulatory float and two calendar months of construction float).

Evidence In Support of Need

In March 2016 an Order-in-Council was issued by the Ontario Government to the OEB, declaring that the East-West Tie ("EWT") Project is needed as a priority project and requesting an in-service date of 2020¹. The Ministry of Energy asked the IESO to update the Needs Assessment of the project in light of the higher cost estimate filed by NextBridge with the OEB for the line component of the EWT Project (refer to **Exhibit B, Tab 3, Schedule 1, Attachment 1**). On December 1, 2017, the IESO reconfirmed that the "E-W Tie Expansion project continues to be the preferred option for meeting Northwest supply needs under a range of system conditions" (see **Attachment 2 of Exhibit B, Tab 2, Schedule 1**). Subsequent to this, the Minister of Energy on December 4, 2017² wrote:

"The Government of Ontario continues to support this project to ensure long term supply stability in the Northwest... The IESO's updated needs assessment affirms that the EWT is an appropriate transmission priority."

This Application ensures that electricity supply needs of Northwestern Ontario are met with the least possible socioeconomic and financial cost to Ontario transmission customers.

In addition to the aforementioned, in order to facilitate the line component of the EWT Project, referred to in this Application as the Lake Superior Link Project, Hydro One will upgrade three transformer stations connected to this line. Details pertaining to the need of that EWT Station Project are outlined in EB-2017-0194.

¹ Exhibit B, Tab 1, Schedule 1, Attachment 1.

² Exhibit B, Tab 3, Schedule 1, Attachment 2

TAB 9

1 MS. CRNOJACKI: Thank you very much. These are all
2 our questions.

3 MS. LEA: Any other questions for Chief Hardy? If
4 not, Chief Hardy, I want to thank you very much for taking
5 the time to answer questions today. We do really
6 appreciate it, thank you.

7 CHIEF HARDY: Thank you very much.

8 MS. LEA: Mr. Warren, are you ready to empanel your
9 witnesses?

10 MR. WARREN: I have to find one first. But other than
11 that, can we take five minutes to get the last of the
12 witnesses down?

13 MS. LEA: Yes, five minutes. Reconvening at 9:25.

14 --- Recess taken at 9:20 a.m.

15 --- On resuming at 9:30 a.m.

16 MS. LEA: Thank you, Mr. Warren, if you could
17 introduce your panel, please, that would be great.

18 **HYDRO ONE NETWORKS INC. - PANEL 1**

19 **Elise Croll**

20 **Christine Goulais**

21 **Andrew Spencer**

22 **Sanjiv Karunakaran**

23 **Bing Young**

24 **Megdi Ishac**

25 MR. WARREN: Yes, good morning. I'll introduce the
26 panel beginning on my right, Elise Croll from Hydro One
27 Networks. Next to her is Christine Goulais from Hydro One
28 Networks. Next to Christine is --

1 MS. LEA: Is your mic on and pointing at you as much
2 as possible? Thank you.

3 MR. WARREN: Next to Christine is Andrew Spencer of
4 Hydro One Networks. Next to Andrew is Sanjiv Karunakaran.
5 He is with SNC-Lavalin. Next to him is Bing Young from
6 Hydro One Networks. And finally to my left is Megdi Ishac.
7 He is from SNC-Lavalin. Their CVs have been distributed,
8 and those CVs will indicate their areas of responsibility
9 with respect to today's testimony.

10 MS. LEA: Thank you very much.

11 Now, Mr. Stevens, I think you are up first.

12 MR. STEVENS: Thank you.

13 **QUESTIONS BY MR. STEVENS:**

14 MR. STEVENS: Good morning, panel. My name is David
15 Stevens, and I'll be asking questions on behalf of
16 NextBridge. My colleague, Brian Murphy, will also have
17 some questions after I've completed the items I'm going to
18 talk about.

19 So to start with I'd like to ask some questions about
20 Hydro One's project schedule. To do this is the document
21 that I can -- should consult, the one that's found at
22 Exhibit B, tab 11, Schedule 1, page 1 of your leave to
23 construct?

24 MR. SPENCER: That's correct, yes.

25 MR. STEVENS: And is this the -- is there anything
26 more detailed in the evidence? I didn't find it, but
27 please let me know if there is or if there's anything more
28 up-to-date.

1 MR. SPENCER: There certainly is additional detail
2 available.

3 MR. STEVENS: Is everything collected in one place
4 somewhere else in the evidence in a more detailed or more
5 up-to-date form?

6 MR. SPENCER: We submitted the centre level of detail
7 within the section 92 application, but we would be happy to
8 provide additional detail if so requested.

9 MR. STEVENS: It's going to take a while if we don't
10 just kind of answer the basic questions as they come out.
11 So I understand from what you're saying that that you could
12 provide more but this is what you have right now on the
13 record.

14 MR. SPENCER: We would be happy to provide additional
15 detail, yes.

16 MR. STEVENS: All right. So let's start. At the top
17 we talk about projected section 92 approval. That's the
18 leave to construct application?

19 MR. SPENCER: That's correct, yes.

20 MR. STEVENS: And it says "start February 2018, finish
21 October 2018". Is that still your anticipation?

22 MR. SPENCER: Subject to the Board's process, yes, we
23 would be able to achieve our completion date within October
24 2018.

25 MR. STEVENS: No, I understand that there is not yet a
26 procedural order or -- I believe there is not yet a notice
27 of proceeding in this case; is that right?

28 MR. SPENCER: I think in large part the motion today

1 is to understand that process going forward.

2 MR. STEVENS: Okay, and with that in mind, assuming
3 that NextBridge's motion does not succeed, how are you
4 going to achieve the October 2018 date, taking into account
5 the fact that we need to have a notice, procedural order,
6 discovery, hearing, and an OEB decision with reasons?

7 MR. SPENCER: I feel the OEB Staff might be able to
8 give a better answer than I would, but we would do feel
9 that with the information presented both in our leave to
10 construct application, the May 7th evidence, and
11 interrogatory responses -- or, sorry, undertaking responses
12 we may provide today, there is sufficient information to
13 allow the Board to understand the viability of our project
14 en route to a hopeful October 2018 leave to construct
15 decision.

16 MR. STEVENS: Okay, can you -- and I would be happy
17 for you to do this by way of undertaking -- can you provide
18 me with a specific timeline schedule for -- including all
19 the relevant steps showing how you plan to achieve the
20 October 2018 LTC approval?

21 MR. WARREN: Well, Mr. Stevens, since that's
22 substantially out of our hands, we can certainly undertake
23 to provide a more detailed schedule, but the processing of
24 -- within the Board is substantially out of our hands, and
25 we have no control over that, so if you want a more
26 detailed schedule, project schedule, we'll undertake to
27 provide that, but with respect to the timing of the process
28 within the Ontario Energy Board, it's out of my client's

1 control.

2 MR. STEVENS: I understand it is out of your control,
3 Mr. Warren, but I assume that your client will have some
4 ideas of what needs to happen to meet the October 2018
5 date, and that's what I'm asking for.

6 MR. WARREN: Well, Mr. Stevens, we both know what
7 needs to happen, because they're Board processes. Again, I
8 make the point, it is out of my client's control, so
9 describing what the Board's ordinary processes are, it
10 seems to me, almost zero value.

11 MR. STEVENS: Okay, well, again, I repeat the
12 question, and if it's a refusal that's fine. I'd like to
13 see the schedule that will be required to meet the deadline
14 that you have identified, taking into account the state of
15 the proceeding at this point.

16 MR. WARREN: Mr. Stevens, we'll undertake to outline
17 what the Ontario Energy Board's usual process is if that
18 would be of benefit to you.

19 MR. STEVENS: Okay, with reference to the October 2018
20 date, please.

21 MS. CRNOJACKI: So that will be Undertaking JT2.1,
22 Hydro One to provide the timeline for the OEB process of
23 its leave to construct application with a reference to
24 October 2018 date for receiving Board's decision as pointed
25 in the project schedule.

26 **UNDERTAKING NO. JT2.1: HYDRO ONE TO PROVIDE THE**
27 **TIMELINE FOR THE OEB PROCESS OF ITS LEAVE TO CONSTRUCT**
28 **APPLICATION WITH A REFERENCE TO OCTOBER 2018 DATE FOR**

1 **RECEIVING BOARD'S DECISION.**

2 MR. STEVENS: Thank you.

3 I'd like to ask you next about the "obtain EA
4 approval" line on this schedule. Is it still Hydro One's
5 anticipation to have a completion date of June 2019?

6 MS. CROLL: Can everyone hear me? So that date was
7 based on some sort of exemption, such as a declaration
8 order. If we are doing a completed individual EA, that
9 date would actually be July 2019.

10 MR. STEVENS: Okay, and you're assuming that if you go
11 the declaration route you would have a approval or an
12 exemption from approval by June 2019?

13 MS. CROLL: We can't presuppose how that would work,
14 but generally it is a shorter process than an individual
15 EA.

16 MR. STEVENS: I see. Okay. And how does -- let's
17 take each of them in turn. The July 2019 expectation of a
18 EA approval, how does that fit with what we heard from the
19 MOECC yesterday that it will take three to five years to go
20 through that process?

21 MS. CROLL: Right, so when the MOECC was referencing a
22 three- to five-year process, they're referencing a project
23 that is just beginning and no work has been done, so we
24 wouldn't disagree with that on a typical EA project where
25 no work has been done. However, in this case there has
26 been significant work done on NextBridge's route,
27 significant consultation completed, and even Hydro One
28 itself on our Lake Superior link route has already been

1 consulting some of our stakeholders as early as last
2 summer, and we've already undertaken many of the studies
3 required.

4 So even the code of practice from MOECC states that
5 generally it takes a proponent 12 to 24 months to prepare
6 EA documentation. We've already started that, and a number
7 of our studies are underway, so we do have a schedule that
8 we feel confident will allow us to meet those MOE timelines
9 for review, which are 12 weeks for terms of reference and a
10 30 weeks' review time for an individual EA.

11 MR. STEVENS: And have you discussed that schedule
12 with the MOECC and have they agreed with it?

13 MS. CROLL: Yes, we've discussed it with MOECC.

14 MR. STEVENS: And have they agreed with it?

15 MS. CROLL: No, they haven't, but we are still under
16 discussion.

17 MR. STEVENS: I see. Can you provide me with
18 correspondence where the schedule's been discussed with
19 them?

20 MS. CROLL: We've provided the schedule to them.

21 MR. STEVENS: No, I'm sorry, can you provide me with
22 copies of the correspondence between Hydro One and MOECC
23 where your proposed EER schedule has been discussed?

24 MS. CROLL: I would say I can provide you with
25 correspondence where we've provided that.

26 MR. STEVENS: So do I take that to mean that there's
27 been no correspondence in response from MOECC?

28 MS. CROLL: We've had verbal discussions around

1 general timelines for declaration orders and individual
2 EAs.

3 MR. STEVENS: Okay. And what -- can you summarize
4 what they've told you in terms of their reaction to the
5 time that you are proposing?

6 MS. CROLL: So we've had numerous meetings with MOECC.
7 With respect to a declaration order, it is difficult to
8 presuppose how long that would take. Typically it is
9 shorter than an individual EA process, and we heard the
10 MOECC suggest a range of six to nine months yesterday. We
11 feel that that would be appropriate, given the six months
12 that we've suggested.

13 With respect to individual EAs, we have had verbal
14 discussions with MOECC around possible ways to expedite
15 that process, and we have had mostly verbal meeting
16 discussions. I suppose we would have to get permission
17 from MOECC to share those meeting notes.

18 MR. STEVENS: Did you get permission from MOECC to
19 share everything that you've shared up to this point?

20 MS. CROLL: I think the correspondence that's formal -
21 - sorry.

22 MS. LEA: Is the green light lit, not on Mr. Warren's
23 side, but yours. I think you share with Ms. Strachan.

24 MS. COOPER: How's that?

25 MS. LEA: I think your microphone is working. Is that
26 working for you?

27 MS. COOPER: Okay, I've got it.

28 I believe as part of the evidence that was filed,

1 there were documents, correspondence exchanged between
2 Hydro One and the ministry. So are you seeking something
3 more than that?

4 MR. STEVENS: No. I've noticed in the documents and
5 in your evidence that there's correspondence between MOECC
6 and Hydro One, and summaries of discussions with MOECC.
7 And the witness, Ms. Croll, indicated that she would need
8 to seek permission from MOECC to report on the
9 conversations that I've been asking about.

10 I'm just curious to know whether permission has
11 already been received for the items that have been
12 disclosed to date.

13 MS. COOPER: So the items that have been disclosed to
14 date, in my understanding, are items of public record, I
15 believe NextBridge received copies of some of those letters
16 and the correspondence that are in the evidence.

17 UNIDENTIFIED SPEAKER: I'm having trouble hearing.

18 MS. COOPER: It doesn't sound like I'm on the mic,
19 even though --

20 MR. STEVENS: We're having trouble hearing the
21 conference call as well.

22 MS. LEA: Can you get closer to it and see if that
23 helps? If not, we'll get you to trade microphones with
24 somebody.

25 MS. COOPER: Okay, how about that? Better?

26 MS. LEA: Not great.

27 MS. COOPER: Now is that better? Yes, I'm on.

28 MS. LEA: My apologies for the -- I don't know what's

1 going on here.

2 MS. COOPER: Sorry, do I have to repeat the question,
3 because I don't know if I was halfway through the --

4 MR. STEVENS: I was simply inquiring as to whether if
5 it's important for Hydro One to get the MOECC's permission
6 to report on discussions and correspondence. I was simply
7 inquiring whether that permission has been received for --
8 explicitly received for everything that's currently in the
9 record.

10 MS. COOPER: So are you asking whether or not the
11 documents that have been produced as part of the evidence
12 submitted to date, whether permission was sought from the
13 Ministry to provide those documents?

14 MR. STEVENS: Yes.

15 MS. CROLL: No, but most -- to Ms. Cooper's point,
16 most of those documents, I'd have to check whether all of
17 them are a matter of public record. But they are also
18 formal correspondence.

19 I would be referring to verbal discussions that took
20 place at meetings between Ministry of Environment, Hydro
21 One.

22 MR. STEVENS: So my question then is this: Can you
23 please provide us with a summary of the MOECC reaction or
24 comments on your proposed timelines after having received
25 their consent, and confirm that you are accurately
26 reporting what they told you?

27 MS. COOPER: We'll take that one under advisement. We
28 don't have a formal record of the discussions.

1 MS. CRNOJACKI: So will that be an undertaking? It is
2 JT2.2.

3 MS. LEA: To report back.

4 MS. CRNOJACKI: To report back under advisement, if
5 the MOECC agrees that Hydro One provide a summary of their
6 comments regarding the proposed environmental assessment
7 schedule.

8 UNDERTAKING NO. JT2.2: HYDRO ONE TO PROVIDE A SUMMARY
9 OF THEIR COMMENTS REGARDING THE PROPOSED ENVIRONMENTAL
10 ASSESSMENT SCHEDULE, IF MOECC AGREES TO DISCLOSE

11 MR. STEVENS: Thank you. While we are on the topic of
12 Hydro One's planned EA process, my understanding from your
13 evidence is that you are in the process of commencing your
14 own EA process.

15 MS. CROLL: Yes.

16 MR. STEVENS: And does your own EA process rely in any
17 way on the NextBridge EA documentation and studies?

18 MS. CROLL: Yes.

19 MR. STEVENS: Can you explain how?

20 MS. CROLL: So it is our opinion that the NextBridge
21 EA studies are a public document. There are several
22 reasons for this.

23 MR. STEVENS: I'm not asking why, actually. I'm
24 asking how you are going to rely on it.

25 MS. CROLL: How we would rely on it?

26 MR. STEVENS: What parts of those documents are you
27 using; how are you coming to have those documents.

28 MS. CROLL: So those documents are a matter of public

1 record and they are available for public review, so we
2 would be referencing those documents. We wouldn't intend
3 to undertake and re-do all of the studies for the route
4 sections that are shared. We would be undertaking our own
5 studies for the sections of the route which differ.

6 But given that information has already been collected
7 and it is clear that that's for the use of the line
8 constructor, we would use that information. We're well
9 aware that relying on that information is at our own risk,
10 and we would take steps to verify that information where we
11 deemed it necessary. And we would also take steps to
12 consult along the entire route to ensure that there were no
13 additional concerns with our proposed undertaking.

14 MR. STEVENS: Okay, thank you. So is that different
15 than from what you said in your prefiled evidence? I'm at
16 tab B, schedule 1, tab 1, page 10.

17 My apologies, I meant to -- I wrote the wrong
18 reference down. Sorry, the reference I should have given
19 you was Exhibit B, tab 7, schedule 1, page 6, the key
20 assumptions.

21 As I read your second key assumption, you had been
22 requiring or expecting that NextBridge's entire EA
23 development work would be made available to Hydro One, and
24 I assumed that that included a request for all of the
25 underlying studies and data, and everything that was used
26 to build-up the EA.

27 Did I understand correctly what your initial request
28 was?

1 MS. CROLL: No, we actually didn't anticipate that all
2 the underlying studies and specifics of consultation would
3 be provided. We expected to use what was publicly
4 available in the published EA documents.

5 MR. STEVENS: I see. So your request now, in any
6 event -- or your expectation now is that you would be able
7 to print off whatever is publicly available, and use and
8 rely on that at your own risk?

9 MS. CROLL: That's correct.

10 MR. STEVENS: And you don't see any requirement to
11 obtain consent from any other party to do that?

12 MS. CROLL: No.

13 MR. STEVENS: And you're aware that you in fact don't
14 have the consent from any other -- from NextBridge or other
15 parties who contributed to the EA to do that?

16 MS. CROLL: We're aware we don't have consent. But I
17 would say that we wouldn't necessarily have to print or
18 reproduce that document. It is publicly available now. We
19 would be referencing that document.

20 MR. STEVENS: I see. Are you asking any specific
21 relief from the Ontario Energy Board to be able to do that?

22 MS. CROLL: No.

23 MR. STEVENS: Are you asking any specific relief from
24 the MOECC to be able to do that?

25 MS. CROLL: The MOECC would obviously have to support
26 that approach, but specifically we haven't asked for relief
27 at this point.

28 If we were to request a declaration order we would

1 suggest that that publicly available information would
2 demonstrate that environmental impacts of the NextBridge
3 route have been properly assessed and there are plans in
4 place to mitigate those impacts.

5 MR. STEVENS: Okay. But staying with the EA process,
6 you indicated that the MOECC will have to endorse, agree,
7 perhaps just allow this approach. Have you had discussions
8 with them about that?

9 MS. CROLL: I would say that they would not -- they
10 wouldn't object to that. So I think in order for us to do
11 that, they would have to object to that in some way to show
12 us that we weren't allowed to reference that public
13 document. I think in the EA Act it is clear that an
14 environmental assessment is a public document, and we would
15 expect to be able to access that public document.

16 MR. STEVENS: And are you relying on precedents where
17 this has happened in the past?

18 MS. CROLL: No.

19 MR. STEVENS: Are you aware of precedents where this
20 has happened in the past?

21 MS. CROLL: There are a number of cases that I know
22 from professional experience where other reports have been
23 referenced by environmental consultants and other parties,
24 but of course the reference includes identifying who
25 prepared those studies, and unless reliance is formally
26 provided by a consultant on a report, another party relies
27 on that at their own risk.

28 MR. STEVENS: I see. But are you specifically aware

1 of other circumstances where a project proponent has relied
2 on an EA report that it did not prepare and that was done
3 by another proponent?

4 MS. CROLL: I'm aware of cases where a third-party
5 proponent has undertaken a project in accordance with an
6 approved EA that was done by another party.

7 MR. STEVENS: And was that with the consent of the
8 other party?

9 MS. CROLL: Yes.

10 MR. STEVENS: Let's talk just a bit more about this.
11 Can you turn to page 23 of your evidence on this motion.
12 And I'm hoping that you also have a copy of -- page 23 has
13 been updated, so I'm hoping you also have a copy of the
14 original filing?

15 MS. CROLL: Yes.

16 MR. STEVENS: Can you explain to me why you updated
17 the evidence? As far as I can tell there were no changes
18 to the evidence; there were just items removed. It looks
19 like, roughly speaking, the bottom half of page 23 was
20 removed.

21 MS. CROLL: That's correct.

22 MR. STEVENS: So there was no changes to the part
23 that's remained?

24 MS. CROLL: Correct.

25 MR. STEVENS: Why did you remove the section that was
26 taken away?

27 MS. CROLL: The reason we removed that was we didn't
28 want to appear to presuppose the position of the Ministry

1 on this matter. We didn't want to state an opinion about
2 our preference on a process, because now we've also
3 initiated an individual EA, yet we still remain aware that
4 the declaration order option is still available to us.

5 So the reason we removed the last section, although
6 not inaccurate, did seem to presuppose a position by the
7 Ministry.

8 MR. STEVENS: Okay. Thank you.

9 And going back to your own EA, you are only producing
10 -- you are only producing your own materials in relation to
11 the parts of the route that diverge from NextBridge; is
12 that right?

13 MS. CROLL: No.

14 MR. STEVENS: Okay. Can you expand on that? How have
15 I misunderstood?

16 MS. CROLL: So we will be conducting full studies and
17 consultation for the section of the route which differs
18 from NextBridge. That would be the 89 kilometres, which
19 includes 35 kilometres through Pukaskwa National Park and
20 also the approaches to the park, so those areas have not
21 been studied by NextBridge other than in the terms of
22 reference, so in their individual EA those were not
23 studied, so we would do full studies and consultation on
24 those areas.

25 In addition, however, there are very minor differences
26 in our undertaking from that of NextBridge along the route.
27 For example, our footprint is much narrower. We don't
28 require the widening that NextBridge does, so although we

1 don't see that as an additional environmental impact, in
2 fact we see it as a benefit, we would still need to let
3 people along the route know that there is that difference.

4 Further, our tower design differs, so we would be
5 consulting consultation along the entire route to ensure
6 that all of the interested parties are aware of the slight
7 differences for the shared portions of the route. We would
8 also be engaging our Indigenous communities along the
9 entire route and gaining any additional information from
10 them on our proposal.

11 MR. STEVENS: Thank you.

12 Can you please provide me with a schedule of all the
13 activities leading up to a July 2019 approval for this EA?
14 And a good reference for that might be the flow chart that
15 was provided in the MOECC evidence showing the various
16 steps that have to be undertaken.

17 MS. CROLL: So to be clear, you are looking for a
18 schedule of EA activities to meet the July 2019 date?

19 MR. STEVENS: That's correct, from the very start of
20 whatever activities you've been doing. You've mentioned
21 that you've been working for some time now.

22 MS. CROLL: Correct.

23 MR. STEVENS: Up until July 2019, setting out the
24 nature of each of the steps and the timing for each of
25 those steps.

26 MS. CROLL: Yes, we can do that.

27 MS. CRNOJACKI: That will be undertaking JT2.3. Hydro
28 One to provide a schedule of all activities leading to the

1 July 2019 date of environmental assessment completion.

2 UNDERTAKING NO. JT2.3: HYDRO ONE TO PROVIDE A
3 SCHEDULE OF ALL ACTIVITIES LEADING TO THE JULY 2019
4 DATE OF INDIVIDUAL ENVIRONMENTAL ASSESSMENT
5 COMPLETION.

6 MR. STEVENS: And I just want to ask a bit about the
7 declaration order process. Is it your expectation that the
8 -- your own EA process and the declaration process -- order
9 process will be proceeding in tandem?

10 MS. CROLL: That's correct.

11 MR. STEVENS: And do I understand correctly that you
12 are not planning to start the order declaration process
13 until such time as NextBridge's EA is approved?

14 MS. CROLL: Originally we were not, because we were
15 instructed by MOECC that they didn't feel we could submit a
16 declaration order until the NextBridge EA was final, but as
17 we heard yesterday from the MOECC staff that were here, in
18 fact, that is not the case. So we could submit our
19 declaration order earlier, which would allow the regulator
20 additional time to review, and declaration orders by nature
21 are flexible. There could be conditions on that
22 declaration order that would allow us to submit it early,
23 conditional upon approval of other items or completion of
24 other requirements.

25 MR. STEVENS: And so what's your plan?

26 MS. CROLL: We're considering our options at the
27 moment.

28 MR. STEVENS: I see. Can you provide me with a

1 schedule of when you plan to undertake the various steps
2 leading up to a declaration order approval? And you can
3 include whatever contingencies you like, given your current
4 state of planning?

5 MS. COOPER: So we're going to take that under
6 advisement, just because, as Ms. Croll said, at this point
7 in time they are considering the issue. It hasn't been
8 finalized.

9 MR. STEVENS: In any event, your firm plan is that you
10 would have a declaration order by June 2019?

11 MS. CROLL: No, we're actually undertaking an
12 individual EA process at this time, and we could submit a
13 request for a declaration order at any time.

14 MR. STEVENS: Okay. But you are going to provide me
15 with updated information about your plans if you're able?

16 MS. CROLL: As soon as we determine when it would be
17 most prudent to submit such a request we will provide that
18 information.

19 MR. STEVENS: Can you -- why don't we do it this way:
20 Can you tell me, based on what you knew until yesterday,
21 what your plans were?

22 MS. CROLL: When we originally thought that we would
23 not be able to submit a declaration order request until
24 NextBridge's EA was finalized, our plan was to submit such
25 a request in December, at which time we expected our field
26 studies and most of our consultations to be complete, and
27 at which time, based on the publicly available schedule
28 provided by NextBridge, we would expect their EA to be

1 approved. However, we can't presuppose when the Minister
2 will actually approve that, but our general plan was to
3 submit immediately following the NextBridge EA being
4 approved.

5 That plan may change. We just found out yesterday
6 there may be an option to submit sooner, so we would
7 certainly consider that.

8 MR. STEVENS: And do you have any different
9 information from what we heard from the MOECC yesterday
10 that a declaration order process could take six to nine
11 months?

12 MS. CROLL: We've reviewed the MOECC website with a
13 number of declaration orders. Specifically, MOECC in
14 discussions referred us to the most recent example, and
15 that was actually approved in approximately one month. In
16 the few declaration orders that I observed, many of them
17 were approved in under four months. So we would expect
18 that six-month timeline would be reasonable.

19 MR. STEVENS: So we heard yesterday that the only two
20 -- I believe this is what -- correct me if you heard
21 differently. I heard that there were two declaration
22 orders issued in the last five years, and each of those
23 were in emergency circumstances.

24 Are you speaking of non-emergency cases where the
25 timing was one month or four months?

26 MS. CROLL: I'm speaking of examples publicly
27 available on MOECC's website for the 59 DEC orders that are
28 listed there.

1 MR. STEVENS: But are they emergency situations?

2 MS. CROLL: I did not review all of them.

3 MR. STEVENS: Right. Can you please let us know if
4 you are going to be taking the position that the MOECC has
5 been approving declaration orders in less than six to nine
6 months in non-emergency situations?

7 MS. CROLL: So the MOECC -- well...

8 MR. STEVENS: Sorry, the Minister, I suppose, to be
9 fair.

10 MS. CROLL: Can you repeat the actual question?

11 MR. STEVENS: Sure. Can you please let us know,
12 perhaps by way of undertaking, if you are taking the
13 position that the MOECC has been approving -- or the
14 minister, rather, has been approving declaration orders in
15 less than six to nine months in non-emergency situations?

16 MS. COOPER: We're not going to give that undertaking,
17 because all of this information is publicly available on
18 the website. It is not Hydro One information. It is a
19 review of the declaration orders that have been issued.

20 I think Ms. Croll mentioned there's 59 of them on the
21 website. So anybody can go onto the website and review all
22 of the declaration orders. It is all publicly available.

23 MR. STEVENS: Can you please provide me with a link to
24 that?

25 MS. COOPER: A link to the MOECC website?

26 MR. STEVENS: A link to exactly where you would find
27 this information.

28 MS. COOPER: I would be personally happy to do that.

1 MR. STEVENS: I would like that by way of Undertaking,
2 just so I can follow through.

3 MS. CRNOJACKI: That will be undertaking JT2.4. Hydro
4 One to provide the link to the MOECC's website with a list
5 of postings of declarations of -- I'm sorry, I need help
6 with this.

7 MR. STEVENS: A link to the page on the MOECC's
8 website that lists declaration orders that have been
9 granted.

10 MS. CRNOJACKI: They have to --

11 MS. CROLL: I would also add with respect to
12 emergencies, as the MOECC noted yesterday, there are four
13 reasons that a declaration order could be granted, one of
14 which is an emergency situation.

15 That is clearly not the only reason they could be
16 granted, and I would direct you to our evidence, page 8,
17 where we outline the other three reasons and how we feel
18 that we're a good candidate for a declaration order,
19 because we meet those other three criteria.

20 MR. STEVENS: Thank you.

21 **UNDERTAKING NO. JT2.4: HYDRO ONE TO PROVIDE A LINK TO**
22 **A MOECC WEB PAGE THAT LISTS DECLARATION ORDERS THAT**
23 **HAVE BEEN GRANTED**

24 MR. STEVENS: Finally on the declaration order, is
25 Hydro One planning to make use of any of the non-public
26 portions of the NextBridge EA materials, including studies
27 and technical information, as part of the declaration order
28 process?

1 MS. CROLL: So it is possible that we could make use
2 of archaeological studies, because those are available
3 through the Ministry of Tourism, Culture and Sport to other
4 licensed archaeologists, and it is industry practice for
5 archaeologists to check with that regulatory body on
6 previous studies. Those studies can be somewhat
7 confidential, and that is why they are only released to
8 licensed archaeologists.

9 MR. STEVENS: Is there anything else non-public that
10 you would be intending to rely upon?

11 MS. CROLL: No.

12 MR. STEVENS: Going back to this schedule that we
13 began talking about, which is at Exhibit B, tab 11,
14 schedule 1, I notice there is no reference here to Parks
15 Canada approval and federal EA approval.

16 Now, my understanding from the letter from Parks
17 Canada in your evidence at Exhibit C, tab 1, schedule 2,
18 appendix 2, is that do you require Parks Canada approval to
19 take the route through Pukaskwa Park; is that right?

20 MS. CROLL: Correct.

21 MR. STEVENS: And I also understand that you also
22 require a completed Environment Canada impact assessment
23 for that portion of the route. Is that correct?

24 MS. CROLL: Correct.

25 MR. STEVENS: Have you commenced the Environment
26 Canada impact process?

27 MS. CROLL: Yes.

28 MR. STEVENS: Can you give me a schedule -- and this

1 might best be done by way of undertaking -- showing me the
2 start and anticipated finish of that schedule, and all
3 significant steps in between?

4 MS. COOPER: We can provide you with a schedule
5 outlining steps.

6 MS. LEA: I'm sorry, I can't hear that answer.

7 MS. CROLL: Yes, we can.

8 MS. CRNOJACKI: That will be JT2.5, Hydro One to
9 provide a schedule for Parks Canada approval of an
10 Environment Canada impact assessment process for the
11 Pukaskwa National Park portion of the route.

12 **UNDERTAKING NO. JT2.5: HYDRO ONE TO PROVIDE A**
13 **SCHEDULE FOR PARKS CANADA APPROVAL OF ALL ENVIRONMENT**
14 **CANADA IMPACT ASSESSMENT PROCESSES FOR THE PUKASKWA**
15 **NATIONAL PARK PORTION OF THE ROUTE**

16 MR. STEVENS: And in terms of the Parks Canada
17 approval, you've produced a number of pieces of
18 correspondence that relate to discussions to renew or
19 extend Hydro One's licence. Are you familiar with those?

20 MS. CROLL: Yes.

21 MR. STEVENS: What -- have those discussions now been
22 completed?

23 MS. CROLL: Are you referring to the licence renewal
24 itself?

25 MR. STEVENS: I am. Has the licence been renewed?

26 MS. CROLL: No.

27 MR. STEVENS: What's the status there?

28 MS. CROLL: So we are still in discussions with Parks

1 Canada. However, the current licence remains in place
2 until the renewal is completed, and that's agreed upon by
3 both Parks Canada and Hydro One.

4 MR. STEVENS: I see, and what -- do you have any more
5 recent correspondence than what we have in the record as to
6 the status of negotiations with Hydro One?

7 MS. CROLL: Those negotiations are taking place with
8 our realty department. They've produced the correspondence
9 up to the date of the evidence, and we would have to check
10 for anything more recent.

11 MR. STEVENS: Can you do that for me, please?

12 MS. COOPER: We'll give you that undertaking to see if
13 there has been any further correspondence on the record
14 with Parks Canada.

15 MS. CRNOJACKI: JT2.6, Hydro One to provide
16 correspondence with Parks Canada regarding licence renewal.

17 MR. STEVENS: Thank you.

18 MR. WARREN: Sorry, just to refine that. I apologize.
19 Much of that correspondence is already in the record.

20 I think what Mr. Stevens asked for was any
21 correspondence after the date of the filing of our evidence
22 on May 7th. Is that right?

23 MR. STEVENS: That's correct.

24 MR. WARREN: Thanks.

25 MS. CRNOJACKI: Thank you.

26 **UNDERTAKING NO. JT2.6: HYDRO ONE TO PROVIDE**
27 **CORRESPONDENCE WITH PARKS CANADA AFTER MAY 7TH, 2018**
28 **REGARDING LICENCE RENEWAL**

1 MR. STEVENS: What's the -- and we were talking a
2 moment ago about the Environment Canada impact assessment,
3 and I noticed in your evidence there is reference to a May
4 9th meeting --

5 MS. CROLL: Right.

6 MR. STEVENS: -- that appeared to be in relation to
7 that request. Am I correct in that reading?

8 MS. CROLL: Yes.

9 MR. STEVENS: Did that meeting happen?

10 MS. CROLL: So on May -- I'll find my notes. On May
11 8th, the park actually provided us comments on the study
12 that we proposed within the park.

13 So those comments were provided instead of the May 9th
14 meeting, and we agreed to have another meeting which is now
15 scheduled for May 17th.

16 So on May 7th, we provided a table of contents for the
17 proposed outline for the impact assessment, and we'd
18 previously provided the details of our study, and we
19 received those comments back actually on May 8th.

20 MR. STEVENS: Thank you. So I have two undertaking
21 requests in relation to that.

22 First of all, can you please provide copies of the
23 materials received by Parks Canada in relation to what
24 would have been the May 9th meeting?

25 MS. COOPER: Are you talking about correspondence,
26 documentation that's been provided by Parks Canada?

27 MR. STEVENS: The witness just indicated that Parks
28 Canada provided comments on materials submitted, so I'm

1 asking for copies of that.

2 MS. CROLL: I believe that was verbal correspondence.
3 I would have to check on that. Would you suggest we would
4 provide a summary of that conversation, or are you looking
5 for a formal correspondence?

6 MR. STEVENS: When you indicated correspondence, I
7 wrongly assumed it was written.

8 MS. COOPER: As did I. So why don't we give you an
9 undertaking to look for and see if there is any
10 correspondence from Parks Canada on this issue and if so,
11 we'll provide.

12 MR. STEVENS: Right. To be clear, I'm interested in
13 you providing -- if it's a summary of what was communicated
14 to Hydro One in any form, whether it was oral or written.

15 MS. COOPER: So we'd have to check to see if something
16 like that is readily available or not available; in other
17 words, if a summary has been prepared or not been prepared?

18 MR. STEVENS: I'm asking you, even if one hasn't been
19 prepared, to prepare it now.

20 MS. COOPER: We'll take that under advisement.

21 MR. STEVENS: Well, the witness has indicated to me
22 that Parks Canada provided comments that Hydro One is
23 working to address those comments. Surely the comments are
24 therefore known to Hydro One and can be summarized.

25 MS. COOPER: I'm going to get further information for
26 you on that, and I will take that under advisement. I'm
27 not sure what those comments were, if they're verbal or
28 what form they came.

1 MR. STEVENS: Right.

2 MS. CRNOJACKI: That will be Undertaking JT2.7. Hydro
3 One to provide, under advisement, a summary of what was
4 provided from Parks Canada in response to the communication
5 Hydro One had with Parks Canada regarding the environmental
6 assessment.

7 UNDERTAKING NO. JT2.7: (A) HYDRO ONE TO PROVIDE,
8 UNDER ADVISEMENT, A SUMMARY OF WHAT WAS PROVIDED FROM
9 PARKS CANADA IN RESPONSE TO THE COMMUNICATION HYDRO
10 ONE HAD WITH PARKS CANADA REGARDING THE ENVIRONMENTAL
11 ASSESSMENT; (B) HYDRO ONE TO PROVIDE A SUMMARY OF
12 DISCUSSIONS THAT WILL TAKE PLACE IN THE MEETING WITH
13 PARKS CANADA ON MAY 17TH.

14 MR. STEVENS: Thank you. And just a second part to
15 that. Can you please undertake to provide me with a
16 summary of discussions at the May 17th meeting and any
17 documents that are exchanged at that meeting, since we
18 won't have a chance to be together again after that
19 meeting, but that meeting is taking place before the motion
20 next week.

21 MS. COOPER: So -- is this on? It's on. Okay. Thank
22 you. So we'll provide you with an undertaking with respect
23 to documentation, and the same response with respect to
24 discussions unless they are in written form.

25 MR. STEVENS: Thank you.

26 MS. CRNOJACKI: So the second part of Undertaking J2.7
27 will be for Hydro One to provide also a summary of
28 discussions that will take place in meeting on May 17th

1 with -- meeting with Parks Canada.

2 MR. STEVENS: And at tab 7 of your materials you
3 include a draft plan for construction. Was that -- do I
4 understand correctly that that was submitted to Parks
5 Canada?

6 MS. CROLL: Yes, it was.

7 MR. STEVENS: And is that the summary of the
8 information that's been provided to them about your
9 construction plans? Sorry, is that the sum total, rather,
10 of what's been provided to Parks Canada in terms of your
11 construction plans?

12 MS. CROLL: So we've outlined on page 4 also of our
13 evidence a summary of the information provided to Parks
14 Canada. So we've provided Parks Canada with a project
15 overview, that was in October of 2017, an environmental
16 evaluation report in January of 2018, and then the
17 construction execution plan, which was provided in February
18 of 2018. And all those documents are included in our
19 evidence.

20 MR. STEVENS: Okay, and the responses that you
21 received on May 8th, were those in relation to this
22 construction plan?

23 MS. CROLL: No.

24 MR. STEVENS: Have you received any responses in
25 relation to this construction plan?

26 MS. CROLL: We haven't received formal responses. We
27 have numerous conversations with Parks Canada. Formal
28 correspondence really comes at milestone events, so I think

1 in the summary you've asked for of our correspondence we
2 could outline any comments that they've made. I wouldn't
3 have those specifically.

4 MR. STEVENS: Thank you, I'd like to add that to the
5 undertaking, please.

6 MS. CRNOJACKI: That will be Undertaking J2.8, Hydro
7 One to provide a summary of any comments by Parks Canada
8 regarding Hydro One's construction plans submitted.

9 **UNDERTAKING NO. J2.8: HYDRO ONE TO PROVIDE A SUMMARY**
10 **OF ANY COMMENTS BY PARKS CANADA REGARDING HYDRO ONE'S**
11 **CONSTRUCTION PLANS.**

12 MS. COOPER: Is that the response as per the other
13 with respect to the summaries?

14 MS. COOPER: That would be included.

15 MR. STEVENS: Now, still on this Parks Canada and
16 Pukaskwa Park issue, I note that in the November 27th, 2017
17 letter Parks Canada indicates that it's prepared to
18 consider the request in accordance with the licence of
19 occupation, we talked about that, applicable laws and
20 policies, and so that includes, I assume, in part, the
21 environmental assessment?

22 MS. CROLL: Yes.

23 MR. STEVENS: Are there other applicable laws and
24 policies that you understand them to be referring to?

25 MS. CROLL: I think it would be -- there would be a
26 number of applicable laws and policies that are in effect
27 in the province of Ontario and federally.

28 MR. STEVENS: So are there specific laws and policies

1 that have come to your mind or have been pointed out to you
2 by Parks Canada that are important to observe in your
3 request?

4 MS. CROLL: I think Parks Canada is referring to any
5 applicable laws, in effect. Those would be numerous, and I
6 think their focus is to ensure that we meet the
7 requirements of the Canadian Environmental Assessment Act
8 in completing either a basic or a detailed environmental
9 assessment, which is currently underway.

10 MR. STEVENS: I see. Okay.

11 And finally, they refer to Hydro One meeting its
12 Indigenous consultation obligations. I assume you are
13 familiar with the evidence filed by First Nations and Métis
14 groups in this motion?

15 MS. CROLL: Yes.

16 MR. STEVENS: And you'll have noted that the Métis
17 Nation of Ontario and Pic Mobert First Nation and
18 Biigtigong Nishnaabeg have each indicated that their
19 interests are impacts by the proposed routing through
20 Pukaskwa Park?

21 MS. CROLL: Yes.

22 MR. STEVENS: What's the status of Indigenous
23 consultations on your routing through the park?

24 MS. GOULAIS: So -- good morning, everybody.

25 From a -- I won't speak specifically to the EA,
26 because that's Ms. Croll's area of expertise. In terms of
27 consulting with community specifically in relation to the
28 park, and outside of the park, for that matter, on our

1 proposed route, we are prepared to undertake consultation
2 immediately with communities.

3 As you have seen in the evidence, there have been
4 letters sent. There have been some correspondence.
5 However, we are -- currently haven't had an opportunity to
6 meet with some of those communities. Particularly the
7 communities you referenced, we did meet with on April 6th,
8 and had initial discussion with them, but we are fully
9 aware and fully prepared to undertake the adequate
10 consultation with those communities in relation to not only
11 the park but the entire project.

12 MS. CROLL: I would also add that for studies that
13 have commenced in the park already, we have notified those
14 communities that the studies were commencing, and in fact,
15 one community requested a copy of the Caribou study, which
16 we have provided.

17 MR. STEVENS: Thank you. And do you have a timeline
18 estimation as to when you will complete consultation with
19 each of these groups whose interests are affected through
20 Pukaskwa Park?

21 MS. GOULAIS: Are you speaking specifically to the
22 Indigenous communities impacted on this project?

23 MR. STEVENS: I am.

24 MS. GOULAIS: So as I mentioned, we are prepared to
25 begin consultation immediately and have sent correspondence
26 to both the First Nation and Métis communities.

27 In terms of timelines, we are not only prepared to
28 undertake consultation in advance of, if we are awarded,

1 not only if we are able to proceed and are, in fact,
2 awarded the section 92 and are the proponent to construct
3 this project, we will undertake consultation leading up to
4 construction, as well as after construction and well into
5 our -- sorry, well after in-service, given the importance
6 of maintaining those relationships and working with
7 communities.

8 The consultation from Hydro One's perspective does not
9 end at in-service date; it would continue on moving
10 forward. So although, as you had raised earlier when we
11 looked at the consultation schedule, although it says, you
12 know, consultation would end in 2021, it is Hydro One's
13 policy and position that consultation should and would
14 continue going forward.

15 MR. STEVENS: Right, okay. And what's Parks Canada's
16 view as to the stage that consultation much reach before
17 they grant their approval?

18 MS. CROLL: Parks Canada has simply indicated to us
19 that we should be consulting with Indigenous communities as
20 we would under any EA process in order to do our impact
21 assessment and throughout our studies. They haven't
22 suggested any kind of timeline when that should start or
23 finish.

24 MR. STEVENS: Okay, and just finally on this question
25 of the route through Pukaskwa Park and your discussions
26 with Parks Canada, the only document that I could see on
27 the record specifically related to obtaining Parks Canada
28 approval is the letter from November 27, 2017.

1 Is there other correspondence in the record that I've
2 missed that relates specifically to that question?

3 MS. CROLL: No, we haven't actually submitted anything
4 to Parks Canada yet that requires their formal approval, so
5 we haven't received any formal correspondence.

6 The reason we asked for this correspondence was that
7 we wanted to assure ourselves that we wouldn't be in a
8 similar situation to NextBridge where Parks Canada did not
9 allow the route through the park because it was considered
10 a new development. This letter was key to our proposal,
11 because it demonstrated that there was no opposition to
12 this under Parks Canada Act, with respect to this being a
13 new development. It is permitted under the current licence.

14 MR. STEVENS: To be fair, it simply says there is no
15 opposition in principle. It doesn't say there is no
16 opposition to this project.

17 MS. CROLL: Well, there is no opposition in principle
18 given the information to this date. Obviously Parks Canada
19 couldn't approve this until our detailed assessment was
20 done.

21 So they are indicating that they will continue to work
22 with us collaboratively on the process, and that they have
23 no reason to oppose the project at this point.

24 MR. STEVENS: And is there any other written
25 correspondence that's not on the record, written
26 correspondence with Parks Canada related to the specific
27 approval request?

28 MS. CROLL: I would have to look. It's possible. I

1 would expect there to be a number of emails, telephone
2 documentation records. We maintain regular contact with
3 Parks Canada.

4 Again, you've asked for a summary of relevant
5 correspondence.

6 MS. COOPER: Sorry, Ms. Croll. There are some emails,
7 I don't know if you've noticed, in the evidence that have
8 been exchanged with Parks Canada.

9 MR. STEVENS: I know there is a collection of things
10 as to the licence renewal. I'm differentiating between
11 that and the approval to route through the park.

12 MS. CROLL: So I would, though, point out on page 4 of
13 our evidence that we did complete a summary of the key
14 correspondence dates with Parks Canada. So I would refer
15 you to those summaries of our teleconferences and our in-
16 person meetings. So those are the key interactions, and
17 obviously there are numerous other minor verbal and written
18 correspondence.

19 MR. STEVENS: I don't want to put words in your mouth,
20 but are you suggesting there is no key interactions since
21 February 12, 2018?

22 MS. CROLL: Not at all.

23 MR. STEVENS: Can you please provide me then with a
24 summary of the subsequent interactions with Parks Canada
25 that relate to your request for permission to route through
26 the park?

27 MS. CROLL: I believe that was already an undertaking.
28 Is that true?

1 MS. COOPER: I think your undertaking in this case
2 spoke specifically on the EA portion, although the others
3 were more broad. I think it was generally all
4 correspondence, as I understood it.

5 MR. STEVENS: I'm happy to get all correspondence. I
6 think I was going through the question with different
7 subjects in mind, but I'd be pleased to receive the
8 totality of your correspondence and dealings with Parks
9 Canada that have anything at all to do with Pukaskwa Park
10 since your Lake Superior link project has been started.

11 MS. COOPER: I think we have that covered. I'd ask
12 the Board Staff if we have that covered by the previous
13 undertakings.

14 And I will also just mention that as Mr. Warren
15 pointed out, the emails that I referred to earlier actually
16 do contain a commentary with respect to the EA aspects as
17 well.

18 MS. LEA: So can I ask which undertaking it was that
19 dealt with the correspondence regarding the park
20 previously?

21 MS. CRNOJACKI: I think it was J2.7.

22 MS. LEA: JT2.7, all right. So, that undertaking will
23 now include all correspondence as just described.

24 MR. STEVENS: Thank you. And just before I move on
25 from scheduling or the schedule for this project, Mr.
26 Spencer, you were eager at the beginning of our discussion
27 to provide an updated schedule, so I'd like to take you up
28 on that offer.

1 Can you please provide us with an updated version of
2 the schedule that was set out in your prefiled evidence?

3 MR. SPENCER: Yes, we can do that.

4 MR. STEVENS: Thank you.

5 MS. CRNOJACKI: That will be undertaking JT2.9, the
6 updated schedule that's provided in the prefiled evidence.

7 **UNDERTAKING NO. JT2.9: TO UPDATE EXHIBIT B, TAB 11,**
8 **SCHEDULE 1, PAGE 1; TO PROVIDE A GANTT PROJECT**
9 **SCHEDULE OR OTHER DETAILS, AS AVAILABLE**

10 MS. CRNOJACKI: Is there more?

11 MR. STEVENS: It was -- I'm sorry, it's at Exhibit B,
12 tab 11, schedule 1, page 1.

13 MS. CRNOJACKI: Thank you.

14 MR. STEVENS: Just a couple of final questions around
15 the route through Pukaskwa Park.

16 What is Hydro One's current proposal for the Lake
17 Superior link project? Is it one route, or two alternative
18 routes?

19 MS. CROLL: So currently the notice of commencement
20 that we've provided indicates a reference route, which is
21 paralleling our existing corridor, including through
22 Pukaskwa National Park. The deviation that is included in
23 the reference route would be a 50-kilometre deviation in
24 the area of Dorion, and that would actually match the
25 current NextBridge route.

26 In addition to that, we have an alternate route that
27 we are including in our terms of reference, which would be
28 the current route of NextBridge, which is a 131 kilometre

1 bypass by around Pukaskwa National Park. However, that is
2 not our preferred route, obviously because the
3 environmental impacts in going through Pukaskwa are
4 significantly less than that other route.

5 MR. STEVENS: Let's break this down and talk about
6 both your EA application and your leave to construct
7 application.

8 So in your EA application, I understand that your
9 draft notice of commencement, which is attachment 18 to
10 your evidence, shows two different routes. Is that right?

11 MS. CROLL: That's correct.

12 MR. STEVENS: One route goes through Pukaskwa Park,
13 and one route does not?

14 MS. CROLL: That's correct.

15 MR. STEVENS: And is it your intention to proceed with
16 the EA seeking approval for each of those alternate routes?

17 MS. CROLL: No.

18 MR. STEVENS: What is your intention?

19 MS. CROLL: Our intent is to seek approval for our
20 preferred route, the reference route.

21 MR. STEVENS: So what will be provided to the Ministry
22 in relation to your alternate route?

23 MS. CROLL: We would be looking at the relative
24 impacts of that other route and we would be providing a
25 rationale for why a reference route is the preferred.

26 MR. STEVENS: Thank you. And within the leave to
27 construct application is it your intention to update and
28 include two alternate routes?

1 MS. CROLL: No, our intent is that we would use the
2 reference route through Pukaskwa National Park.

3 MR. STEVENS: And what happen if Parks Canada
4 determined that they will not grant you the opportunity to
5 use quad towers on your existing route through the park?

6 MS. CROLL: So in the very unlikely case that Parks
7 Canada did not allow us to go through the park, we would
8 know that by, I would expect, late in Q4. And at that
9 point, we could complete the EA such that we could use the
10 alternate route to go around Pukaskwa.

11 MR. STEVENS: Am I right in assuming that would rely
12 almost entirely on the EA materials filed by NextBridge?

13 MS. CROLL: Yes, with the exception of the minor
14 changes that are resulting from our route, that again being
15 the footprint area of the corridor being reduced by
16 approximately 50 percent, and the change in tower design.

17 MR. STEVENS: When are you anticipating approval from
18 Parks Canada?

19 MS. CROLL: We would anticipate approval -- we expect
20 in December, so sometime in Q4, late November or December,
21 because our studies would have been done at that point and
22 we would have submitted our impact assessment and provided
23 time for review by Parks Canada.

24 MR. STEVENS: Can you remind me what your evidence
25 says? I don't remember seeing -- I remember seeing a much
26 earlier date than December, but I might be wrong on that.

27 MR. SPENCER: So it's in fact on page 5 of our May 7th
28 evidence.

1 MS. CROLL: Late 2018. I think that's consistent with
2 what I've said.

3 MR. SPENCER: Just to elaborate slightly on what Ms.
4 Croll's testimony states, the answers to some of these
5 questions, if not all, are on page 5 of our evidence filed
6 on May 7th. At the bottom of the second paragraph:

7 "Approval from Parks Canada is anticipated to be
8 late in 2018."

9 And later in the page, for those that are interested
10 in the cost dimension of this proceeding, we are in fact
11 articulating the fact that in the unlikely event that we
12 did have to follow the route defined by NextBridge, that
13 that incremental cost would only add an additional
14 \$40 million to the Hydro One proposal, still substantially
15 providing savings on the capital expenditures, as well as
16 ongoing maintenance costs.

17 MR. STEVENS: Thank you. So within the LTC
18 proceeding, you are simply proceed -- you are going forward
19 on the basis that you will route through Pukaskwa Park,
20 correct?

21 MS. CROLL: Correct.

22 MR. STEVENS: How is it that you can achieve LTC
23 approval in October, if you are not going to get Parks
24 Canada approval until December?

25 MS. CROLL: Our LTC would be based on that route and
26 we would expect going forward to get Parks Canada approval.

27 MR. SPENCER: It is my understanding, although I'm not
28 the expert, it is quite common for leave to construct

1 applications to have conditions associated with follow-on
2 environmental approvals.

3 MR. STEVENS: And so you would look on this just as a
4 garden-variety environmental approval?

5 MS. CROLL: It is a required environmental approval,
6 and often leave to construct are granted prior to an EA
7 being approved.

8 MR. STEVENS: Right. But I'm not talking about the
9 EA. I'm talking about sort of the fundamental permission
10 from Parks Canada to let you go through the park --

11 MS. CROLL: So --

12 MR. STEVENS: -- in a different way than currently --

13 MS. CROLL: So their permission is based on completion
14 of an EA in accordance with the Canadian Environmental
15 Assessment Act, so they are one and the same.

16 MR. STEVENS: I see, so you will not receive any
17 permission from them until your EA is approved?

18 MS. CROLL: That's -- until the EA specifically for
19 Parks Canada is approved, not our individual EA.

20 MR. STEVENS: I'm sorry, so this is the Environment
21 Canada EA?

22 MS. CROLL: So Environment Canada, under the Canadian
23 Environmental Assessment Act, requires us to do either a
24 basic or a detailed impact assessment for the section of
25 our route which is actually within the park, and that is a
26 separate document from our individual EA and subject to
27 Parks Canada approval.

28 So we will use the same studies that we're doing for

1 both of those processes. However, a discrete document will
2 be submitted to Parks Canada.

3 MR. STEVENS: I see. And I believe I asked you this
4 before, and I apologize, but I want to confirm that you did
5 agree, I think, to provide me with your anticipated
6 schedule for that environmental assessment process, that
7 being the one that is required by Parks Canada?

8 MS. CROLL: That's correct.

9 MR. STEVENS: Great. And is it your position that
10 Hydro One's leave to construct approval will be effective
11 from the time that it's granted, even though you won't have
12 Parks Canada approval at that time?

13 MS. CROLL: I don't know what the usual process is,
14 I'm sorry.

15 MR. SPENCER: Honestly, we're not sure of the
16 procedural details of the leave to construct's approval
17 process.

18 MR. STEVENS: Right. Okay.

19 So the final set of questions that I wanted to ask you
20 about, and then perhaps we can take a break after that, and
21 my colleague will have a few questions. I apologize that
22 we're taking as long as we are, but hopefully it will
23 answer some of the questions others might have been asking.

24 I provided your counsel with a couple of documents
25 this morning that I hope that you've received. They both
26 are submissions from EWP -- EWT LP within the EB-2011-0140
27 designation proceeding. Do you have those?

28 MS. CROLL: Yes.

1 MR. STEVENS: Mr. Warren, is there any objection to
2 entering these as exhibits?

3 MR. WARREN: No.

4 MR. STEVENS: Can we please enter these as exhibits,
5 the first one being the two interrogatory responses and the
6 second one being the first portion of EWT LP's argument in-
7 chief?

8 MS. CRNOJACKI: Yes. So KT2.1 is the first exhibit.
9 These are answers to interrogatory 6 and interrogatory 2 in
10 EB-2011-0140 proceeding.

11 **EXHIBIT NO. KT2.1: ANSWERS TO INTERROGATORY 6 AND**
12 **INTERROGATORY 2 IN EB-2011-0140 PROCEEDING.**

13 MR. STEVENS: Thank you.

14 MS. CRNOJACKI: And the second one is Exhibit KT2.2.
15 It is the first portion of EWT LP argument-in-chief, EB-
16 2011-0140, Board file.

17 **EXHIBIT NO. KT2.2: FIRST PORTION OF EWT LP ARGUMENT-**
18 **IN-CHIEF, EB-2011-0140**

19 MR. STEVENS: Thank you.

20 So looking first at Exhibit KT2.1, the interrogatory
21 responses, I just want to confirm that EWT LP was a
22 partnership company created by Hydro One, or at least in
23 the majority by Hydro One, to -- seeking to become
24 designated as the transmitter for the East-West Tie
25 project?

26 MR. SPENCER: It was an equal partnership between
27 Hydro One Networks, Great Lakes Power, and Bamkushwada L.P.

28 MR. STEVENS: And at that time, Great Lakes Power was

1 associated with Hydro One? No?

2 MR. SPENCER: Not as a matter of normal course of
3 business, only for the EWT LP proceeding.

4 MR. STEVENS: Right, but Hydro One was certainly one
5 of the equal partners within EWT?

6 MR. SPENCER: That's correct.

7 MR. STEVENS: And my understanding is that one of the
8 equal partners was the Bamkushwada Limited Partnership, or
9 BLP; is that right?

10 MR. SPENCER: That's correct.

11 MR. STEVENS: And the interrogatory responses that
12 I've provided give a little bit of context as to the
13 decision of BLP to be part of this, and I'd like to look
14 first at Interrogatory No. 6.

15 It indicates that the -- and now I'm in the second
16 paragraph of the answer. It indicates that:

17 "The decision of the participating First Nations
18 to do business with each other to form BLP and to
19 become equal partners in EWT LP with companies of
20 their own choice was an act of self-
21 determination. It has taken almost three years
22 to develop the underlying relationship. Their
23 decision was based on a desire for participation
24 in development, construction, and operation
25 activities; for equity ownership; and for equal
26 participation in the corporate governance of the
27 transmitter designated to own transmission
28 facilities crossing their own traditional

1 territories. This is congruent with the
2 participating First Nations each having
3 traditional territories directly impacted by the
4 project."

5 And it seems to me that that same reasoning would
6 apply now to BLP's partnership with NextBridge; is that a
7 fair comment?

8 MS. GOULAIS: Sorry, can you repeat the question?

9 MR. STEVENS: Sure, I just read you a section of this
10 answer, and I can reread it --

11 MS. GOULAIS: I'm following it.

12 MR. STEVENS: -- and I'm just asking for your reaction
13 to my suggestion that these same comments relied -- or
14 relate equally or substantially equally to BLP's current
15 relationship with NextBridge.

16 MS. GOULAIS: I'm not going to speak to --

17 MR. WARREN: Hang on, witness.

18 How would they know what BLP is thinking about? How
19 could they conceivably answer that question, Mr. Stevens?

20 MR. STEVENS: Okay, I'll move on. I know I'm running
21 out of time.

22 So let's look then at the next interrogatory. It's
23 Interrogatory No. 2. And this interrogatory response
24 appears to set out the contractual or other relationship
25 between BLP and EWT LP, and it indicates that:

26 "The partners of EWT LP have mutually agreed to
27 deal with one another on an exclusive basis with
28 respect to the project before and after the date

1 of designation. The participating First Nations
2 did so voluntarily and with the advice of
3 independent legal counsel."

4 I guess my first question here -- and this is for Mr.
5 Warren -- is whether Hydro One is able and willing to
6 provide the exclusivity language from the agreement with
7 BLP.

8 MR. WARREN: Yes.

9 MR. STEVENS: Thank you.

10 MS. CRNOJACKI: That will be JT2.10. Hydro One to
11 provide the details, the exclusivity language of agreements
12 with BLP.

13 **UNDERTAKING NO. JT2.10: HYDRO ONE TO PROVIDE THE**
14 **DETAILS OF THE EXCLUSIVITY LANGUAGE OF AGREEMENTS WITH**
15 **BLP.**

16 MR. STEVENS: Thank you.

17 And I don't know if anybody on the panel can answer
18 this or not, but my interpretation of this answer is that,
19 had EWT LP been designated as the transmitter, this
20 exclusivity arrangement would have continued; is that fair?

21 MS. GOULAIS: Yes.

22 MR. STEVENS: Thank you.

23 So let's move on to KT2.2. And this is EWT LP's
24 argument-in-chief in the designation proceeding. If you
25 turn up page 2, the executive summary, and go down to the
26 heading "consultation", it states that:
27 "EWT LP's development plan is founded on the need to
28 acquire a social licence to develop, construct, and operate

1 the project. This fundamental tenet runs through every
2 aspect of the development plan. As has been seen recently
3 elsewhere, projects lacking a valid social licence
4 experience repeated delays, cost overruns, and in many
5 instances have to be abandoned."

6 Does Hydro One still agree that this statement
7 continues to apply?

8 MS. GOULAIS: So from a consultation perspective,
9 Hydro One's position would be that we understand the
10 obligations that are in front of us from a consultation
11 perspective, and we do intend to undertake those.

12 MR. STEVENS: Right. But do you still believe that
13 having a social licence is fundamentally important and that
14 if you don't have a social licence, you risk delays, cost
15 overruns and potential abandonment?

16 MS. GOULAIS: From a consultation perspective
17 generally, working with and consulting the Indigenous
18 communities is absolutely critical. I would agree with
19 that.

20 MR. STEVENS: Right, okay. Next I'd like to turn up
21 page 14 of the argument-in-chief. I'm in the third
22 paragraph, and it indicates that:
23 "No other applicant has demonstrated the positive
24 relationships that EWT LP, through its partners, has with
25 Aboriginal communities. These positive relationships are
26 built on a foundation of trust, which takes time to develop
27 and is essential for meaningful Aboriginal engagement."

28 And then I'm skipping down a couple of lines:

1 "BLP's early participation in the project
2 planning process and its active engagement in
3 development work, especially environmental
4 assessment and consultation, will significantly
5 lower the risk of project cost overruns and
6 delays."

7 That was all within the same paragraph. I just
8 skipped a couple of sentences. It is all on page 14. Are
9 you there?

10 MS. CROLL: Sorry, what was the question?

11 MR. STEVENS: I haven't had a question. It looked
12 like you were struggling to find the passage, so I was just
13 waiting for you to catch up.

14 Now, it's fair to say that EWT -- or Hydro One no
15 longer enjoys this advantage or relationship that it had at
16 the time of designation?

17 MS. GOULAIS: Well, you know, thinking back to
18 yesterday, when Chief Collins had explained, you know, in
19 advance of our original submission through the designation
20 process, there was a significant amount of time and effort
21 that had gone into building that relationship. And
22 unfortunately, we were not successful and NextBridge was.

23 So, you know, those relationships that were built over
24 that period of time with these communities has continued
25 over the years, not specifically related to any project,
26 but under Hydro One's approach to working with communities
27 respectfully.

28 Hydro One, as well as its construction partner SNC,

1 does have a long-standing history of working with
2 communities respectfully, and building those relationships
3 across the province and particularly in this part of the
4 province. And we intend to work with those communities and
5 continue building those relationships and in the respectful
6 way that we have to date.

7 We understand that -- you know, and we heard the
8 chiefs' testimonies yesterday that of course it's
9 frustrating for them to have had -- to be bounced around in
10 terms of who they are working with, and we fully appreciate
11 that and we are sensitive to those issues and -- again, not
12 only on this project, but in general.

13 And so again, we do have relationships in this part of
14 the province, and we do intend to continue building those
15 relationships and work collaboratively and respectfully
16 with those communities.

17 MR. STEVENS: What do you say to the comment that we
18 heard from the Métis Nation of Ontario today that you are
19 starting from a deficit? You've poisoned the well?

20 MS. GOULAIS: I think what I would say to that comment
21 is what we have been saying on this, particularly from the
22 beginning, is that we have reached out. We do want to work
23 and consult with all Indigenous communities impacted on
24 this project, including the Métis.

25 If given the opportunity to meet, we would really
26 appreciate understanding how we can work together going
27 forward.

28 We understand that the Métis specifically, given that

1 was your question, they do have consultation protocols, and
2 we do intend to respect those protocols and work within
3 those.

4 We do -- we are in a position where we haven't been
5 given the opportunity to have those discussions, and we
6 really are looking forward to those. And we do want to act
7 respectfully and work with all Indigenous communities,
8 including the Métis.

9 MS. CROLL: Could I add that from an EA perspective, I
10 think there is a misunderstanding when we talk about a
11 declaration order. This is not an exemption that means we
12 don't have to do our proper studies and consultation. It
13 is a way to acknowledge that a lot of work has already been
14 done and to expedite a process.

15 But I think the misunderstanding is that we are going
16 to skip the consultation phase. We are not doing that. We
17 are consulting the same way for an individual EA as we are
18 for a declaration order and documenting that.

19 If we're relying on NextBridge's EA, we are relying on
20 all that consultation that's already been done, and has
21 created and identified impacts and which is to mitigate
22 those, and those are clearly laid out in the EA document.

23 The MOECC yesterday said itself that all of those
24 inputs, including traditional knowledge from Indigenous
25 groups, have been rolled up and must be rolled up in that
26 EA document.

27 MR. STEVENS: So are you suggesting that you can rely
28 on the First Nations and Métis consultation that NextBridge

1 has undertaken?

2 MS. CROLL: No, we are conducting our own
3 consultation. But what I'm saying is all of that
4 information already provided has been included in the
5 public document that's now available. It doesn't mean that
6 we wouldn't still do our own consultation.

7 MR. STEVENS: Right. Can you please turn to page 25
8 of the argument?

9 On page 25 below your chart, it says:

10 "EWT LP submits that aggressive assumptions about
11 the timeline for completing any of these steps,"
12 the steps being the steps in an ES process, "if
13 proven wrong can create cascading delays through
14 each subsequent step."

15 If we go to the next page, page 26, at the bottom of
16 the first paragraph it says:

17 "Unlike other applicants, EWT LP has factored
18 into its development schedule assumptions about
19 the EA process consistent with MOE practice
20 guidelines."

21 Can you please provide me with the schedule for EA
22 approval that was assumed and included in the designation
23 application?

24 I can give you some help. It looks to me like there
25 is a 25-month term when I look at Exhibit 7 -- part B,
26 Exhibit 7, page 12. But there is very little detail. It
27 is found on a quite a wide-ranging development schedule
28 page. But I say it's relevant because I want to be able to

1 test the EA schedule that you are now proposing.

2 MR. WARREN: We'll take it under advisement.

3 MS. CRNOJACKI: JT2.11. Hydro One under advisement to
4 provide schedule for EA approval assumed in EWT LP's
5 designation application.

6 **UNDERTAKING NO. JT2.11: HYDRO ONE, UNDER ADVISEMENT,**
7 **TO PROVIDE SCHEDULE FOR EA APPROVAL ASSUMED IN EWT**
8 **LP'S DESIGNATION APPLICATION**

9 MR. STEVENS: If I can add to that, given that this is
10 under advisement, if you are not prepared to provide the
11 schedule, can you please confirm that the evidence in your
12 designation application indicated a 25-month period from
13 submitting the terms of reference to approval. And the
14 reference there is part B, Exhibit 7, page 12 of 49.

15 MR. WARREN: Where is that evidence reference? Is
16 that from some --

17 MR. STEVENS: That is from the EWT LP designation
18 application in EB-2011-0140.

19 MR. WARREN: It's still under advisement.

20 MR. STEVENS: You will be pleased to hear this is my
21 last question.

22 Could you please turn to page 41 of the argument in-
23 chief? At the top of the page, the first full paragraph,
24 it indicates:

25 "EWT LP's consultation plan recognizes that
26 meaningful consultation requires giving
27 stakeholders genuine opportunities to shape the
28 design and route of the project. EWT LP is not

1 taking the 'design first, consult later' approach
2 favoured by some proponents. Proponents such as
3 AOLP and UCT, that intend to approach
4 stakeholders with a ready-made plan for project
5 development, will likely not be offering
6 meaningful opportunities to receive and integrate
7 public feedback and, as a result, risk
8 encountering delays and cost impacts due to
9 public opposition."

10 Can you explain to me how your current plan is
11 different from what you are identifying as problematic in
12 this statement?

13 MS. CROLL: Yes, so this statement was made at the
14 very start of this project where no work or consultation
15 had been done at that time.

16 We're all aware that over the last five years there
17 has been significant consultation and study done on both
18 the proposed Hydro One route and the proposed NextBridge
19 route, both under the terms of reference and now by
20 NextBridge in the individual EA.

21 So for Hydro One to create a new terms of reference is
22 -- we expect to be a fairly straightforward process,
23 because everyone who is already familiar with this project
24 has been heavily consulted and, in fact, an approved terms
25 of reference already exists for this undertaking.

26 That approved terms of reference, in fact, uses our
27 proposed route as the preferred reference route, so there
28 has already been significant consultation on that. We

1 would not expect to duplicate all that, but we would expect
2 to create our own terms of reference which makes it clear
3 what our reference route is and what our alternate route
4 is.

5 MR. STEVENS: Thank you, those are my questions,
6 although my colleague will have a few questions after the
7 break.

8 MS. LEA: Thank you. So we'll reconvene in 15
9 minutes, please, which is 11:05 by the clock on the wall,
10 which I'm informed is two minutes slow, so at about 11:07.

11 Thank you.

12 --- Recess taken at 10:52 a.m.

13 --- On resuming at 11:08 a.m.

14 MS. LEA: Welcome back. Thank you. I believe -- is
15 it Mr. Murphy? Yes, thank you. You have some questions
16 for the panel.

17 **QUESTIONS BY MR. MURPHY:**

18 MR. MURPHY: Good morning. My name is Brian Murphy,
19 and I'll be asking you questions on behalf of NextBridge.

20 **First I'd like to start with the material that you**
21 **submitted on May 7th, page 30, the third full paragraph.**
22 **In that paragraph, Hydro One states that it has the utmost**
23 **confidence in its modelling, although it will do full scale**
24 **testing to perform on the suspension transmission towers.**

25 **Do you see that statement?**

26 MR. SPENCER: Yes, we see it.

27 MR. MURPHY: **Does this statement apply to the**
28 **suspension towers in the park, or all the suspension towers**

1 MR. KARUNAKARAN: It is for all the structures
2 associated with the Lake Superior link project.

3 MR. MURPHY: How many structures are you proposing for
4 the Lake Superior project?

5 MR. KARUNAKARAN: Number of structure types?

6 MR. MURPHY: The family of structures, the family of
7 different structures. You have quad circuit, you have
8 double circuited, you'll have dead-end, so I just want to
9 understand the number that you will be testing.

10 MR. KARUNAKARAN: There are about seven of them.

11 MR. MURPHY: Seven? Thank you. Now, let's turn to
12 page 39 and the design for the quad circuit tower.

13 Can you explain to me how many guides are depicted in
14 this rendition of the tower, or another way of saying it,
15 how many guides are you currently planning to use on the
16 quad circuit tower?

17 MR. KARUNAKARAN: I'd have to check on that and come
18 back to you with an accurate answer -- hang on a second,
19 sorry.

20 MR. ISHAC: It is three guide wires per length; in
21 total there are 12.

22 MR. MURPHY: Thank you. That's what I thought and I
23 just wanted to confirm.

24 Has Hydro One ever tested a quad circuit transmission
25 tower that uses that number of guides?

26 MR. ISHAC: No.

27 MR. MURPHY: Has Hydro One considered shortening the
28 spans of the quad circuit transmission towers in the park

1 as a way to help use less guides?

2 MR. ISHAC: No.

3 MR. MURPHY: Let's turn to page 6, the fifth full
4 paragraph.

5 In that paragraph, you provide two examples of quad
6 circuit transmission towers, the Longwood circuit and the
7 Burlington circuit. I'll refer to them separately as
8 Longwood and Burlington; do you see that?

9 MR. SPENCER: We do, yes.

10 MR. MURPHY: These quad circuit towers are self-
11 supporting towers; in other words they do not use guys,
12 correct?

13 MR. YOUNG: That is correct.

14 MR. MURPHY: The Longwood example that you provide
15 runs through predominantly farmland; is that correct?

16 MR. YOUNG: Yes, that's correct.

17 MR. MURPHY: And it's also near London, Ontario; is
18 that correct?

19 MR. YOUNG: That's correct.

20 MR. MURPHY: Turning to the Burlington example, that
21 runs along a beach near Hamilton; is that correct?

22 MR. YOUNG: Yes.

23 MR. MURPHY: So it's fair to say that neither one of
24 these examples are anywhere near located in northwest
25 Ontario?

26 MR. SPENCER: And if I might just elaborate slightly?
27 Although these examples cited in point 1 on page 6 of the
28 evidence are not in north-western Ontario, Hydro One has

1 over 50,000 steel structures and approximately a third of
2 our transmission line overhead inventory is within northern
3 Ontario. So certainly we have a very clear understanding
4 of the topology, the terrain and weather conditions and how
5 those all affect design requirements.

6 MR. MURPHY: Just so I can go back to my question, I
7 just want to confirm that those locations are not in
8 northwest Ontario?

9 MR. SPENCER: That is correct.

10 MR. MURPHY: Thank you. Even with those examples, is
11 it fair to say that Hydro One does not have a transmission
12 circuit that includes 87 quad circuit transmission towers?

13 MR. YOUNG: No, that isn't correct. We have a number
14 of multi-circuit towers throughout the province. The other
15 one that wasn't identified here is a quad 230 kV tower line
16 that we have in the eastern part of the GTA, and those are
17 four 230 kV circuits on the same tower that runs for nearly
18 30 kilometres.

19 MR. MURPHY: Why was that not indicated in your
20 submittal?

21 MR. YOUNG: We just provided a couple of examples.

22 MR. SPENCER: There are a number of examples and as
23 you are driving around highways in the greater Toronto
24 area, you will actually see many quad circuit towers. I
25 would encourage anyone driving from the Gardiner Expressway
26 way onto the 427, you will see quad circuit towers there.

27 And as Mr. Young alluded to, some of the most critical
28 corridors we have feeding load within the Toronto area are

1 in fact built on quad circuit towers.

2 MR. MURPHY: I'd like to have an undertaking for a
3 full answer on all the examples that you have on quad
4 circuit towers. You've mentioned quite a few. I'd like a
5 full inventory, including the length and vintage.

6 MS. LEA: And the location, sir?

7 MR. WARREN: We'll see how much is involved in getting
8 an answer to that.

9 MR. MURPHY: I'm sorry, I did not hear the response.

10 MS. LEA: I'm sorry, Mr. Warren, I interrupted you. I
11 beg your pardon, sir.

12 MR. WARREN: I said we'll take it under advisement.
13 We'll see how much is involved in it. If there are
14 hundreds of towers in different locations, it may be
15 effectively impractical for us to provide an answer to
16 that. We'll take under advisement and let you know.

17 MR. MURPHY: I can make it easier. I'm looking for
18 the circuits between one substation and another, and only
19 the length and vintage between those circuits.

20 As a person who works in this industry, I'm fairly
21 comfortable that you have that list readily available.

22 MR. WARREN: Same answer. I'll take it under
23 advisement and let you know.

24 MS. CRNOJACKI: JT2.12, under advisement, Hydro One to
25 provide examples of quad circuit towers between
26 substations.

27 MR. MURPHY: Thank you.

28 UNDERTAKING NO. JT2.12: UNDER ADVISEMENT, TO PROVIDE

1 EXAMPLES OF QUAD CIRCUIT TOWERS LOCATED BETWEEN
2 SUBSTATIONS

3 MR. MURPHY: I'd like to turn to page 31, the third
4 full paragraph, where it states that Hydro One's towers
5 withstood the 1998 ice storm with minor damages, unlike
6 Hydro-Quebec.

7 Do you see that statement?

8 MR. YOUNG: Yes.

9 MR. SPENCER: I do see it, yes.

10 MR. MURPHY: Let's turn to page 35, the first full
11 paragraph. Here Hydro One claims that the 1998 ICE storm
12 shows that Hydro One's design criteria prevents cascading.
13 Do you see that statement?

14 MR. ISHAC: Yes.

15 MR. MURPHY: Is it a fair statement that the 1998 ice
16 storm did not impact Hydro One with the same amount of ice
17 accumulation that was experienced by Hydro Quebec?

18 MR. ISHAC: Yes.

19 MR. MURPHY: Thank you. Is it also fair to state that
20 Hydro One did not have 87 quad circuit towers in northwest
21 Ontario placed on 50-year old foundations that withstand
22 the same icing conditions of Hydro Quebec?

23 [Witness panel confers]

24 MR. WARREN: Sorry. Actually, before my clients
25 answer the question, I need to understand the question. Is
26 the question that in the 1998 ice storm, there was no ice
27 on 87 quad towers in north-western Ontario? Is that the
28 question?

1 MR. MURPHY: The question is: Did Hydro One have 87
2 quad circuit towers built on 50-year-old foundations at
3 that time period.

4 MR. ISHAC: The answer is no.

5 MR. MURPHY: Thank you. Now, I would like to move to
6 the critique of Mr. Nickerson's memorandum. Hydro One, in
7 its critique, discusses that there are two industry
8 practices, modelling and testing, and that Hydro One models
9 but does not test angled and dead-end structures, and it
10 also -- this is on page 30 --

11 MR. WARREN: Mr. Murphy, Mr. Murphy, do you have a
12 page reference that you can direct my clients to?

13 MR. MURPHY: Yep, page 30. It is just a general
14 discussion of -- they use modelling sometimes and sometimes
15 testing.

16 So my question -- and that dead-end towers are
17 modelled, not tested, and that you've had no failures with
18 dead-end; is that a correct reading?

19 MR. SPENCER: That is a correct read, yes.

20 MR. MURPHY: Thank you.

21 In the 87 quad circuit transmission towers that you
22 are proposing for your project, there are no dead-end
23 towers, correct?

24 MR. KARUNAKARAN: That's correct.

25 MR. MURPHY: In 2011 Hydro One experienced a failure
26 of a double circuit 230 suspension tower near Wawa on the
27 transmission line that connects Ontario to Manitoba; isn't
28 that correct?

1 MR. SPENCER: That is correct.

2 MR. MURPHY: How long did it take to restore the tower
3 near Wawa?

4 MR. SPENCER: The specifics we don't have at the
5 particular moment, but I would like to articulate a very
6 clear difference between that tower and the ones that are
7 proposed through the Lake Superior link. Those towers were
8 designed in accordance with the standards at the time,
9 which were to withstand a one-in-50-year storm event, and
10 of course, as Hydro One and SNC-Lavalin have proposed as
11 part of the Lake Superior link, we'll be designing far more
12 stringent criteria of a one-in-100-year storm event.

13 MR. MURPHY: And I do understand that, so thank you,
14 but I would also like to understand the amount of time it
15 took to restore the tower; could I get that through an
16 undertaking?

17 MR. SPENCER: We could provide that through an
18 undertaking. Yes.

19 MR. MURPHY: Was there any loss of load during -- I'm
20 sorry, yeah, the number.

21 MS. CRNOJACKI: JT2.13, Hydro One to provide time that
22 it took to restore the tower in 2011 on the transmission
23 line from Ontario to Manitoba.

24 UNDERTAKING NO. JT2.13: HYDRO ONE TO PROVIDE THE TIME
25 THAT IT TOOK TO RESTORE THE TOWER NEAR WAWA IN 2011
26 STORM ON THE TRANSMISSION LINE FROM ONTARIO TO
27 MANITOBA.

28 MR. MURPHY: I'll move on to -- the next question is,

1 my understanding you had two transmission failures in March
2 of this year; is that correct?

3 MR. SPENCER: Let us consult for one second, please.

4 [Witness panel confers]

5 MR. WARREN: While they are conferring, Mr. Murphy, do
6 you have dates, times, locations so that we are not looking
7 for a needle in a haystack?

8 MR. MURPHY: I actually have pretty dramatic newspaper
9 articles that I could hand out if you want me too, but I'm
10 also --

11 MR. WARREN: I just want dates and times, Mr. Murphy.
12 You can keep the drama to yourself, if you wouldn't mind.

13 MR. MURPHY: It was March of 2018.

14 MR. SPENCER: So Mr. Young and I are consulting. We
15 are familiar with one event on the K2Z circuit in the Belle
16 River area. We are at a bit of a loss for the second
17 event, in all honesty.

18 MR. MURPHY: What I'd like to ask as an undertaking is
19 for each of Ontario's Hydro's transmission failures over
20 the past ten years -- and I'll read this slowly so, one,
21 you can hear it, and two, that I have it in writing if the
22 court reporter needs it -- for each Ontario Hydro
23 transmission tower failure over the past ten years, provide
24 the following information: The days of the outage of the
25 transmission circuit, whether there was a loss of load. If
26 yes, the duration of the loss of load, was the -- was the
27 tower modelled prior to construction? Was the tower tested
28 prior to construction? Was it designed to withstand a one-

1 in-50-year storm or a one-in-100-year storm? Was a root-
2 cause analysis conducted? If no, why not? If yes, provide
3 a copy of the root-cause analysis. Were there remedial
4 measures or procedures implemented? If not, why not? If
5 yes, provide a copy.

6 MR. WARREN: The answer to the request for an
7 undertaking is no.

8 MR. MURPHY: Can I have a basis for the refusal?

9 MR. WARREN: No.

10 MR. MURPHY: I will just say it is pretty standard
11 information that most utilities have at hand. I will move
12 on.

13 MR. SPENCER: If I might just add a few things here,
14 because my understanding of this technical conference is to
15 share information that may ultimately be helpful to OEB
16 staff and the Board members themselves in arriving at a
17 decision on the motion itself, so with that in mind I'd
18 like to speak briefly just to the underlying issue I
19 believe you are getting to, which is our restoration
20 capabilities in the event of an extreme weather event.

21 MR. MURPHY: I'm trying to do it in a database manner,
22 not in an anecdotal matter, so I actually would rather move
23 on to my other questions, and if you are not willing to
24 provide the detail, I don't see how anecdotal helps either
25 party.

26 MR. SPENCER: I think, honestly, it would be helpful.
27 We've certainly taken into account the importance of the
28 proposed Lake Superior link circuitry on the northwestern

1 power system and the other parts of the power system within
2 Ontario, and we have developed response plans in the event
3 of forced outages in that area, which would include
4 location of crews in proximity, which I might add we
5 already have, including necessary equipment, sourcing of
6 materials for both temporary and permanent repairs that
7 would minimize power system disruption in the event of a
8 forced outage on those circuits. Thank you.

9 MR. MURPHY: Now let's turn to NextBridge April 30th
10 submittal, if the person -- it is attachment A, Appendix 5,
11 page 2 of 4, the last line of the second full paragraph.
12 This is a letter from Andrew Spencer, vice-president,
13 transmission and substations for Hydro One.

14 MR. SPENCER: Yes, we have it turned up.

15 MR. MURPHY: The last sentence says:

16 "In fact, in the over 40 years of current East-
17 West Tie's life span there has only been one
18 tower-down situation, which took place during the
19 -- 2009 ice storm, the weather phenomenon that
20 would have most likely had the same effect on any
21 equipment in the region."

22 Do you see that statement?

23 MR. SPENCER: Around the middle of page 2, yes.

24 MR. MURPHY: Is it Hydro One's position that if the
25 existing East-West Tie were to experience, again, a 2009-
26 type ice storm, that again it would experience similar
27 damage?

28 MR. SPENCER: Not necessarily.

1 MR. MURPHY: And is there a basis for that? It seems
2 like an apples-to-apples statement.

3 MR. SPENCER: As I'm sure you are aware, there are a
4 number of factors which would impact the outcome, and just
5 a storm in and of itself does not necessarily result in a
6 structural failure of a tower.

7 MR. MURPHY: But it's correct to say you are not
8 upgrading the existing East-West Tie to a one-in-100
9 standard?

10 MR. SPENCER: That statement is correct, yes.

11 MR. MURPHY: Thank you.

12 MR. KARUNAKARAN: But I would add, sorry, that the 97
13 structures of quad circuit through the Pukaskwa National
14 Park --

15 [Reporter appeals.]

16 MR. KARUNAKARAN: -- but I would add that the 87
17 structures, the quad circuit towers through the Pukaskwa
18 National Park are currently being upgraded to the one-in-
19 100-year storm event.

20 MR. MURPHY: I heard two different answers, and I
21 don't know who controls in your corporation, so I'm happy
22 to have him correct you, if that's the case.

23 MR. KARUNAKARAN: For clarity, you were asking whether
24 the existing east-west tie which runs for 400 route
25 kilometres was going to be upgraded.

26 The short answer to that is not no its entirety.
27 However, with the Lake Superior link plan, we are building
28 a two-circuit line that is adjacent to the existing east-

1 west tie line, but there is a replacement portion through
2 the Pukaskwa National Park, and those structures through
3 the Pukaskwa National Park will be upgraded to the one-in-
4 100-year storm event.

5 MR. SPENCER: Mr. Karunakaran's clarification is in
6 fact...

7 MR. MURPHY: I understand that and I appreciate that
8 clarification, thank you.

9 Let's turn to page 42, back to your May 7th submittal,
10 and this is on page 42, the last paragraph.

11 There, Hydro One indicates that it does not dispute
12 the ultimate capacity need for the project, but asserts
13 that the capacity shortfalls identified in the December
14 2017 updated IESO needs assessment can be managed until
15 2021. Do you see that statement?

16 MR. YOUNG: Yes, I do.

17 MR. MURPHY: It is a correct statement, is it not,
18 that Hydro Ones to not own any generation?

19 MR. YOUNG: That is correct.

20 MR. MURPHY: Hydro One is also not a NERC balancing
21 authority that can balance load in generation. That's
22 under the authority of the IESO, correct?

23 MR. YOUNG: That is correct.

24 MR. MURPHY: Hydro One is not the system operator.
25 The IESO is the system operator, is that correct?

26 MR. YOUNG: Yes, the IESO is the system operator, as
27 well as the planning coordinator for Ontario.

28 MR. MURPHY: And a resource -- the resource planner as

1 well?

2 MR. YOUNG: That is correct.

3 MR. MURPHY: The IESO has control over ties with
4 Minnesota and Manitoba, correct?

5 MR. YOUNG: They have operational supervision of the
6 tie lines with Manitoba and Minnesota.

7 MR. MURPHY: As a reliability coordinator?

8 MR. YOUNG: Yes, and as a system operator.

9 MR. MURPHY: Thank you. Is it a fair statement, given
10 the above, that it's the IESO, not Hydro One, who would be
11 the entity to determine that the movement of the in-service
12 date to December of 2021 or 2022 is manageable?

13 MR. YOUNG: It is up to the IESO to continually assess
14 the risk of the capacity shortfall. But based on the study
15 results of the IESO and previous studies, especially the
16 study provided in May of 2014, which we've included in this
17 response, and if I could take you over to -- if I can take
18 you to page 20 and figure 6 of the additional evidence.

19 You can see in that in that graph, the capacity
20 requirement -- or as we call it, the capacity shortfall --
21 in the years 2019 to 2020 indicates capacity shortfalls at
22 levels higher than the capacity shortfall currently
23 identified for 2021.

24 In that instance, in figure 6 in the study for that
25 figure was -- where the study was done and the figure
26 produced, the IESO indicated that those capacity shortfall
27 levels were manageable.

28 So in this case, the most recent study, the capacity

1 shortfall of an incremental 10 megawatts between 2020 and
2 2021, from our review of what the IESO has provided, looks
3 to be quite manageable.

4 MR. MURPHY: And I do understand that's your opinion.
5 My question is: That is a determination of the IESO,
6 correct, whether it's manageable or not?

7 MR. YOUNG: Yes, and the IESO has indicated that it's
8 manageable at levels of 300 megawatts.

9 MR. MURPHY: Its latest 2017 study recommended an in-
10 service date of 2020, isn't that correct?

11 MR. YOUNG: That's correct.

12 MR. MURPHY: That assessment was not studying whether
13 they could manage through a year or two of additional risk,
14 isn't that correct?

15 MR. YOUNG: Well, that assessment I don't believe
16 precludes the possibility of delays into 2021. As part of
17 their statement in the recommendation, there was a note and
18 caveat indicating that this was subject to potential
19 approvals delays, with a recognition that should there be
20 approval delays, then the in-service dates may delay out
21 into 2021.

22 The report did not identify any significant concerns
23 with that. I would expect if 2020 was a hard date, and
24 that there was some serious significant system impacts,
25 IESO would have indicated that.

26 MR. MURPHY: Now, I'd like to move to page 46, the
27 bottom half of the page, and the top of page 47, where it
28 discusses the Northeast Power Co-ordinating Council

1 directory number 1.

2 Are you all there?

3 MR. SPENCER: We're at the page reference, yes.

4 MR. MURPHY: Now, Hydro One submitted a request and
5 supporting documentation for exclusion of the 87 quad
6 circuit towers to MPC's task force on system studies
7 pursuant to appendix E of directory number 1?

8 MR. YOUNG: Yes. There has been -- to answer this
9 question properly, I believe I need to take the audience
10 perhaps through what is exactly stated in the standard and
11 what is exactly required.

12 I know yesterday Mr. Rubenstein asked for a copy of
13 it, and I think that has been filed. And I'd like to go
14 through the relevant sections of that NPCC directory 1, so
15 people can be clear on exactly what is meant by that
16 exclusion. There has been significant confusion around it.

17 Before going into that, just generally for the -- as a
18 sort of a synopsis of it is that fundamentally, there is no
19 restriction for multi-circuit lines. All that that
20 standard says is that should your multi-circuit line
21 involve more than five towers, right, then you can't be
22 excluded from the -- what the planning -- the performance
23 requirements.

24 If you your line is less than five towers, then you
25 can be excluded. There is no statement, whether direct or
26 implied, that multi-circuit tower lines are not allowed.

27 So if I may -- could you pull up the directory one.

28 MR. MURPHY: I don't disagree with that statement. So

1 I would be willing to stipulate to that.

2 MR. WARREN: Mr. Murphy, if you could just let the
3 witness answer the question, please.

4 MR. MURPHY: I'm giving him the opportunity to see
5 that we are on the same page.

6 MR. YOUNG: Okay. So this is quite a hefty document.
7 I'm not going to go through all of it, because it has
8 portions of it for resource planning, transmission
9 planning, and operations planning.

10 MR. WARREN: I apologize for interrupting, Mr. Young.
11 Might this be given an exhibit number, please?

12 MS. CRNOJACKI: It will be Exhibit KT2.3. Do we have
13 a copy of that? I mean a hard copy?

14 MR. WARREN: We'll undertake to provide you with a
15 copy.

16 MR. SPENCER: To clarify, I believe it was filed as an
17 undertaking this morning by NextBridge further to a request
18 yesterday.

19 MR. YOUNG: I'm not sure that entire thing was filed.
20 There might be sufficient portions of it that cover what
21 I'm going to be speaking to.

22 MR. WARREN: What we'll do is over the lunch break we
23 will make additional copies of the entire document.

24 MS. CRNOJACKI: This is May 17th dated document. Am I
25 correct?

26 MS. LEA: So we have copies of a document dated May
27 the 17th, but it is an undertaking response. Is that what
28 you are referring to?

1 MR. YOUNG: Yes.

2 MS. LEA: Okay. So we have Exhibit JT1.13 and 1.14.

3 Is that the undertaking response you wish to refer to now?

4 MR. WARREN: This is not the same.

5 MS. LEA: Not the same document?

6 MR. WARREN: Not the same document.

7 MS. LEA: Right. The one that Lauren is presently
8 passing out, can you indicate, is that the document you
9 wish to refer to?

10 MR. YOUNG: It is the same document.

11 MS. LEA: Same document.

12 MR. YOUNG: But we've got -- we've just numbered it in
13 a way that's much easier to follow.

14 MS. LEA: Oh.

15 MR. YOUNG: And we have sections highlighted, so it's
16 -- there are a lot of words in this document. It is quite,
17 quite hefty.

18 MS. LEA: That's fine. So Mr. Warren, it appears we
19 have copies of the document your witness is about to refer
20 to you but in a slightly different format; is that my
21 understanding? Is my understanding correct?

22 MR. WARREN: I have to defer to my witness.

23 MR. YOUNG: Yes, it is the exact same document --

24 MS. LEA: Okay.

25 MR. YOUNG: -- except that there has been some
26 highlights placed on certain portions of the document.

27 MS. LEA: All righty. Thank you.

28 MR. YOUNG: If we could go to page 7, under the

1 transmission planning. Unfortunately, the highlighted
2 sections are not easy to see, but I'll just walk everyone
3 through it.

4 Under R7 of the transmission planning, it makes a
5 distinction that each transmission planning, planner, and
6 planning coordinator, which in Ontario is the IESO, "shall
7 plan its bulk power system" essentially to the requirements
8 specified in Table 1.

9 Table 1 is essentially a long list of the
10 contingencies that must be tested to demonstrate system
11 performance. And I'll be going there in a moment.

12 In R8 it says that "each transmission planner and
13 planning coordinator shall assess" -- now, this is really
14 key -- "the impact of extreme contingencies listed in Table
15 2".

16 So there is a key distinction between the
17 contingencies that need to be assessed from a required
18 performance perspective versus the extreme contingencies
19 that need to just be assessed, but not necessarily be
20 designed for.

21 So if you could go to the first Table 1. The heading
22 of that table talks to the planning design criteria and the
23 contingencies identified in this table -- "the system must
24 meet these performance requirements", and when it comes to
25 multi-circuit tower lines, the key contingency is the item
26 number 6, where we've provided some asterisks to it.

27 Can you go to page 75? What the contingency 6 says
28 that if you have a multi-circuit tower line then your

1 system needs to be designed for the simultaneous loss of
2 any two adjacent transmission circuits on this multi-
3 circuit tower.

4 And this is just a simple illustration of a quad four-
5 circuit tower. And just conceptually labelled the four
6 circuits A, B, C, D.

7 The NPCC requirement for multi-circuit tower lines
8 only requires the system to be designed to withstand the
9 loss of circuits A, B -- A and B or A and C or B and D or C
10 and D. It does not require the system to be designed to
11 withstand the loss of four of them or three of them or even
12 the combination of A and D or B and C.

13 Now, if you can go back to page 13 of -- there is
14 essentially a footnote here, footnote item 7. And this is
15 the footnote that talks to the five-circuit exclusion. And
16 what this says is that in situations where you have a
17 multi-circuit line and that multi-circuit line is five
18 towers or less, you don't need, as a transmission system,
19 you do not need to design your system to be able to
20 withstand the loss of these double circuits, the
21 combinations that I went through, simply because it is a
22 recognition that the circuits are very short and the
23 likelihood of losing two circuits simultaneously is very
24 low.

25 It doesn't -- this footnote does not preclude multi-
26 circuit towers at all and, in fact, even provides an
27 opportunity for -- for transmitters and power system
28 entities to come forward to NPCC to ask for an exclusion

1 where the line involves more than five towers. But those
2 are very special situations that are case by case that
3 requires NPCC approval.

4 Hydro One is not seeking any kind of approval. Hydro
5 One is simply designing a four-circuit tower line that
6 fully meets and complies with the NPCC performance
7 requirements.

8 Can you go to Table 2, please. This is the section
9 which deals with the consideration of multi-circuit loss
10 beyond the loss of two circuits. And these are deemed to
11 be extreme contingency events. And again, there is a very
12 fine -- very fine distinction, even in the title, that this
13 is not design criteria and that these are not performance
14 requirements. These are just performance assessments.

15 And if you look at the -- where I have it asterisked
16 under "extreme contingency", when the IESO as part of its
17 regular review of all the facilities in the tower system,
18 they have to do extreme contingency assessment, and the
19 extreme contingencies that they have to assess are all
20 identified in this list.

21 So this includes not only the loss of four circuits on
22 a single tower, but it also includes all of the circuits
23 that are in a common right-of-way.

24 So in the case of this project, the Lake Superior
25 link, the extreme contingency that needs to be tested for
26 is not just the four circuits on the quad tower, but also
27 the four circuits that are on two separate tower lines
28 which are adjacent to each other.

1 The extreme contingency testing goes beyond that and
2 says it has to even look at loss of all the circuits
3 emanating from a station which is even more severe than
4 just the four-circuit loss.

5 The extreme contingency assessment is a review to
6 determine the -- and to identify impacts which might be
7 unacceptable. And the intent of that assessment is to say
8 that if something were extremely impactful, then the IESO
9 would look at potential mitigation measures. But the
10 consideration of those potential mitigation measures is
11 always in the context of what is the level of impact, and
12 what is the economic feasibility associated with it.

13 Otherwise, if we were to design the system to
14 withstand extreme contingencies, the cost of transmission
15 facilities in all Ontario would easily double or more.
16 It's essentially that you'd have to duplicate all these
17 major stations and many, many lines and corridors.

18 So the economic feasibility component of it plays a
19 significant role in the assessment of what mitigation
20 measures is potentially possible when it comes to extreme
21 contingency assessments.

22 And then I'd just like to just go to the last item in
23 this document, and this is Pasquale on page 28. Under the
24 introduction section, I would just like to read out this
25 portion of it, that the intent of assessing extreme
26 contingency is not to assess the individual extreme
27 contingency on its own.

28 It is really to assess a collection of extreme

1 contingencies to determine if there is overall weakness in
2 the system.

3 And then the part that I wanted to quote here is that:

4 "This procedure applies to transmission planning
5 studies that consider the overall performance of
6 the inter-connected system of the NPCC planning
7 coordinator areas. It principally applies to
8 NPCC-wide studies of the bulk power system, and
9 generally does not apply to studies normally
10 conducted by NPCC transmission planner and
11 planning coordinators that concentrate on an
12 individual or a limited number of facilities."

13 Then in section 3, just to reinforce that, the second
14 -- the bottom of the first paragraph:

15 "It is not the intent to test the worst
16 imaginable extreme contingency, but EC tests
17 should be severe."

18 And then if you go to page 3, in the second paragraph,
19 I'd just like to note that it says here:

20 "The loss of portions of the system should not
21 necessarily be considered a failed result,
22 provided that these losses do not jeopardize the
23 integrity of the overall bulk power system."

24 Again, the intent of the extreme contingency testing
25 is to say when I review this collection of possible extreme
26 contingency, how does this affect the broader
27 interconnected power system.

28 And again, that's reinforced again in section 5, the

1 first paragraph.

2 "EC test reports should focus on those portions
3 of the system in which the basic system
4 weaknesses may be developing, rather than on the
5 results of one specific contingency."

6 I know that was a fair bit to go through, but I just
7 want to ensure that there was appropriate context when
8 we're talking about what are extreme contingencies and what
9 are contingencies that both the transmission entity as well
10 as the IESO needs to design the system to perform against.

11 MR. MURPHY: I'd like to go back to my original
12 question, just to confirm from what I'm hearing, that Hydro
13 One does not intend to seek an exclusion under appendix E
14 of directory number 1.

15 MR. YOUNG: That is correct, there is no exclusion to
16 seek.

17 MR. MURPHY: Thank you. Those are all my questions.

18 MS. LEA: Thank you very much.

19 MS. LEA: So we have Batchewana First Nation listed as
20 the next questioner. Is counsel for that party here, or on
21 the phone?

22 MR. HENDERSON: Yes, I am. It's Bill Henderson on the
23 phone.

24 MS. LEA: Mr. Henderson, I apologize. I got a little
25 bit mixed up as to who was who. So Mr. Henderson, do you
26 have some questions for these witnesses?

27 MR. HENDERSON: Yes, I do.

28 MS. LEA: Thank you, please go ahead.

TAB 10

- Work protection issues must be addressed. Unless there is one Controlling Authority¹⁹ (as per Utility Work Protection Code), the entity owning the exit line from the station would have to issue a supporting guarantee for work downstream. Ideally, one entity maintains the entire line to avoid this duplication and complication in establishing a safe work zone. The supporting guarantee is needed to ensure personnel safety in addition to locally applied grounds and it is standard procedure.

IN-SERVICE DATE

- e. What are the implications of Hydro One's proposed in-service date of 2021 in the context of the Priority Project OIC and subsequent correspondence and reports?

The main reason for the stated in-service date of 2020 is the OIC, dated Mar. 2, 2016, which stated:

[AND WHEREAS] Ontario considers the expansion or reinforcement of the electricity transmission network in the area between Wawa and Thunder Bay composed of the high-voltage circuits connecting Wawa TS with Lakehead TS (the "East-West Tie Line Project"), with an in service date of 2020, to be a priority;

The delay of in-service date from 2018 to 2020 was previously proposed by the IESO (formerly OPA) and NextBridge, and the delay was endorsed by the OEB on November 19, 2015. The OIC stated that the project, and the agreed in-service date of 2020, is a priority.

Based on the OIC and the expectation that the designated and connecting transmitters could be able, at best, to complete the project by the end of 2020 (according to the July 31, 2017, leave to construct applications and their assumptions for approval timelines), the IESO in its 2017 update report²⁰ recommended an in-service date of 2020 by stating,

The IESO continues to recommend an in-service date of 2020 for the E-W Tie Expansion project. Discussions with the transmitters confirmed their ability to meet this date, dependent on timely regulatory approvals.

In response, the Ministry of Energy, in its Dec. 4, 2017, letter to the IESO, stated,

Given the IESO's recommended in-service date of 2020, I also expect the OEB will proceed in a timely manner in consideration of its performance standards for processing applications.

Upon review of the above references, and further justifications described later in this response, one can conclude that the 2020 in-service date is not a mandatory or critical requirement and is instead a desired recommended date.

Hydro One states that a delay of up to one year in the recommended in-service date is justifiable, considering the huge cost saving and reduced environmental impact that results from Hydro One's shorter route and smaller right-of-way compared to the NextBridge proposal. Hydro One is

¹⁹ Controlling Authority definition - The person(s) who occupies a position responsible for the control of specific equipment and devices. This includes the responsibility for performing, directing or authorizing changes in the conditions or in the position of the equipment or devices.

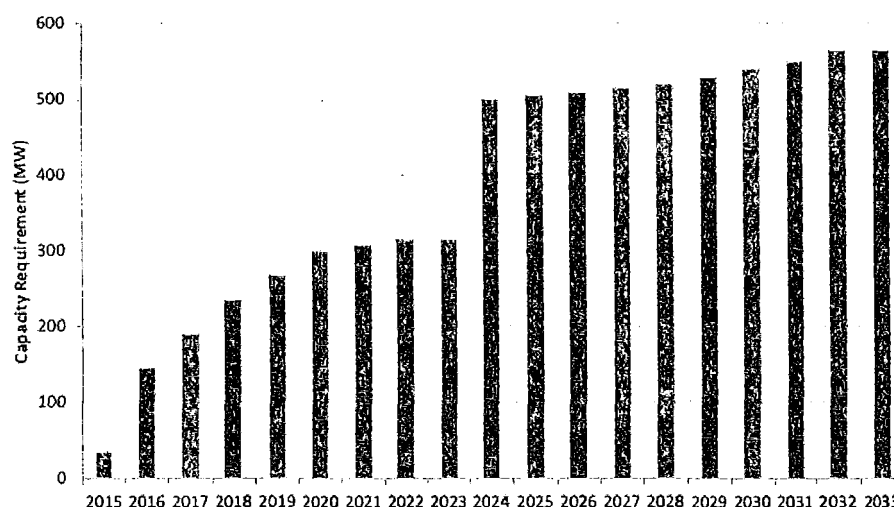
²⁰ IESO Updated Assessment of the Need for the East-West Tie Expansion, December 1, 2017

confident that this delay will not pose an undue risk to electricity supply in the Northwest based on the following reasons.

- i. The IESO's second Need Update Report, dated May 5, 2014, forecast a capacity shortfall greater than the capacity shortfall that is now anticipated in 2020 and still deferred the Project in-service date to 2020 because the capacity shortfall was manageable.

The IESO's second Need Update Report, dated May 5, 2014, forecasted a capacity shortfall of approximately 35 to 230 MW between 2015 and 2018, increasing to approximately 300 MW in 2020. An extract of Figure 6 is provided below and the entire report is provided as Attachment 14 to this submission.

Figure 6. Expected Incremental Northwest Capacity Requirement



Yet, on September 30, 2014, the IESO (then OPA) wrote a letter to the OEB recommending the delay of the EWT in-service date from 2018 to 2020. A copy of this letter is provided as Attachment 15.

The IESO's third Need Update Report of December 15, 2015²¹, states:

"This report also follows several additional filings with the Board in the E-W Tie proceeding, namely: i) the OPA's September 30, 2014 need update letter regarding the development schedule, including a recommendation and explanation of the rationale for revising the project's in-service date from 2018 to 2020."

"In the filings referenced above, the OPA and IESO advocated that the additional time for development work afforded by the deferral of the in-service date from 2018 to 2020 be used to investigate potential cost savings for the project." [emphasis added]

NextBridge, in its June 24, 2015, letter to the OEB, requested revisions to the development schedule, based on the delay of the in-service date to 2020. The OEB approved the new schedule²². The delay

²¹ Exhibit B, Tab 2, Schedule 1, Attachment 1 – Page 2

²² EB-2015-0216 – OEB Decision and Order – November 19, 2015

of two years in the in-service date was requested notwithstanding the IESO's forecast 300 MW capacity shortfall in 2020 for the objective of reducing the cost of the project. After the OEB decision to accept the revised development schedule and in-service date of 2020, the IESO issued the third update report of December 2015 and revised the shortfall in 2020 to approximately 160 MW.

Based on the same arguments as those above, Hydro One considers the delay of up to one year in the in-service date to be justified because it offers a significant cost saving and the potential capacity shortfall during that period is manageable as described below.

- ii. The IESO's 2017 update report²³ assumptions are worst-case scenarios.

The report indicates that "A 100 MW capacity need already exists today, and this need continues to grow to approximately 240 MW by the original 2020 in-service date." This shortage is based on the IESO's Reference demand forecast and planning assumption and criteria, including:

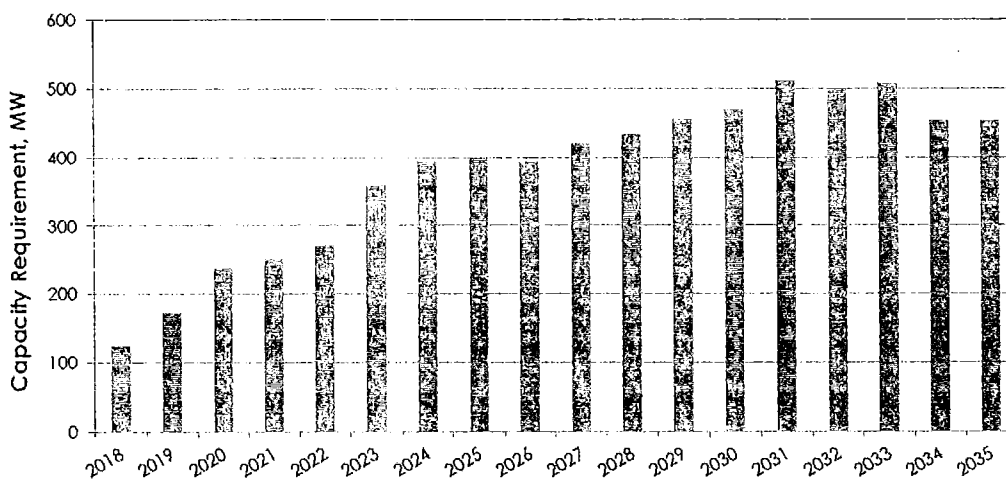
- a) Approximately 740 MW demand in the Northwest (Fig 2 of the 2017 IESO report)
- b) No import from Manitoba and Minnesota
- c) Loss of both circuits of the existing EWT line

This means that based on the IESO's probabilistic assessment, only approximately 500 MW of generation is expected to be available out of 1,364 MW of installed capacity (Fig 4 of IESO report).

- iii. The supply shortage increases only marginally with a one-year delay

The supply shortage increases only marginally from approximately 240 MW in 2020 to approximately 250 MW in 2021 if the in-service date is delayed by one year. This is according to the IESO's Reference demand scenario (Figure 5 of IESO report, copied below).

Figure 5. Expected Incremental Northwest Capacity Requirement under Reference Demand



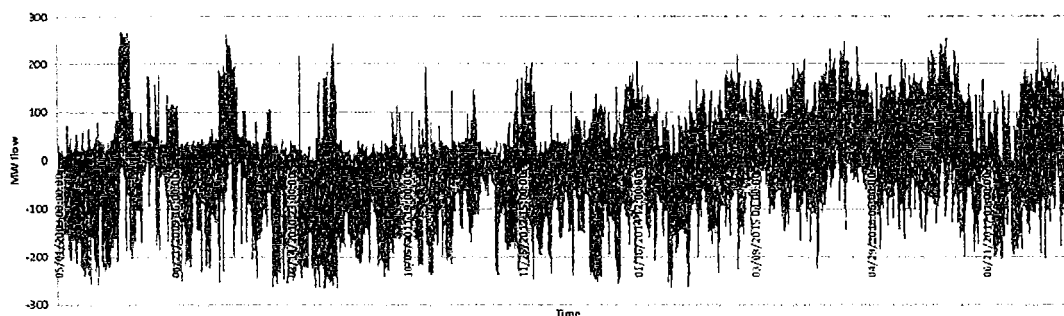
- iv. Probability of capacity shortfall is low, and the risk is manageable.

²³ EB-2017-0364 – Exhibit B, Tab 2, Schedule 1, Attachment 2 – Page 13, Section 6.1

The probability of the coincidence of low generation, loss of the EWT double-circuit line for more than a few hours, and limitation of no import from Manitoba and Minnesota is very small over the course of one additional year before project completion.

Under storm conditions, it is possible that both circuits would trip; and when one circuit is out of service, the second circuit could trip as a result of a fault. But except in rare occasions, the outage is momentary, and one or both circuits return to service in a matter of minutes. If one circuit is out of service for a planned outage and the other circuit sustains a fault, the first circuit could be returned to service in a few hours. When at least one circuit remains in service, it can provide up to 350 MW of capacity to the Northwest, mitigating the supply shortage during low generation.

The existing transmission system has capacity for 150-200 MW import from Manitoba (Page 16 of the 2017 IESO report). The interconnection with Minnesota can also provide up to 100 MW import. Although there is no firm import agreement with Manitoba and Minnesota, just as they are expected to be able to support the post-contingency need in the Northwest for up to 30 minutes, it is likely that they will be able to extend this support for a few hours while at least one of the EWT circuits be brought back to service following an outage. In the past 10 years, Ontario's real time hourly-average import from Manitoba has ranged from 0 to 265 MW. Graph 1 is provided not to contradict the Planning information provided by the IESO, but to illustrate the transfer capability of the Manitoba-tie line. Based on the data provided in Graph 1, it is an extremely conservative assumption that the import capabilities from Manitoba cannot be reasonably relied upon to address the up to one year delay.



Graph 1
10 Year Flow Through Manitoba Tie Line

The IESO's 2017 update report has not raised a major concern regarding the shortage of up to 240 MW in the Northwest between 2018 and 2020 under Reference demand scenario (Figure 5 of IESO report). Instead, the report indicates that the IESO "will . . . monitor electricity supply and demand in the Northwest" (Page 2 and 19 / Sec 1 and 9 of the IESO report)

The 2015 need update report by the IESO had also identified capacity needs in the interim period before the completion of the E-W Tie, although in that report the capacity need in 2020 was predicted to be around 150 MW instead of 240 MW in the new report. The 2015 report indicated that in the interim period, "if necessary, [IESO will] deploy short-term options to bridge the gap until the E-W Tie expansion comes into service" – (page 12)

Therefore, for all these reasons, Hydro One states that a potential capacity need (according to the planning criteria and assumptions) of around 250 MW in 2021, before the completion of Lake Superior Link, has low probability and is manageable, if necessary, by deploying short-term options.

American Society of Civil Engineers Manual No. 74, Fourth Edition, 2016 ("ASCE Structural Loading Manual").

Unlike NextBridge, Hydro One understands firsthand the requirements in designing and operating a transmission line in the particular environments of northern Ontario, as Hydro One has owned, operated and maintained the current EWT Line and other lines for over 50 years. Hydro One's design criteria are based on the technical standards mandated by CSA and the OEB as well as Hydro One's robust loading specification considering heavy ice, wind plus ice, and high wind alone, in addition to the longitudinal loads for line security. The performance of the lines design to these criteria has been proven to be beyond satisfactory for the past 50 years, including in northern Ontario.

C. It is accepted industry practice that unique and new transmission tower configurations (such as that proposed by Hydro One), should be designed and full-scale tested to verify the ability of the structure to support design loads and meet code requirements.

In actuality there are two accepted industry standards, the first being testing as described and the second being the inclusion of additional safety factors to the design models. Hydro One and formerly Ontario Hydro have over 100 years of experience successfully designing angle and dead-end towers without testing using higher overload factor. No recorded failure of any dead-end tower has been experienced in the last 100 years.

Although Hydro One has the utmost confidence in the modeling, full-scale tower testing will be performed on the suspension towers to confirm the suitability of the tower design process and the tower detailing process. Sufficient timelines are incorporated within our schedule to accommodate any unforeseen modifications and retesting if required. Indirectly, the tests also confirm the correctness of the tower members themselves with respect to their connections, steel grades, sizes, and lengths. These towers will be tested according to the international standard IEC 60652.

D. For one tower structure design, this process could take well over one year. In addition, if the inspection of the foundations show that some or all of the foundations require repair or replacement, the effort and time necessary to develop an acceptable plan to mitigate and implement repairs to the foundations could also take a year. Thus, unless Hydro One can provide information and evidence that it has completed all of the above steps and tasks with acceptable results, it is likely Hydro One is over a year or more away from being able to provide the Ontario Energy Board (OEB) and stakeholders with the information and evidence needed to show it can safely and reliably construct and operate the new quad circuit towers on either existing foundations or new foundations, if needed.

The projected timeline to start assembling towers for the Park is June 2020 for the August 2020 outage, which is more than two years from the current date. Given Mr. Nickerson's one-year timeline concern, the current Hydro One timeline provides ample time to ensure that these quad circuit towers and foundations are designed and verified, including load testing.

E. The Application and Additional Evidence does not provide any information that Hydro One has completed any of these tasks or steps. If Hydro One has completed these tasks for its proposed design, I would want to review the supporting data and conclusions. I am concerned that a new quad circuit tower, as proposed by Hydro One, is not appropriate, safe, and reliable given the likely loading on the lines, icing conditions experienced at the Park, and the use of existing foundations.

TAB 11

1 think we still have a bit of time, but I'm not -- I don't
2 think we have 45 minutes. I'm hoping less than 30. I
3 won't make any promises.

4 MR. LESYCHYN: Twenty.

5 MS. LEA: Well, okay, gentlemen, I'm not sure whether
6 I should hold you to that. I think we need a brief break.
7 We need to get up, stretch, et cetera, so we will return,
8 however, quite quickly. Can we return in -- is five
9 minutes enough for folks? Because we do want to get out of
10 here preferably before 6:30.

11 Thank you, we'll reconvene in five minutes. Thank
12 you.

13 --- Recess taken at 5:37 p.m.

14 --- On resuming at 5:46 p.m.

15 MS. LEA: All right, we're back. Mr. Zacher?

16 **QUESTIONS BY MR. ZACHER:**

17 MR. ZACHER: Good evening, panel. I don't have a lot
18 of questions.

19 Mr. Young, I just want to ask a couple of follow up
20 questions from Mr. Rubenstein with regards to the capacity
21 gap, and I wonder if you could turn up page 23 of Hydro
22 One's additional evidence filed May 7th.

23 This is with the two graphs that Mr. Rubenstein had
24 referred you to.

25 MR. YOUNG: Page 23?

26 MR. ZACHER: Page 20, I apologize; 20 and 21.

27 MR. YOUNG: Yes, I have it.

28 MR. ZACHER: I think you were looking at the graph on

1 page 20, which is actually from the 2014 needs update. So
2 properly, we should be looking at the most recent one, the
3 2017 needs update on page 21, right?

4 MR. YOUNG: That is correct, but only -- I was
5 referring to it based upon the determination in 2014 that
6 those capacity shortfalls were at that time deemed
7 appropriate to defer the project in-service by two years,
8 right?

9 So at those levels, if it was deemed to be appropriate
10 then, then in 2017, based on the study report, those
11 numbers are actually smaller than in 2014. And I was just
12 trying to draw that linkage.

13 MR. ZACHER: I understand. So even if you are looking
14 at the 2017 need update, where you see the sort of capacity
15 gap sort really ticks up in 2023, not 2024, you still infer
16 from the IESO's need update that this is -- there is a
17 capacity gap, but it's manageable, in your view.

18 MR. YOUNG: That's right. It is manageable for
19 another year. I hope I didn't imply that it was manageable
20 to 2023.

21 MR. ZACHER: No. And just to be clear, I think you
22 fairly conceded to Mr. Rubenstein that while it's
23 manageable, there may be costs that come with managing that
24 gap?

25 MR. YOUNG: That's correct.

26 MR. ZACHER: And those could include replacement
27 energy costs, for instance imports from Manitoba.

28 MR. YOUNG: That's right, but they would be

TAB 12

2.0 KEY ASSUMPTIONS, RISKS AND CONTINGENCIES

2.1 Key Assumptions

These key assumptions are critical to the completion of the Project, both with respect to schedule and overall costs. If these assumptions do not materialize, Hydro One will not be able to complete the Project as proposed in this Application.

- i. **CO-OPERATION WITH MINISTRY OF ENVIRONMENT AND CLIMATE CHANGE:** It will be necessary that the MOECC work collaboratively with Hydro One to implement a regulatory measure, such as a Cabinet exemption to typical EA requirements. This regulatory measure would allow Hydro One to utilize the EA-specific development work already completed by NextBridge, and address changes in the proposed route through additional study, consultation and regulatory approval. Hydro One will ensure the Project is conducted in accordance with any relevant conditions and mitigation measures proposed in the NextBridge EA as well as incorporate any additional considerations from the studies associated with the route changes.
- ii. **UTILIZATION BY HYDRO ONE OF EXISTING EA:** Given that the competitive process established by the OEB clearly states the ability for any transmitter to submit a Leave to construct to build the project, Hydro One has assumed that the EA-specific development work will be made available to the transmitter designated to ultimately construct the Project. This is a necessary measure to foster optimal competition in any open process. It aligns with the intent of the Policy that established that the development transmitter and constructing transmitter was not necessarily going to be the same transmitter¹⁶, and is critical

¹⁶ 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.”

to mitigate ratepayer costs and ensure a timely in-service date for the Project. Additionally, in the context of an open, fair and on-going competitive process, the development work (inclusive of the EA) is intended for the benefit of ratepayers through the ultimate construction of the line.

iii. **DISCLOSURE OF THE NEXTBRIDGE EA:** The effects of the EA Amendment currently being prepared by NextBridge will need to be made available to Hydro One prior to the end of the third quarter of 2018 in order to ensure changes are addressed. Approval of NextBridge's EA must be received by the end of the third quarter of 2018 and Hydro One must receive EA approval of the route changes by June 2019 in order to meet both the in-service date and the costs as outlined in this Application.

iv. **AGREEMENT WITH IMPACTED INDIGENOUS COMMUNITIES:** This leave to construct application is conditional upon Hydro One finalizing agreements with directly impacted Indigenous communities to be established on mutually agreeable terms within a short period of time (in order of 45 days) from receipt of OEB approval.

Risks and Contingencies

2.2 HYDRO ONE MONTE CARLO SIMULATION

Hydro One utilized a Monte Carlo risk simulation to assess the probability of possible outcomes to determine the amount of the risk contingency. This sophisticated risk simulation method enables Hydro One to derive a reasonable and probable contingency allowance based on the analysis of a multitude of scenarios. A similar process was also followed by our construction partner.

The key risks that were included in the Monte Carlo simulation are identified in the table below.

TAB 13

Ministry of Energy

77 Grenville Street
6th Floor
Toronto ON M7A 2C1

Tel: (416) 314-2599

Ministère de l'Énergie

77 rue Grenville
6^e étage
Toronto ON M7A 2C1

Tél: (416) 314-2599



Indigenous Energy Policy

VIA EMAIL

March 2, 2018

Daniel Charbonneau
Senior Manager, Indigenous Relations
Hydro One Networks Inc.
483 Bay Street
Toronto, Ontario M5G 2P5

Re: East-West Tie Line

Dear Mr. Charbonneau:

Thank you for your letter dated November 7, 2017 requesting clarification from the Ministry of Energy on the Duty to Consult requirements for the East West Tie Line (Lake Superior Link).

Your letter states that the preliminary scope of the project consists of a new 398 kilometer, 230 kilovolt double-circuit transmission line along the northern shore of Lake Superior between Wawa and Thunder Bay. The proposed project would parallel the existing Hydro One tie between Lakehead Transmission Station and the Wawa Transmission Station.

The Ministry of Energy has reviewed the information provided relative to its current understanding of the interests of First Nation and Métis communities in the area and has determined that it may have the potential to affect First Nation and Métis communities who hold or claim Aboriginal or treaty rights protected under Section 35 of Canada's *Constitution Act* 1982.

The Ministry of Energy is delegating the procedural aspects of consultation and the Ministry of Energy expects that Hydro One will undertake the procedural aspects of consultation, consistent with the responsibilities outlined in the Memorandum of Understanding (MOU) signed between Ontario, represented by the Minister of Energy, and Hydro One, in September 2016. Please note that these consultation obligations are in addition to the consultation requirements imposed under the *Environmental Assessment Act* and further

clarified in the 'Consultation in Ontario's Environmental Assessment Process' Code of Practice as well as the 'Preparing and Reviewing Environmental Assessments in Ontario' Code of Practice.

Per section 8.1 of the MOU, the MOU and Schedule 'A' may be amended in writing at any time by the agreement of the Parties. The Ministry of Energy proposes an amendment to the MOU to include the following project description:

2. East West Tie Transmission Line (Lake Superior Link)

The East West Tie Transmission Line Project is added to this schedule consistent with the 2013 Long-Term Energy Plan, the Order in Council 326/2016 and the December 2017 Updated Assessment of the Need for the East-West Tie Expansion conducted by the IESO, which confirms the East-West Tie, a new transmission line roughly parallel to the existing transmission line that extends between Wawa and Thunder Bay, as the recommended option for maintaining a reliable and cost-effective supply to Northwest Ontario for the long term.

Per Sections 2.2(c) and 3 of the MOU, the Ministry of Energy also wishes to clarify that for the purposes of the Environmental Assessment under Part II of the *Environmental Assessment Act*, the Ministry of the Environment and Climate Change assumes primary responsibility, on behalf of the Crown, for items (c), (d), (e), (g), (h) under Section 3.2 of the MOU.

Based on the Crown's assessment of First Nation and Métis community rights and project impacts, the following Aboriginal communities should be consulted on the basis that they have or may have constitutionally protected Aboriginal or treaty rights that may be adversely affected by the Project:

Community	Mailing Address
Animbiigoo Zaagi'igan Anishnaabek First Nation (Lake Nipigon Ojibway)	204 Main Street, PO Box 120 Beardmore, ON P0T 1G0
Biinjitiwaabik Zaaging Anishinaabek First Nation (Rocky Bay)	General Delivery MacDiarmid, ON P0T 2B0
Biigtigong Nishnaabeg	PO Box 193, 78 Pic River Road Heron Bay, ON P0T 1R0
Bingwi Neyaashi Anishinaabek (Sand Point First Nation)	146 S. Court Street Thunder Bay, ON P7B 2X6
Fort William First Nation	90 Anemki Place, Suite 200 Fort William First Nation, ON P7J 1L3
Ginoogaming First Nation	PO Box 89, 101 Poplar Crescent Long Lac, ON P0T 2A0
Long Lake #58 First Nation	209 Otter Street, PO Box 609 Long Lac, ON P0T 2A0
Michipicoten First Nation	107 Hiawatha Drive, Box 1, Site 8, RR#1 Wawa, ON P0S 1K0
Missanabie Cree First Nation	174B, Hwy. 17E, Bell's Point Garden River, ON P6A 6Z1
Ojibways of Batchewana	236 Frontenac Street, Rankin Reserve 15D

	Sault Ste. Marie, ON P6A 5K9
Ojibways of Garden River	7 Shingwauk Street Garden River, ON P6A 6Z8
Pays Plat First Nation	10 Central Place Pays Plat, ON P0T 3C0
Pic Mobert First Nation	PO Box 717 Mobert, ON P0M 2J0
Red Rock Indian Band (Lake Helen)	Box #1030 Nipigon, ON P0T 2J0
MNO Greenstone Métis Council*	PO Box 825, 211-401R 4th Ave Geraldton, ON P0T 1M0
Red Sky Métis Independent Nation	406 East Victoria Ave Thunder Bay, ON P7C 1A5
MNO Superior North Shore Métis Council*	26 Princess Street Terrace Bay, ON P0T 2W0
MNO Thunder Bay Métis Council*	226 May Street South Thunder Bay, ON P7E 1B4

** Please copy MNO head office on correspondence to MNO regional councils:

Métis Consultation Unit
Métis Nation of Ontario Head Office
500 Old St. Patrick Street, Unit D, Ottawa, Ontario, K1N 9G4
Fax: (613) 725-4225

This rights-based consultation list is based on information that is subject to change. First Nation and Métis communities may make new rights assertions at any time, and other developments (e.g. the discovery of Aboriginal archaeological sites) can occur that may require additional First Nation and/or Métis communities to be notified and/or consulted. If you become aware of potential rights impact on communities that are not listed above at any stage of the consultation and approval process, kindly bring this to the attention of the Ministry of Energy with any supporting information regarding the claim. The Ministry of Energy will then assess whether it is necessary to include the community on the rights-based consultation list above.

If you have any questions about this letter or require any additional information, please contact Shannon McCabe at 416-212-6704 or shannon.mccabe@ontario.ca

Sincerely,



Samir Adkar
Director
Energy Networks and Indigenous Policy

C: Elise Cross Director, Environmental Services Hydro One Networks Inc.

TAB 14

AFFIDAVIT OF JOHANNA DESMOULIN,
CHIEF OF PIC MOBERT FIRST NATION

I, Chief Johanna Desmoulin, of the Pic Mobert First Nation in the Province of Ontario, make oath and say as follows:

1. I am the Chief of Pic Mobert First Nation and have been since July 2017. I have previously acted as Chief from 2009 to 2015 and as deputy Chief from 2015 to 2017 and as such have knowledge of the matters attested to herein.
2. Pursuant to the Procedural Order No.1 dated April 27, 2018 issued by the Ontario Energy Board ("OEB"), the BLP First Nations were recognised as an Intervenor in the Motion filed by Nextbridge seeking the dismissal of Hydro One Networks Inc.'s ("HONI") Lake Superior Link ("LSL") application.
3. The following evidence is from my direct knowledge in my role as Chief, unless otherwise stated to be based on specific sources of information in which case I believe such information to be true.

Routing through Pukaskwa National Park

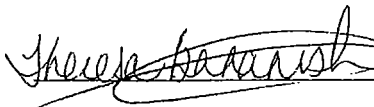
4. Pic Mobert First Nation has filed and is actively pursuing an aboriginal title claim in court, and the area claimed overlaps with the Pukaskwa National Park. The Statement of Claim in this court file number CV-2006-142 is attached hereto as Exhibit A. The maps of the claimed aboriginal title areas are attached as Exhibit B.
5. Pic Mobert First Nation is engaged with Canada and Ontario in respect of this aboriginal title claim in an on going process.
6. Pic Mobert First Nation members engage in many traditional practices in and around Pukaskwa National Park, such as hunting, fishing, trapping, ceremonies, sacred practices, plant harvesting for food and medicine. The land, animals, plants and water in and around the Park are very important to Pic Mobert First Nation exercise of rights. Other parts of Pic Mobert asserted title area and traditional territory are impacted already by third party uses, and the Park is still not as impacted.
7. HONI's proposed LSL project depends in part on being routed through Pukaskwa National Park. Any such routing and the attendant construction and disturbance and ongoing use would impact Pic Mobert First Nation's asserted aboriginal title and other aboriginal rights exercised in the area. The more such claimed title land is taken up for transmission

Affidavit of Chief Johanna Desmoulin
for Intervenor BLP First Nations

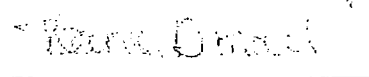
purposes, the less such land can be used for other purposes that Pic Mobert First Nation may wish to pursue and govern.

8. Significant consultation with and accommodation of Pic Mobert First Nation's concerns about impacts must be completed prior to any development that affects our asserted title and our rights. The more the land in our claimed title area, including the Park, is used or used up by third parties, the harder it will be for Pic Mobert to use that and the surrounding lands for our own purposes when our title is confirmed. As a result, Pic Mobert First Nation takes the position that HONI will need our consent to develop any project in the Park or elsewhere in our claimed title area.
9. No consultation by HONI or the Crown related to the proposed LSL project has been initiated or undertaken yet with Pic Mobert First Nation. No accommodation measures have been discussed. Discussions with Nextbridge started about 5 years ago and the consultation process is still not complete, so I cannot see how the timelines proposed by HONI can result in meaningful engagement with us, in particular given the importance and strength of our rights and title claim in this area.

SWORN (OR AFFIRMED) BEFORE ME at Batchewana First Nation, in the Algoma Region of Ontario on May 7, 2018.

 LSUC# 50389N

COMMISSIONER for taking Affidavits



Signature of Deponent

AFFIDAVIT OF DUNCAN MICHANO
CHIEF OF BIIGTIGONG NISHNAABEG

I, Chief Duncan Michano, of Biigtigong Nishnaabeg in the Province of Ontario, make oath and say as follows:

1. I am the Chief of Biigtigong Nishnaabeg and have been since Nov 28, 2013 and as such have knowledge of the matters attested to herein.
2. Pursuant to the Procedural Order No.1 dated April 27, 2018 issued by the Ontario Energy Board ("OEB"), the BLP First Nations were recognized as an Intervenor in the Motion filed by Nextbridge asking for the dismissal of Hydro One Network Inc.'s ("HONI") Lake Superior Link ("LSL") application.
3. The following evidence is from my direct knowledge in my role as Chief, unless otherwise stated to be based on specific sources of information in which case I believe such information to be true.

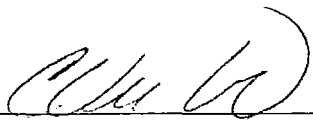
Routing through Pukaskwa National Park

4. Biigtigong Nishnaabeg filed on January 7, 2003, and is actively pursuing, an aboriginal title claim in the Ontario Superior Court of Justice. The title area claimed overlaps with the Pukaskwa National Park. The Statement of Claim in this matter is attached hereto as Exhibit A.
5. Canada and Ontario have initiated and are pursuing settlement negotiations with Biigtigong Nishnaabeg about this claim. These negotiations are on-going.
6. Biigtigong Nishnaabeg members engage in many traditional activities in and around the Park, including hunting, fishing, trapping, gathering, ceremonial and sacred practices. The lands, waters and wildlife in and around the Park are very important to Biigtigong Nishnaabeg. Other parts of Biigtigong Nishnaabeg's asserted title area and traditional territory are impacted already by third party uses, and the Park is still not as impacted.
7. As a result, any development on these lands to which we claim title and on which we exercise rights, has the potential to adversely impact Biigtigong Nishnaabeg's asserted and practiced rights and reduce our options on how we use these lands if our title claim is successful in court or in associated negotiations.
8. HONI's LSL project depends in part on being routed through Pukaskwa National Park. Any such routing and the attendant construction and disturbance and ongoing use for

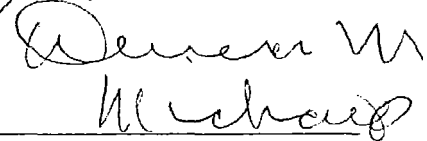
another transmission line, would impact Biigtigong Nishnaabeg asserted aboriginal title and other aboriginal rights in the area. The more such claimed land is taken up for transmission purposes, the less we can use it for our own self-determined purposes when our title is confirmed.

9. Because of all this, significant consultation with and accommodation of, Biigtigong Nishnaabeg's concerns about impacts must be completed prior to any development that affects our asserted title and rights. Biigtigong Nishnaabeg takes the position that any development in our claimed title area requires our consent.
10. No consultation by HONI or the Crown related to the proposed LSL project has been initiated or undertaken yet with Biigtigong Nishnaabeg. No accommodation measures have been discussed. Discussions with Nextbridge started about 5 years ago and the consultation process is still not complete, so I cannot see how the timelines proposed by HONI can result in meaningful engagement with us, in particular given the importance and strength of our rights and title claim in this area.
11. I have written to Parks Canada telling them that, among other things, Parks Canada needs to obtain Biigtigong Nishnaabeg's permission before approving or conducting any activity in the Park, and that there is a higher requirement for consultation in the case, such as here, when the land is subject to an active aboriginal title claim. This consultation is of paramount importance when our lands and economic development aspirations are, or may be affected. Attached as Exhibit B to this affidavit, is that correspondence.

SWORN (OR AFFIRMED) BEFORE ME at the Town of
Marathon in the Province of
Ontario on (date) May 4, 2018.



COMMISSIONER for taking Affidavits



Signature of Deponent

CHUCK VERDO, a Commissioner, etc.,
District of Thunder Bay, for the Corporation of the
Town of Marathon

AFFIDAVIT OF CHIEF PETER COLLINS
PRESIDENT OF BLP AND CHIEF OF FORT WILLIAM FIRST NATION

I, Chief Peter Collins, from Fort William First Nation in the Province of Ontario, make oath and say as follows:

1. I have been the President of Bamkushwada General Partner Inc., the general partner of Bamkushwada Limited Partnership ("BLP") since November 5, 2015 and the Chief of Fort William First Nation since April 15, 2015 and as such have knowledge of the matters attested to herein.
2. I am familiar with the history of the negotiations surrounding the East West Tie Project ("EWT") and I have been involved in the negotiations of the BLP agreement with NextBridge Infrastructure LP ("NextBridge," the general partner of which is Upper Canada Transmission, Inc., the designated transmitter for EWT) since becoming Chief of Fort William First Nation.
3. I am familiar with the Lake Superior Link Project ("LSL") proposed by Hydro One Networks Inc. (HONI) and understand that the LSL project is in direct competition with the EWT in which BLP and its constituent First Nation partners are participating.
4. Pursuant to the Procedural Order No.1 dated April 27, 2018 issued by the Ontario Energy Board ("OEB"), the BLP First Nations were recognized as an Intervenor in the Motion filed by NextBridge asking for the dismissal of the LSL project.
5. The following evidence is from my direct knowledge in my role as Chief of Fort William First Nation and President of BLP, unless otherwise stated to be based on specific sources of information in which case I believe such information to be true.

A. In-Service Date

6. As identified by the Minister of Energy ("MOE") 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.
7. Businesses and members of the Five First Nations have invested time, human capital and financial resources to prepare for contracts and employment for project construction based on a 2020 in-service date. I have spoken with representatives of Supercom Industries LP, an affiliate of BLP, also wholly owned by the Five First Nations and Michipicoten First Nation, which has been coordinating training and contracting opportunities for our communities regarding the EWT:

- Approximately 300 local people, over 90% of whom are indigenous people from local First Nations and nearby communities (including people of Metis descent), with many from the Five First Nations, are currently participating in training programs or have recently completed training programs, all in anticipation of work that will become available based on the 2020 in-service date. Attached as Exhibit A is a letter from Common Voice Northwest that supports this information¹;
 - Significant time and resources have been spent by the Five First Nations and Supercom in negotiating joint ventures specifically based on the 2020 in-service date.
 - Approximately \$5 million in government funding has been provided to Supercom via grants from Canada and the Province of Ontario to cover the costs of these training programs
8. A one year delay, should the OEB approve the HONI LSL project, would impose significant costs and losses on the Five First Nations and their members and businesses, and the efforts made by Supercom and its funders and training agencies will not be realized.
9. BLP and Supercom have known, established relationship terms and conditions with NextBridge and its project general contractor. It is on this basis that all of the above development work has been undertaken. There is nothing known about any potential future relationship with HONI should it be granted leave to construct the LSL, and for reasons explained below, nothing can be known or developed with HONI prior to any leave to construct to it being granted. This uncertainty itself imposes a cost.
10. The time and resources, and business good will, expended by First Nation businesses on developing joint ventures and other arrangements with other companies so as to be able to contract for goods and services for the EWT project, may be wasted or lost if all such business arrangements are not fully utilized in the competing LSL project. There is good reason to believe that there will be such waste and lost, and that it will be significant. Businesses that will be ready for a 2020 in-service date might need to close or move elsewhere to other business opportunities that will be more immediate for them. Businesses have to make money to survive.

¹ This letter also appears as Appendix 4 of NextBridge Additional Material.

11. Further, a number of those First Nation businesses were retooled to do the work of the EWT project, and all of these costs and resources may be wasted and lost for the same reason.
12. Delaying by one year would undermine the extensive work and training done to date, to prepare hundreds of indigenous persons for employment in the EWT project. People cannot be expected to wait an extra year for work; trained First Nation members may move to other available opportunities and leave our communities to do so, which would defeat the efforts of so many of us over the past five years to create these opportunities near home.
13. In addition, these costs and losses, as outlined above, have not been factored into the LSL cost as submitted by HONI in its leave to construct application.

B. Indigenous Consultation

Consultation

14. Neither HONI nor the Crown has initiated or undertaken any consultation as of yet in respect of the LSL and its many impacts on the known and asserted rights of the Five First Nations. There was a meeting in Thunder Bay on April 6, 2018 between the BLP First Nations and HONI to discuss HONI's need to consult and accommodate, but such consultations have not begun. Such consultations likely cannot commence until after this motion is concluded, given the finite resources of the BLP First Nations. We cannot be stretched too thin. We are still engaging in all of the preparation and development work for the EWT project as outlined above, engaged in this motion, and involved in hundreds of other pursuits not related to this transmission issue.
15. The BLP First Nations were consulted by NextBridge in the development of the EWT for an extended period of time. In fact, consultation and negotiation of accommodation measures with the BLP First Nations and Michipicoten First Nation took place over an almost five year period.
16. Each of the Five First Nations exercises rights and has asserted rights in respect of its own traditional territory, and all are different. Each has to be meaningfully consulted and accommodated, on its own. We are not carbon copies of one another.
17. In addition to the Five First Nations (plus Michipicoten First Nation which is also a partner in BLP), there are 12 other "aboriginal entities" that were identified by the MOE as being communities to be consulted by HONI. HONI's time and resources would need to be allocated to consult with not just the BLP First Nations, but with all of these 18 entities. Attached as Exhibit B is this consultation list.

18. The LSL project is different than the EWT project. The route is different and some of the Five First Nations, in particular Pic Mobert and Biigtigong Nishnaabeg, have serious concerns about the LSL route through the Pukaskwa National Park. The LSL project is slated to begin a year later, which raises issues identified above. We are also concerned that HONI's labour force and/or general contractor may be unionized and this raises issues with access to jobs by First Nation members (priority employment opportunities is often a form of accommodation measure).
19. Given that it took years to undertake consultations with and accommodation of the Five First Nations (plus Michipicoten First Nation) in respect of the EWT project with NextBridge, and given that the EWT project is different in material respects from the LSL project, and given that it will not be possible for HONI to consult with the Five First Nations about certain accommodation measures (only after HONI is granted leave to construct would this be possible) (see below), I see no way that the duty to consult and accommodate the Five First Nations could be met prior to the OEB making its decision on leave to construct.
20. The Five First Nations all take the position that the duty to consult and accommodate must be fully met prior to and as a condition of any approval for the project. We take the position, therefore, that this duty must be fully met before leave to construct is issued.
21. Further, HONI's LSL project (its projected costs and timelines) relies on its use of the NextBridge Environmental Assessment ("EA") work. The Five First Nations were consulted during and about NextBridge's EA work. The Five First Nations provided NextBridge and the EA with Traditional Ecological Knowledge ("TEK") and Traditional Land Use Study ("TLUS") information.
22. This TEK and TLUS information was provided under confidentiality to NextBridge. TEK and TLUS information is sensitive and the Five First Nations have serious concerns about its use and its possible appropriation. The Five First Nations do not consent to this information being shared with HONI for the LSL.
23. The Five First Nations gave input into the EA for the EWT project. The LSL project is different and will have different impacts.
24. For the reasons above, the Five First Nations do not consent to any aspect of the NextBridge EWT EA being shared with or given to HONI to rely on. This effectively lowers the standard and content of consultation with First Nations, to the extent that the EA contains information from such consultations (including TEK and TLUS information). In support of our position on this aspect, we wish to rely on the recent correspondence

between the Ministry of the Environment and Climate Change ("MOECC"), the MOE, HONI and NextBridge pertaining to this issue² (Exhibit C). The MOECC in its letter to HONI

dated April 10, 2018 made it very clear that they were considering the LSL project as a new undertaking for the purpose of the *Environmental Assessment Act*³.

25. The Five First Nations deserve full and complete consultation and accommodation on the LSL project, and not some cut and pasted or patched together engagement.

Accommodation

26. The MOE in a letter dated March 29, 2011 to the OEB, stipulated that Indigenous participation was required in this transmission project, and all applicants who sought designated transmitter status set out in those applications how they intended to do this. That letter is attached as Exhibit D.
27. At this stage, the BLP First Nations were partnered with HONI, and Great Lake Power Transmission ("GLPT") toward applying for designated transmitter.
28. At the time of the designation process, the BLP First Nations had an agreement with HONI and GLPT that contained an exclusivity obligation (not to discuss or engage in deals with competitors for this project).
29. Now, as a result of the agreement between BLP First Nations and NextBridge in development and expected construction of the EWT project, BLP First Nations have an exclusivity obligation with NextBridge. In a letter dated March 5, 2018, BLP First Nations informed HONI about this exclusivity obligation, and informed HONI that HONI would have known or expected that this exclusivity obligation with NextBridge would exist because the same thing existed with HONI at the earlier designation stage. That letter is attached as Exhibit E.
30. The implications of this exclusivity obligation are that the BLP First Nations cannot discuss or negotiate any economic participation terms or deals with a competing bid (ie: HONI's). The BLP First Nations therefore cannot enter into any such discussions with HONI, unless and until, and after, HONI is granted leave to construct.
31. Economic participation, whether it had been directed by the MOE in the 2011 letter (Exhibit D), or not, would have been required by the BLP First Nations, among other things, to properly accommodate for the concerns and impacts of the project. It is the position of

² See Appendices 2, 5, 6, 7, 8, 9 and 10 of Nextbridge Additional Material. (Exhibit C of this Affidavit).

³ See NextBridge Additional Material, Appendix 10. (Exhibit C of this Affidavit).

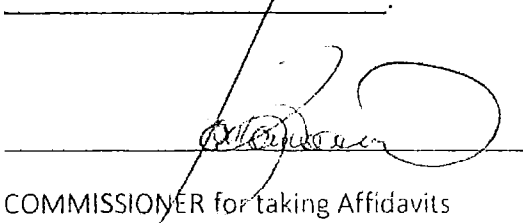
the BLP First Nations that consultation must always be with the intent to substantially address the First Nation's concerns, and that such concerns are addressed through accommodation measures, which include: prevention of impacts; minimization of non-preventable impacts; and compensation/offset benefits for residual impacts. Economic participation is a vehicle to deliver compensation/offset benefits.

32. The BLP First Nations cannot engage with HONI in consultation about these latter accommodation measures while we are in an agreement with NextBridge. This agreement would not expire until and unless HONI were granted leave to construct. HONI therefore cannot fulfill its duty to consult with and accommodate the BLP First Nations. It is the position of the BLP First Nations that HONI put itself in this position knowingly.
33. Further, even if the BLP First Nations could engage in discussions about economic participation/accommodation prior to the leave to construct decision, or even if it would be sufficient to leave such consultation and accommodation until after leave to construct (should HONI be granted it), HONI has not left nearly enough time to do so.
34. The partnership that was created between the BLP First Nations and NextBridge took a lot of time, human capital, and financial resources. In fact, it took almost five years to conclude the economic participation agreement.

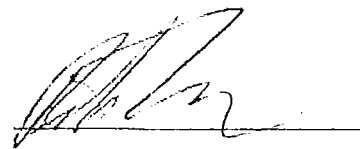
C. First Nation Rights and Jurisdiction

35. The Five First Nations are all Indigenous nations with their own governments. Both the EWT and the LSL projects would cross the traditional territories of the Five First Nations (and Michipicoten First Nation, which is also a partner in BLP) and would affect their rights.
36. To my knowledge, no other Indigenous entity is similarly or as greatly affected as the BLP First Nations and Michipicoten First Nation.

SWORN (OR AFFIRMED) BEFORE ME at the (Community) of Fort William First Nation, in the (District) of _____ Thunder Bay, Ontario _____ on (May 04, 2018)



COMMISSIONER for taking Affidavits



Signature of Deponent

Ian James Elannon, a Commissioner,
etc., Province of Ontario, for
Fort William First Nation.
Expires December 4, 2020.

1 chief of Biigtigong Nishnaabeg. In the centre is Chief
2 Peter Collins of Fort William First Nation and also
3 president of the board, Bamkushwada Limited Partnership.
4 And to my right is Chief Johanna Desmoulin, Chief of Pic
5 Mobert First Nation.

6 **BAMKUSHWADA L.P. FIRST NATIONS - PANEL 1**

7 **Duncan Michano**

8 **Peter Collins**

9 **Johanna Desmoulin**

10 MS. LEA: Thank you. I should have said one more
11 thing. For those of you who are on the telephone, it is
12 very helpful to us here in the room if you mute your phone
13 so that no noise from your area transmits itself into the
14 hearing room. So thanks very much for that courtesy.

15 I think, Mr. Warren, you have some questions for the
16 witnesses before us.

17 Questions by Mr. Warren:

18 MR. WARREN: Thank you.

19 As I indicated at the outset, my name is Robert
20 Warren. I am one of the counsel for Hydro One Networks
21 Inc., and I have a few questions for you, based -- the
22 questions are based on the affidavits which you filed in
23 this matter, and if I could begin first with Chief
24 Desmoulin.

25 If you could turn up your affidavit if you have a copy
26 in front of you, Chief. And I would ask you to turn to
27 paragraphs 7 and 8. And in particular in paragraph 8 I'm
28 going to quote from the second sentence in that paragraph,

1 and it reads, quote:

2 "The more the land in our claimed title area,
3 including the park, is used, or was used up by
4 third parties, the harder it will be for Pic
5 Mobert to use that and the surrounding lands for
6 our own purposes when our title is confirmed."

7 Are you familiar, Chief Desmoulin, with the
8 application -- with the proposal that my client has for
9 its, what it calls the Lake Superior Line? Are you
10 familiar with it?

11 CHIEF DESMOULIN: Good morning. This is quite new to
12 me, too, to be sitting at a hearing, so bear with me.

13 You asked a question, if I am familiar with Hydro One
14 Superior Link.

15 MR. WARREN: Let me be specific. Hydro One Network
16 Inc.'s proposal for its East-West Tie, for its line, is a
17 proposal that, in large part, follows its existing right-
18 of-way.

19 CHIEF DESMOULIN: Mm-hmm.

20 MR. WARREN: So, for example, in the park what Hydro
21 One is proposing is to replace its existing towers, and it
22 will not increase the area which is covered now by its
23 right-of-way, and I am wondering if you were familiar with
24 that aspect of its application.

25 CHIEF DESMOULIN: Sir, I have to admit I am not fully
26 familiar with it again. When any industry, organization,
27 or something like a transmission line project comes
28 forward, always there has to be -- to consult with the

1 First Nation, and I have never been consulted, so I have to
2 say yes and no, because I've seen it on the news, I've seen
3 it on the media that Hydro One -- excuse me, let me put it
4 -- I just want to use the correct wording here, just to --
5 for the purpose of this hearing. No, I have to say no.

6 MR. WARREN: Fair point, Chief. Let me phrase the
7 question this way: If it were the case that Hydro One,
8 their proposal, if their case once built does not occupy
9 any more land than their existing transmission system -- in
10 other words, not expand their footprint at all -- would
11 that address the concern which you've addressed in
12 paragraph 8 about more claimed title area being used?

13 CHIEF DESMOULIN: Would it address the concern? I
14 have to say it won't address the concern. Again, I am just
15 going to speak personally as a First Nation person, but
16 also as a Chief. So many things were taken from us, our
17 culture, our language, and whatever piece of land that we
18 have, you know, to exercise our traditional rights or
19 traditional activities to take care of the land, should
20 that go through with your indicating here on our -- what
21 I'm proposing, what I've signed an affidavit to, and it
22 would affect, you know, I guess that's why I put the
23 intervenor in.

24 MR. WARREN: Thank you, Chief Desmoulin. If I could
25 move to Chief Michano, please. And your affidavit, if I
26 could ask you to turn it up, please.

27 In paragraph 8 of your affidavit, Chief Michano, you,
28 like your colleague, Chief Desmoulin, has expressed a

1 concern about additional land being used in your
2 traditional territory.

3 MR. MICHANO: That's right.

4 MR. WARREN: I'll ask you the same question that I
5 asked of Chief Desmoulin, which is that the area which
6 Hydro One Networks proposes for its line will not occupy
7 any more land than their existing right of way does now.
8 It is within the same area.

9 Does the fact that they are not going to use more
10 land, does that address the concern which you've addressed
11 in paragraph 8 about more land being used?

12 MR. MICHANO: No, and I'll tell you why.

13 We are in an Aboriginal title land claim. As part of
14 that land claim, we are looking for additional land as well
15 as compensation. You know that.

16 Any use, any impact, any degradation, I guess, of the
17 land related to any type of development will have an impact
18 on us, because we are looking for additional lands and
19 those lands may or may not be part of what we are looking
20 for.

21 I can't get into specifics about which land we're
22 looking at. We have those outlined, but because it's
23 litigation privileged, and you know that, because we are in
24 a court case right now. We are also at the point of
25 getting into preliminary negotiations.

26 So things are advancing, and they are advancing
27 quickly. We're at the point where we are talking to MNR
28 and OEM about withdrawals until we get our land base

1 settled. We are just in the process of doing that now.

2 So any type of development, there's no way that
3 anybody is going to be able to develop that line, even if
4 it's like on the existing line, without impacting the lands
5 around it because you have to access that somehow.

6 And even if you access it by helicopter, by chopper,
7 my experience is that the distance is limited, so you have
8 to have a lay down area somewhere and roads getting into
9 that lay down area. So how do you not impact the
10 surrounding areas? That's almost impossible.

11 I guess what our issue is is that we've had so many
12 alienations that when we're looking for additional land
13 through our land claim, we are at a loss of where to
14 actually go, where we've got good viable land that we can
15 use for economic development, that we can use for
16 residential area, the protection of our water sources for
17 future generations, those sort of things.

18 We're even looking at agricultural land, and we want
19 to try to make sure that we have viable land, not just a
20 scrap that's left over because nobody else wants it. So we
21 don't want that land to be impacted to a degree where it's
22 not useful for us anymore.

23 MR. WARREN: Thank you, Chief. Finally, Chief
24 Collins. If I could ask you to turn up your affidavit, and
25 I'm looking at paragraph 7 of your affidavit.

26 In that paragraph, you express a number of concerns.
27 One of the concerns is about loss of training which is
28 being given to a substantial number of Indigenous people.

1 If my client, Hydro One Networks, were to continue
2 that training or augment it, would that address that
3 concern on your part?

4 CHIEF COLLINS: Good morning, everyone. First of all,
5 the impact of Hydro One and if they get leave to construct
6 has a detrimental to all of the training and all of the
7 work that we've put in place to date. If you look at the
8 300 plus people that we have trained in preparation for the
9 November 2018 construction date will be possibly lost to
10 future development if the leave to construct is given to
11 Hydro One and the timeframe is pushed back to 2021.

12 We have so many different families and so many
13 different studies looking for employment and they went
14 through the whole training process, and if the leave to
15 construct gets pushed back, we may have lost all that
16 training aspect and it will have an impact on all those
17 students.

18 So will it have an impact on us? Absolutely. It will
19 have an impact on the livelihood of the 300 plus that we
20 are training today and the future training. I mean, once
21 they're trained -- I mean, they are all anticipating being
22 working in November, and that's the impacts that we will be
23 impacted even if you get leave to construct.

24 MR. WARREN: My question though, Chief Collins, was if
25 that training were continued by Hydro One Networks, does
26 that address the concern about training?

27 CHIEF COLLINS: It doesn't, because again, if you look
28 at what is anticipated by all of those folks that we're

1 training today, they are anticipated being working on
2 November 2018, not December 2021, or December 2019.
3 Whatever that case may be, it will have an impact.

4 Will Hydro One continue the training for those three
5 years, and pay those folks? I doubt that. So I guess the
6 impacts that we see today is the impacts of what we are
7 trying to achieve and that, giving our folks a chance to
8 work and operate some of their own businesses and some of
9 their own entities.

10 MR. WARREN: The concern that you've expressed, Chief
11 Collins -- am I right in understanding that you have not
12 talked to Hydro One Networks about those concerns? Is that
13 right?

14 CHIEF COLLINS: Again, how can we talk to Hydro One?
15 We have an implementation agreement, a nondisclosure
16 agreement with our partnering company right now, and
17 Nextbridge. How do we have those discussions without being
18 in violation or breach of our contract?

19 MR. WARREN: You speak in -- thank you for that. You
20 speak in your affidavit about joint ventures. Have you
21 entered into joint venture agreements with Nextbridge?

22 CHIEF COLLINS: We have a joint venture agreement; we
23 own 20 percent of the company today. But we also have
24 joint venture agreements with other companies and other
25 industries, and we have a joint venture with our general
26 partners or the general contractors today.

27 I mean, we have a lot of different ventures that have
28 started to develop and work towards being part of this

1 whole big project.

2 MR. WARREN: Finally, Chief Collins -- and this is
3 just a follow-up to an answer you've already given -- in
4 paragraphs 28 and 30 of your affidavit, you refer to
5 exclusivity obligations with Nextbridge. Can you tell me
6 when that exclusivity arrangement was entered into?

7 CHIEF COLLINS: That was 2016 or 2017 -- 2017.

8 MR. WARREN: 2017, and that exclusivity agreement,
9 does it prevent you from having any discussions with any
10 other potential line developer?

11 CHIEF COLLINS: Well, absolutely. I mean, we created
12 a partnership. I explained this earlier. We created a
13 partnership that -- we entered into a partnership structure
14 with our six First Nations. We now have a partnership
15 arrangement that doesn't give us any leeway to go out and
16 expand that. Why would we do that? We have it in place,
17 we have what we wanted.

18 MR. WARREN: Thank you very much, Chief Collins, those
19 are my questions. Thank you.

20 MS. CRNOJACKI: Thank you very much. Board Staff?

21 **QUESTIONS BY MS. CRNOJACKI:**

22 MS. CRNOJACKI: Board Staff has a number of questions
23 for Batchewana Limited Partnership. We are interested in
24 hearing the views of all the members with this panel today,
25 so please feel free to add your perspective, even if
26 another panel member has responded to the question.

27 Although you already in response to Hydro One's
28 questions noted that there has not been a consultation

1 initiated by Hydro One regarding the Lake Superior Link
2 project, I would like to just confirm if you can tell us,
3 has Hydro One initiated any communication since May 7th,
4 this year? That's the date you filed your affidavits of
5 evidence?

6 CHIEF COLLINS: Again, I'll answer that. Yes, we had
7 a meeting with them on April the 6th, but it doesn't
8 protrude (sic) to consultation.

9 One of the things in your -- most of youse are legal
10 people. You know what a binding contract is, and we are in
11 a binding contract now that we have, and all of our
12 communities have signed with NextBridge, so we can't have a
13 discussion with other parties when we have an agreement, so
14 I don't know how they expect us to have the property --
15 Hydro One, the property, consult us without us violating
16 our contract and our obligation that we have in place
17 today.

18 MS. CRNOJACKI: Thank you.

19 So in your evidence you raised a number of concerns
20 with respect to Hydro One meeting its duty to consult, and
21 you just explained to us one of the constraints, which is
22 quite important in terms of how you see the possibility of
23 the consultation going ahead with Hydro One.

24 In your view, is there a way for Hydro One to meet its
25 duty to consult if Hydro One's leave to construct
26 application is not dismissed?

27 CHIEF COLLINS: Can you repeat that so that we can...

28 MS. CRNOJACKI: Do you think that Hydro One can meet

1 its duty to consult obligation if the application goes
2 ahead; in other words, if it is not dismissed by the
3 Ontario Energy Board?

4 CHIEF COLLINS: I guess I don't see how they can meet
5 their duty to consult because they have not even given us
6 that consideration in advance of filing for leave to
7 construct. If proper consultation, they would have advised
8 us in advance, and that's our struggles and that's our
9 problems, you know. They didn't take us into consideration
10 when they filed the leave to construct or consult with us
11 to advise us that they were going to file.

12 I mean, we've been at this process for over five years
13 now, you know, and I look at it from this way: OEB has set
14 a precedent, because we were a partner with HONI several
15 years back, and we filed to be the builder of the
16 transmission line in partnership with HONI, but that went
17 off the table when OEB awarded the contract to NextBridge,
18 so we had no choice but to start having those discussions
19 with NextBridge, and we come to an agreement, and that's
20 where we are at today.

21 MS. CRNOJACKI: Thank you.

22 Does Chief Michano or Chief Desmoulin have any
23 comments regarding this question or response to Chief
24 Collins?

25 CHIEF MICHANO: No, I've got nothing to add to that.

26 CHIEF DESMOULIN: I would like to add, processes in
27 each First Nation is unique, and for ourselves, again, Pic
28 Mobert First Nation, when again industry or Hydro or HONI

1 comes to our community, just like NextBridge did, they just
2 don't go and see the Chief and Council. We are accountable
3 to people. And this is process just like any other
4 business or what's happening here, it is process. And I
5 respect, and I would think that, again, people that know
6 Aboriginal law or have anything to do with legalities with
7 First Nations, they would understand that we have a process
8 in place too. We just don't make decisions as a Chief and
9 Council. We have to take that out to the people, and we
10 honour our people's decisions, and we would like them to be
11 consulted.

12 We would have, you know, appreciated to have been
13 consulted, and that did not happen. And with our people,
14 that's what we intend to do. We want to respect our people
15 and consult too, so that's going to be a process in itself;
16 that's not going to be a three-week thing or one-day thing.
17 That might even take up to a year because, again, you know,
18 we have people living in the community. We have, like, 900
19 members. We have 400 on reserve and 500 off reserve. We
20 have some living in Thunder Bay; we have some living in
21 Sault Ste. Marie. We actually have some people living in
22 Toronto, so we have to communicate with those people to let
23 them know what's helping, and we think we do a fine job, or
24 we try to do our best, anyway.

25 Again, respect, that's a biggy there, in terms of
26 communicating and in terms of consulting because, again, we
27 consult with our people. I wanted to add that.

28 And if I can, I'd like to add with Chief Collins, what

1 he talked about. As you can see in my affidavit, I became
2 Chief in 2009, and it wasn't because I was, you know, your
3 typical politician, whatever a politician might look per se
4 for every individual here. I was chosen as Chief because
5 our community wanted change. And that was my question.
6 What do I bring to my people? Do I bring healing,
7 wellness? And how I do go about doing that? And do I
8 bring economics.

9 And there was an opportunity that came out, like he
10 had said. A transmission line was coming through our
11 traditional territories, and six Chiefs went, Fort William,
12 Michipicoten, like, the six that are on here, but the three
13 of us that went there, and we talked to, I believe it was
14 Brad Duguid, and we had a meeting with him. We said there
15 is a transmission line coming through, we understand that,
16 we hear that, and we want an opportunity to be a part of
17 this transmission line, because so many times again, in my
18 lifetime, my father's lifetime, industry came and industry
19 went, and it left the people and it left the land basically
20 raped, or there was nothing left to the land. So when this
21 was coming through -- and this is -- it's going to stay
22 with me, because I'm not going to be like, you know, my
23 grandfather or my dad, I'm going to be a part of this
24 process. And we tried to ask, let us go with Hydro One.
25 They had other players at that table, but we went to meet
26 and said we were interested, we are capable, and, you know,
27 I guess Hydro One put their bid in and they said we lost
28 and NextBridge won.

1 So what did we have to do because they won? We had to
2 go knocking on NextBridge's door when NextBridge came to
3 us, and we said, Yeah, we have to have a talk. And it
4 wasn't easy discussions, I have to admit that, and I think
5 NextBridge could admit that, because I don't think people
6 necessarily, like, even today, acknowledge that every town,
7 every city you go through in Ontario, especially from
8 Toronto to -- or I say Thunder Bay to Sault, because that's
9 my little local area -- every town that you go through,
10 there is a traditional territory in there, every town, and
11 I'm just asserting, and I'm going to take care of my
12 traditional territory one way or the other, and I've got to
13 put that out there.

14 Like I said, we did it, and not necessarily, you know,
15 you can't -- it's government again that tells us no, and
16 then, you know, go basically swallow your values and make
17 the best deal you can for your people so you could feed
18 your people, and to deal with some of the issues that we
19 struggle with.

20 And here we are, we've done it, and again you bring us
21 back to the table again to say, Well, there's HONI now --
22 we were looking at HONI now, and come back to the table.
23 We are so much forever in pawns, but like I said, I'm not
24 prepared to, you know, to be another pawn.

25 Like we've said, we signed agreements. We want to go
26 forward. We are looking forward to going forward, and we
27 don't want to tell our people, Okay. You know, you are
28 going to have to wait another year. That's good you got

1 some training, and then meanwhile, good luck, because we
2 have to go back to the table again and deal with whatever
3 government's putting at us. So with that, I just want to -
4 - I had to add to that.

5 Thank you. I hope that answers your question.

6 MS. KEMPTON: May I provide some clarification about
7 the exclusivity provision?

8 MS. LEA: Sorry, who's speaking?

9 MS. KEMPTON: Kate Kempton. May I provide some
10 clarification? It's the same almost identical exclusivity
11 clause we had with HONI and GLPD at the designation stage,
12 and it does not prevent consultation, and I would turn
13 parties to Exhibit E of Chief Collins' affidavit, the
14 letter from Bamkushwada to HONI sets out -- it doesn't set
15 out the exact content of the clause, but it does set out an
16 overview.

17 If you turn to the third -- second full paragraph on
18 page 2 of that letter and following paragraphs, the -- what
19 it does is say that Bamkushwada Limited Partnership and the
20 constituent First Nations can't compete with themselves.
21 We are partners and parties to the East-West Tie project,
22 and we are not going to -- and we committed to not compete
23 with ourselves, just like anybody else would not compete
24 with themselves by entering into competitive negotiation
25 and competitive agreement with a competitor, like HONI in
26 the same process.

27 And that's what it says. It says that parties cannot
28 -- parties to the agreement between NextBridge and BLP are

1 not permitted to enter into discussions, or negotiations,
2 or agreements in respect of a competitive bid.

3 It does not prevent consultation. But what it does
4 is, to the extent that from our point of view, the duty to
5 consult is -- has two more words attached, "and
6 accommodate." It is the duty to consult and accommodate,
7 because the duty must always be with the intent to
8 substantially address the concerns of the affected
9 Aboriginal parties.

10 Substantially addressing the concerns means
11 accommodating, and that often leads to compensatory and
12 economic kind of measures, because you can't mitigate
13 impacts to zero. And so for the remaining burdens or
14 impacts that are left, you have to do something to at least
15 offset them, if not improve the situation for the affected
16 First Nations, and that leads to revenue sharing, or equity
17 that leads to revenue, or business contracting priority
18 opportunities, or employment priority opportunities, or all
19 of the above.

20 Those economic measures are a key part of the
21 agreement with NextBridge, as they would be with anybody
22 else. Of course they are, yes. They are part of the
23 participation that the Minister of Energy required of this
24 process, but they are also forms of accommodation which are
25 constitution-required. And because of the overlap with the
26 duty to consult and to accommodate which HONI has been
27 delegated, they are foreclosed from engaging with us fully
28 on the accommodation that leads into economic

1 participation, because we are not going to compete with
2 ourselves. Nobody would, and of course we agreed to that,
3 the same way we agreed with HONI and GLPD that we would not
4 do that.

5 So that's what that means. Absolutely we can engage
6 in consultation measures, but where we reach a lid on that
7 where we can't engage in consultation about or provision of
8 economic accommodation, that there is a cap on what we can
9 consult about, and we've informed HONI of that repeatedly.

10 MS. CRNOJACKI: Thank you very much.

11 MR. WARREN: Sorry, could I just follow-up with Ms.
12 Kempton and ask -- you've referred to the exclusivity
13 agreement. Are you prepared to file a copy of the
14 exclusivity agreement in this proceeding?

15 MS. KEMPTON: It's part of the implementation
16 agreement, which is confidential. I would -- because we
17 are in an agreement with NextBridge, I would have to seek
18 their permission to profile that provision and only that
19 provision.

20 I've just explained to you what it says, and so I
21 can't answer that because I would have to get the consent
22 of NextBridge to file that clause and only that clause.

23 We are obviously not going to file the entire
24 implementation agreement.

25 MR. WARREN: Okay. Can you -- in this process, from
26 time to time, we ask parties for undertakings if they will
27 provide something.

28 Can I ask you for this undertaking: Will you

1 undertake to file the exclusivity portions of the agreement
2 which the chiefs have with NextBridge?

3 MS. KEMPTON: I will undertake to seek NextBridge's
4 consent to do so. And if I get NextBridge's consent, then
5 I will undertake to file just that clause.

6 MR. WARREN: Thank you very much.

7 MS. LEA: Thank you. That will be TC, as in technical
8 conference, K1.1. Does that work for you?

9 MS. CRNOJACKI: I think it is JT1.1.

10 MS. LEA: It's a J? Okay. We should have talked
11 about this before. What is the full...

12 MS. CRNOJACKI: This will be undertaking JT1.1.

13 **UNDERTAKING NO. JT1.1: BANKUSHWADA TO FILE THE**
14 **EXCLUSIVITY PORTIONS OF THE AGREEMENT WHICH THE CHIEFS**
15 **HAVE WITH NEXTBRIDGE**

16 MS. LEA: Okay, thank you.

17 MS. CRNOJACKI: We have one more question just to wrap
18 up our questions for the BLP.

19 You've already described in your affidavits and you
20 spoke today to significant costs and losses on the five
21 First Nations and their members of businesses, if a one
22 year delay in the service date will take place.

23 **Can you please expand on the effect on your community**
24 **if the 2020 project in-service date is delayed?**

25 I assume it has to do with some of the opportunities
26 that you've gained through your agreements regarding
27 accommodation, economic measures, and so on with
28 NextBridge.

1 CHIEF COLLINS: Maybe just to clarify your question
2 again. I'm having a hard time hearing. There is a little
3 fan in the background.

4 MS. CRNOJACKI: I'm sorry. Better now?

5 CHIEF COLLINS: Some kind of fan in the back going on.

6 MS. CRNOJACKI: Should I restate the question?

7 CHIEF COLLINS: Yes.

8 MS. CRNOJACKI: The affidavit of Chief Collins and of
9 the panel, the BLP panel today, stated that a one year
10 delay of the in-service date will impose significant costs
11 and losses on the five First Nations and their members and
12 businesses.

13 Can you please expand on the effect on your community
14 if the 2020 project in-service date is delayed?

15 CHIEF COLLINS: I can help out with that question, I
16 guess. What I'll -- how I'll explain is as we have in our
17 community right now, we have about ten different companies
18 that are starting to purchase equipment and get ready for
19 the job. But also we have 250 students, or 250-plus
20 students also preparing to take on the workforce on this
21 project.

22 Here's the personal impact of that. We have young
23 people that their lives were going this way. With this
24 opportunity now, it's going this way in anticipation of
25 being on the ground working in 2018.

26 So that in-service date is critical for our community,
27 not only for our members, but for our contractors that we
28 have. We have put a lot of time and a lot of effort to get

1 to where we are today. All six of our partnering
2 communities have taken away our leadership roles at our
3 community to make sure this project is getting off the
4 ground, and we get exactly what we're looking for.

5 If you look at how the structure is, I mean, this is
6 not a simple thing and it's not a simple process that we've
7 been involved with. We walked away from the process a few
8 times because we were not getting what we wanted.

9 We got to where we are, where we want. We spent a lot
10 of our resources, a lot of our time, a lot of our energy
11 and one of the things people don't understand, I'm not just
12 a president of this board, I am not just the chief of my
13 community. I am everything from A to Z in our community.
14 We have so many responsibilities. I mean, this is one, but
15 there's so many different impacts in our community that we
16 deal with day in and day out.

17 You know, creating jobs is an opportunity and creating
18 a future for families. And Chief Johanna said this
19 yesterday. We are not just impacting 350; we could be
20 impacting 1,500 people, depending on the size of your
21 family. If you have a family of five, then times that by
22 300 and you have 1,500 people that you are impacting.

23 So that's what the impacts will be. Hopefully, I've
24 answered your question.

25 MS. CRNOJACKI: Thank you.

26 CHIEF DESMOULIN: I'd like to add again and I want to
27 make reference to -- years ago when we came here to try to
28 get on board to be a partner with -- I think it was Ontario

1 Hydro. I keep saying Hydro One, but HONI. You know,
2 should that have taken place, I think it was about a month
3 ago, you can check it if you will, Chronicle Journal
4 Thunder Bay, there is front page and it's at Lakehead
5 University and it said they found a deceased body in the
6 university fields.

7 You know, that deceased body belonged to a 30-year old
8 band member belonging to our community. And his birthday,
9 it was in April, anyway, April 4th, someplace around there,
10 and his birthday was going to be April 24th, and he was
11 going to be 31, and to me, you know, you talk about the
12 impacts. That's an impact, because he was just getting
13 started, finding his way in life.

14 Again, you take a look at First Nations, or the
15 history of where we come from. We're still in that
16 history. We are still getting out. We're still, you know,
17 asserting, and I think doing a mighty fine job,
18 considering, but with him, he didn't make it.

19 I heard stories, you know, he was -- every day he was
20 in class. He had good attendance, but he still had that
21 trauma, intergenerational (sic) trauma, if you will. I have to
22 say it like it is, and he didn't make it because of his
23 addiction. He died.

24 So to me, impact, that's a big impact, and I think,
25 you know, if that took place a long time ago or if we had
26 more of those kind of opportunities a long time ago or some
27 of the tragedies that we experience as a people would not
28 occur. They would be lessened, if you will.

1 Like, I'm not going to say I'm blaming it on that, but
2 I want to say that is one of the impacts I feel personally
3 as a mother, a grandmother, you know, and as a leader in my
4 community, so with that, there is impacts, because I have a
5 young boy, just got his grade 12 through SuperCom, and now
6 he's in the carpenter course, and, you know, should this be
7 delayed another year, where does he go? What does he do?
8 Because he's looking forward to starting work as soon as he
9 gets his certificate of carpenter, so impacts, lots.

10 CHIEF MICHANO: Yeah, I'd like to add a bit to that
11 also. The level of participation by our people and in
12 particular our young people, actually the whole range, but
13 in particular young people, is unprecedented. I've never
14 seen anything like this. There is so much excitement.
15 People going out to get their education, going out to get
16 training, and what expectation that they are going to start
17 work. That's what the excitement is about.

18 SuperCom has done a marvelous, marvelous job, and
19 have, like, spend a lot of dollars and a lot of time and
20 a lot of effort to get that buy-in from our young people.
21 And to delay, we may lose that momentum, and those young
22 people fall back to where they were before.

23 So I think we have to keep that momentum going and
24 keep that excitement and that I guess thought in those
25 young people's minds that they are going somewhere, they
26 are doing something, they are doing something useful with
27 their lives.

28 On the economic development side of things, there's

1 people starting to buy equipment, and these are not big
2 companies. They can't afford to wait and pay payments.
3 They've got to put that machinery to work. They're buying
4 these things, going to the banks with the expectation that
5 that machinery is going to go to work this fall.

6 They've got to wait another year, what happens? How
7 are they going to pay for those things? They send it back
8 to the dealer and they may never get it again.

9 So I guess, in regards to startup companies, it is
10 imperative that we keep the schedule going, because that's
11 how they've planned buying that equipment and making those
12 agreements with and partnerships with other companies.

13 CHIEF COLLINS: Thank you. Again, I just have to
14 add --

15 MS. LEA: Is your microphone on, sir?

16 CHIEF COLLINS: I was going to add a final comment. I
17 had the opportunity of visiting the classrooms before
18 leaving Thunder Bay, and I got to visit three different
19 classrooms in the college, and the great attendance that we
20 see, and we see the great excitement, but even when we had
21 the opportunity to meet with them, are we really going to
22 work in November? You know, the questions -- and I see
23 that excitement in them.

24 And I use this one story, my nephew is one of them,
25 and his life -- again, his life was going that way, and now
26 I see the commitment, and I realize that he's strong, he's
27 focused on where he wants to go and what he wants to
28 achieve and what he wants to change his life to be, because

1 I didn't think he would make it, but he is making it. He
2 is still there today. He was there at the beginning, and I
3 seen him walking to school every day. Once in a while I
4 give him a ride.

5 But those are the kind of impacts. When you are
6 talking about the impacts and how they are going to impact
7 our communities, well, if they don't have that opportunity
8 -- one of the things that we say as Chiefs, you know what
9 those folks are going to tell us? You guys are liars.
10 We'll never listen to you again if we're not working in
11 November. So that is an impact on our political, you know,
12 groups here, and we have a lot of work and a lot of effort
13 that we put forward to making this time. Meegwetch.

14 MS. LEA: Thank you.

15 MS. CRNOJACKI: Thank you, these are all our questions
16 for BLP.

17 MS. LEA: Well, I would like to you very much for
18 coming down, making the time, taking the effort to come
19 down. We really appreciate it. And I think that completes
20 the questioning that we need from you this morning. Thank
21 you so very much.

22 CHIEF COLLINS: Thank you for having us.

23 MS. LEA: And I think that the NextBridge panel is now
24 going to move into the witness box. Thank you. We'll take
25 a few minutes to do the exchange of panels.

26 Thank you very much. Could we have the introduction
27 of the next witnesses, please?

28 MR. STEVENS: Certainly. The members of the panel,

TAB 15

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.

AFFIDAVIT OF CHIEF MELVIN HARDY

I, CHIEF MELVIN HARDY of Biinjitiwaabik Zaaging Anishinaabek First Nation in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am a member of Biinjitiwaabik Zaaging Anishinaabek ("BZA") and was elected Chief in July 2016. As such I have knowledge of the matters to which I herein depose, except for those matters that are stated on information and belief, and where so stated, I have provided the source of the information and I believe it to be true.
2. I am providing this affidavit as evidence as part of BZA's intervention in this proceeding.
3. HONI's proposed Lake Superior Link Project is a competing application with Upper Canada Transmission Inc. operating as Nextbridge Infrastructure ("Nextbridge")'s application to build the East West Tie line project, EB-2017-0812 ("East West Tie").
4. Hydro One Network Inc's ("HONI") proposed Lake Superior Link project, the subject of these proceedings, traverses the traditional territory of BZA. Our members continue to engage in our traditional practices throughout this territory through hunting, fishing, trapping, harvesting

and ceremonies. These traditions and practices may be affected by the proposed Lake Superior Link Project. However, the extent to which they may be affected is uncertain as HONI has not yet consulted our community with respect to this project.

5. BZA has an unextinguished aboriginal title claim and includes areas affected by the Lake Superior Link Project and as such there is a heightened obligation on the Crown to fulfil the duty to consult. It is my understanding that the Ministry of Energy has delegated the procedural aspects of consultation to HONI with respect to this project, and that this consultation is in addition to the consultation requirements imposed under the *Environmental Assessment Act*.
6. To my knowledge, HONI has made very limited contact with BZA concerning the Lake Superior Link Project and there has been no community engagement to date. A letter dated April 30th, 2018, addressed to myself from HONI and attached hereto as **Exhibit A**, advises that HONI is seeking to begin the consultation process immediately. However, this is the only correspondence BZA has had with HONI with respect to this application.
7. BZA requires significant consultation and accommodation with respect to the transmission line project. HONI may even require the consent of BZA with respect to the Lake Superior Link application. BZA submits that this consultation is required prior to any development which will affect the rights, title or interests of the BZA.
8. Since 2013, BZA has engaged with Nextbridge with respect to the East West Tie application. Consultation with Nextbridge is ongoing, however the consultation process with respect to that application is not complete.
9. BZA retained Shared Value Solutions to assist them reviewing Nextbridge's Environmental Assessment in the East West Tie application. Shared Value Solutions provided a technical

10. If HONI will be relying on the Nextbridge's Environmental Assessment and similarly will be relying on this regulatory process to address ongoing concerns, BZA has not been advised as to how HONI will address the concerns that BZA has raised with respect to the transmission line construction.
11. BZA has an interest in whether the Environmental Assessment for the East West Tie is transferrable to the Lake Superior Link Project.
12. I make this affidavit with respect to the above proceeding and for no improper purpose.

Commissioner for Taking Affidavits, etc.

CHIEF MELVIN HARDY

1 terms of the duty to consult and accommodate, but also in
2 terms of the economic participation.

3 If we were to have to start that process all over
4 again, we have very serious concerns, A, about the ability
5 to complete it, particularly in the timelines that have
6 been identified. I think that that's next to impossible.
7 But also there is no guarantee that we are going to
8 actually come out the other end with the benefits for
9 communities that we've been successful in -- that we're on
10 the verge of achieving in our discussions with NextBridge.

11 This will put us back, we believe, at least -- it took
12 us four years to do this work with NextBridge. It's going
13 to take us a very extended period of time to have that kind
14 of deep consultation and engagement with Hydro One.

15 So that would ultimately be -- the impact is starting
16 from scratch again is a real risk for our communities.

17 MS. CRNOJACKI: Thank you very much. These are all
18 our questions.

19 MS. LEA: Thank you. Anyone else with questions for
20 the Métis Nation of Ontario?

21 Thank you very much for taking the time, both those on
22 the phone and yourself here in the room. I really
23 appreciate it. And thank you, Ms. Strachan.

24 So the next group is BZA. Mr. Esquega and Ms.
25 MacDonald, I believe you're on the line.

26 BIINIJITIWABIK ZAAGING ANISHNAABEK - PANEL 1

27 Chief Melvin Hardy

28 MR. ESQUEGA: Good morning. It's Etienne Esquega

1 here. Molly MacDonald is here with me as well, and so is
2 Chief Melvin Hardy.

3 MS. LEA: Chief Melvin Hardy. Okay, thank you. Does
4 Hydro One have any questions for the BZA?

5 MR. WARREN: No.

6 MS. LEA: Very well, thank you. Then we'll turn to
7 Board Staff -- unless anybody else? No? Board Staff,
8 please.

9 QUESTIONS BY MS. CRNOJACKI:

10 MS. CRNOJACKI: Board Staff has several questions for
11 BZA, First Nations.

12 BZA motion evidence indicates that Hydro One made very
13 limited contact with the BZA concerning the LSL project,
14 and that there has been no community engagement.

15 BZA noted that it requires significant consultation
16 and accommodation, and even the consent of BZA with respect
17 to the LSL project.

18 Our first question is -- since the BZA evidence was
19 filed, has there been any communication with Hydro One?
20 And if so, please describe the communication.

21 CHIEF HARDY: This is Chief Mel Hardy. And it's not
22 just BZA. It is Biinjitiwaabik Zaaging Anishinaabek; BZA
23 is just an acronym. Just so you guys know who you're
24 dealing with, we're actually a First Nations -- that's our
25 First Nations language we're talking here.

26 Hydro One did send on April 30th a letter, and that's
27 the only engagement we've had.

28 I did receive a call from an employee of Hydro One,

1 requesting to have a meeting with that staff member. I
2 said I would get back to that member, but it is on the same
3 date as when I got the letter and that's the only
4 engagement I have ever had.

5 MS. CRNOJACKI: Thank you, and my apologies for using
6 the acronym.

7 We know that your evidence raises a number of concerns
8 with respect to Hydro One meeting its duty to consult. In
9 your view, is there a way for Hydro One to meet its duty to
10 consult if Hydro One's leave to construct application is
11 not dismissed?

12 CHIEF HARDY: One of the things I do see is that the
13 45-day window obviously would not be enough time for
14 consultation, because if you look at the consultations
15 we've had with NextBridge since 2013 and in all that time
16 -- and I really believe that there was no true consultation
17 made to our First Nations. And so in order for Hydro One
18 to do this, Hydro One has to develop a relationship of
19 trust with our First Nation. In order to do that, they'd
20 have to engage with our First Nations on the ground and
21 then develop that trust within that relationship, and
22 engagement will follow. But that trust needs to be built
23 first.

24 MS. CRNOJACKI: Thank you. In your view, what would
25 be a reasonable timeframe for Hydro One to discharge its
26 duty to consult?

27 CHIEF HARDY: Well, at this time, it's pretty hard to
28 determine because Hydro One already does some procurement

1 projects on our land right now, and we've inquired about
2 the procurement opportunities and at this point the Hydro
3 One has not reached out to us.

4 So when we look at development of trust, we are
5 looking at a period almost the same as NextBridge or more.

6 It depends how long that NextBridge -- I mean that Hydro
7 One is able to develop that trusting relationship with
8 Biinjitiwaabik Zaaging Anishinaabek members.

9 MS. CRNOJACKI: Thank you. And is there -- do you
10 want to add anything to that response?

11 CHIEF HARDY: Not right now.

12 MS. CRNOJACKI: Our final question is: If you can
13 please describe any impact on your community if the 2020
14 project in-service date is delayed?

15 CHIEF HARDY: One of the things I'd like to add is the
16 proximity of Biinjitiwaabik Zaaging Anishinaabek to the
17 proposed EWT line on the HONI route is that the community
18 is in relation to the proposed route, we are about
19 approximately 58 kilometres by highway, 47 kilometres as
20 the crow flies, on Highway 11. We've also got many members
21 living in Thunder Bay and along as the Highway 17 route as
22 well, so we do have members living there.

23 The traditional territory of BZA, of Rocky Bay or
24 Biinjitiwaabik Zaaging Anishinaabek extends down the
25 reserve and includes lands affected by the proposed route
26 of the project. We do not delineate or speculate as to
27 where the boundaries as to our territory may be.

28 MS. CRNOJACKI: Thank you very much. These are all

1 our questions.

2 MS. LEA: Any other questions for Chief Hardy? If
3 not, Chief Hardy, I want to thank you very much for taking
4 the time to answer questions today. We do really
5 appreciate it, thank you.

6 CHIEF HARDY: Thank you very much.

7 MS. LEA: Mr. Warren, are you ready to empanel your
8 witnesses?

9 MR. WARREN: I have to find one first. But other than
10 that, can we take five minutes to get the last of the
11 witnesses down?

12 MS. LEA: Yes, five minutes. Reconvening at 9:25.

13 --- Recess taken at 9:20 a.m.

14 --- On resuming at 9:30 a.m.

15 MS. LEA: Thank you, Mr. Warren, if you could
16 introduce your panel, please, that would be great.

17 HYDRO ONE NETWORKS INC. - PANEL 1

18 Elise Croll

19 Christine Goulais

20 Andrew Spencer

21 Sanjiv Karunakaran

22 Bing Young

23 Megdi Ishac

24 MR. WARREN: Yes, good morning. I'll introduce the
25 panel beginning on my right, Elise Croll from Hydro One
26 Networks. Next to her is Christine Goulais from Hydro One
27 Networks. Next to Christine is --

28 MS. LEA: Is your mic on and pointing at you as much

TAB 16

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.

EVIDENCE OF THE INTERVENOR MÉTIS NATION OF ONTARIO

1. Introduction

1. The Notice of Hearing of Motion issued by the Ontario Energy Board (the “Board”) on April 6, 2018 (the “Notice”), invited the parties to the above-noted proceeding to address the questions set forth in Schedule A to that Notice. These questions are relevant to Hydro One’s proposed timelines and costs for the Lake Superior Link Project (“LSL”).

2. The Métis Nation of Ontario (“MNO”) is an intervenor in the above-noted proceeding and it is filing the attached evidence in relation to the questions identified in Schedule A, and, overall, to whether the Board should grant the relief requested by NextBridge in this motion to dismiss the LSL leave to construct application.

3. In addition, the MNO is filing evidence in relation “First Nation and Métis Participation” related issues, which were previously identified by the Board as a filing requirement in EB-2011-0140 and received express and separate consideration by the Board in the East West Tie (“EWT”) designation process.

2. Indigenous Consultation

A. The MNO and its Representative Role and Governance Structure

4. The MNO represents its registered citizens and Métis communities throughout Ontario through a province-wide governance structure. This unique governance structure has been

recognized in the *Métis Nation of Ontario Secretariat Act* (the “MNO Act”).¹ The MNO Act’s Preamble states,

Métis Nation of Ontario Secretariat is a corporation without share capital incorporated under the *Corporations Act*. It is the corporate and administrative arm of the Métis Nation of Ontario, which was created to represent and advocate on behalf of its registered citizens, and the Métis communities comprised of those citizens, with respect to their collective rights, interests and aspirations, as well as to provide social, economic and cultural supports to Métis individuals, families and communities through a province-wide service delivery system.

The Métis Nation of Ontario maintains a centralized registry of its citizens. The members of Métis Nation of Ontario Secretariat are citizens of the Métis Nation of Ontario, with defined rights and responsibilities, as set out in the Secretariat’s constituting documents and by-laws.

The citizens of the Métis Nation of Ontario identify as descendants of the Métis people that emerged in west central North America with their own language (Michif), culture, traditions and way of life. These Métis people collectively refer to themselves as the Métis Nation, which includes Métis communities within Ontario.

Through Métis Nation of Ontario Secretariat, the Métis Nation of Ontario has established various democratically elected governance structures at the local, regional and provincial levels to represent its citizens. The Government of Ontario recognizes that the Secretariat’s status as a governance structure that represents its citizens at the local, regional and provincial levels creates operational realities that are distinct from other Ontario not-for-profit corporations.

5. The MNO is governed by a comprehensive set of bylaws developed by its citizens that establishes democratically elected governance structures at the provincial (i.e., the Provisional Council of the Métis Nation of Ontario), regional (i.e., Regional Councilors) and local levels (i.e., MNO Chartered Community Councils).²

¹ *Métis Nation of Ontario Secretariat Act, 2015*, SO 2015, c 39 [Métis Nation of Ontario Written Evidence, EB-2017-0364 (“MNO Evidence”), Appendix A].

² MNO Secretariat Bylaws, August 28, 2016 [MNO Evidence, Appendix B]; Sample Métis Nation of Ontario Community Charter Agreement [MNO Evidence, Appendix C]

B. The Regional Rights-Bearing Métis Communities Impacted by the LSL

6. The MNO represents two regional rights-bearing Métis communities whose traditional territories will be traversed by the LSL and whose rights and outstanding land related claims have the potential to be adversely impacted by the LSL.³

- a) The first regional Métis community—the Northern Lake Superior Métis Community—is generally represented on the attached map at Appendix D. As further explained below, this community has been recognized by Ontario as a historic Métis community consistent with the requirements of the Supreme Court of Canada’s judgement in *R. v. Powley*, [2003] 2 SCR 207 and some aspects of this community’s Aboriginal rights protected by section 35(1) of the *Constitution Act, 1982* have been accommodated by Ontario through a negotiated agreement with the MNO.⁴
- b) The second Métis community—the Sault Ste. Marie Métis Community—is generally represented on the attached map at Appendix D. As further explained below, this Métis community has established rights protected by section 35(1) of the *Constitution Act, 1982* as recognized by the Supreme Court of Canada in *R. v. Powley*, [2003] 2 SCR 207.⁵ Some aspects of this Métis community’s established and asserted rights have also been recognized by Ontario through a negotiated agreement with the MNO.⁶

7. As illustrated on the map attached as Appendix D, these two communities are represented at the local level through the following MNO Chartered Community Councils: Historic Sault Ste.

³ Métis Nation of Ontario, Map of Métis Communities and Proposed East-West Tie Transmission Project (Territories and Administrative Geography) [MNO Evidence, Appendix D].

⁴ Fact Sheet for Northern Lake Superior Historic Métis Community, dated August 18, 2017 [MNO Evidence, Appendix E]; Framework Agreement on Métis Harvesting in Ontario between the Métis Nation of Ontario and the Ministry of Natural Resources and Forests, executed on April 30, 2018 [MNO Evidence, Appendix F].

⁵ *R v Powley*, 2003 SCC 43, [2003] SCJ No 43 (QL) [MNO Evidence, Appendix G]; Fact Sheet for the Sault Ste. Marie Historic Métis Community, dated August 18, 2017 [MNO Evidence, Appendix H].

⁶ Framework Agreement on Métis Harvesting in Ontario between the Métis Nation of Ontario and the Ministry of Natural Resources and Forests, executed on April 30, 2018 [MNO Evidence, Appendix F].

Marie Métis Council, the North Channel Métis Council, Superior North Shore Métis Council, the Greenstone Métis Council and the Thunder Bay Métis Council.⁷

8. These two regional Métis communities assert that they have and exercise Aboriginal rights throughout their respective territories, including, among other things, hunting, fishing (food and commercial), trapping (food and commercial), gathering, sugaring, wood harvesting, use of sacred and communal sites (e.g., incidental cabins and family group assembly locations) and use of water. In addition, the pre-existing use and occupancy of these communities within parts of the region give rise to collectively-held interests in specific lands. These communities also have outstanding claims against the Crown for breaches of its duties and obligations owing to them based on various land related promises made to them. These rights and outstanding claims are embedded within section 35 of the *Constitution Act, 1982* and the Crown is obligated to determine, recognize, respect and reconcile them.

9. Unlike First Nations in this region, these Métis communities have not yet negotiated, modified or exchanged their Aboriginal rights for rights protected within a historic or a modern day treaty.

10. With respect to dealing with Crown consultation and accommodation matters, these two regional Métis communities have executed internal Regional Consultation Protocols to ensure they are appropriately consulted on Crown conduct (i.e., policies, projects and government decisions) that have the potential to impact Métis rights, claims and interests throughout their respective regions such as the LSL.⁸

C. Recognition, Accommodation and Negotiation of Métis Rights and Interests

11. In 2003, the Supreme Court of Canada in *R. v. Powley* confirmed that Métis are a full-fledged rights-bearing Aboriginal people whose rights are equally confirmed and protected within the meaning of section 35 of the *Constitution Act, 1982*.

⁷ MNO Community Charter Agreements for Historic Sault Ste. Marie Métis Council, the North Channel Métis Council, Superior North Shore Métis Council, the Greenstone Métis Council and the Thunder Bay Métis Council [MNO Evidence, Appendix I].

⁸ Métis Nation of Ontario Consultation Protocol for Lakehead/Nipigon/Michipicoten Traditional Territory, signed on May 26, 2012 [MNO Evidence, Appendix J]; Métis Nation of Ontario Consultation Protocol for Historic Sault Ste. Marie Traditional Territory, signed on May 5, 2009 [MNO Evidence, Appendix K].

12. On August 21, 2017, the MNO and Ontario jointly identified seven historic Métis communities in the province that meet the requirements of the *Powley* case,⁹ including:
- a) The Historic Northern Lake Superior Historic Métis Community generally described as the inter-connected Métis populations at Michipicoten, Pic River, Fort William, Nipigon House, and Long Lake;¹⁰ and
 - b) The Historic Sault Ste. Marie Métis Community generally described as the inter-connected Métis populations at Sault Ste. Marie and its environs, which included “Batchewana, Goulais Bay, Garden River, Bruce Mines, Desbarates, Bar River, St. Joseph's Island, Sugar Island and into Northern Michigan.”¹¹
13. The following historic reports and research were reviewed as a part of the identification of these historic Métis communities:
- a) Joan Holmes & Associates, “Historical Profile of the Lake Superior Study Area’s Mixed European-Indian Ancestry Community Final Report,” September 2007;¹²
 - b) Arthur J. Ray and Kenichi Matsui, “Fur Trade and Métis Settlements in the Lake Superior Region, 1820–50,” June 2011;¹³

⁹ Métis Nation of Ontario Press Release, “Ontario and the MNO announce identification of historic Métis communities,” August 21, 2017 [MNO Evidence, Appendix L].

¹⁰ Fact Sheet for Northern Lake Superior Historic Métis Community, dated August 18, 2017 [MNO Evidence, Appendix E]

¹¹ Fact Sheet for the Sault Ste. Marie Historic Métis Community, dated August 18, 2017 [MNO Evidence, Appendix H]

¹² Joan Holmes & Associates, “Historical Profile of the Lake Superior Study Area’s Mixed European-Indian Ancestry Community Final Report.” Report prepared for the Federal Interlocutor, September 2007. <http://www.metisnation.org/media/141008/doj%20report%20-%20lake%20superior.pdf>

¹³ Arthur J. Ray and Kenichi Matsui, “Fur Trade and Métis Settlements in the Lake Superior Region, 1820–50.” Report prepared for the Métis Nation of Ontario, June 2011. http://www.metisnation.org/media/654378/final_report_for_mno_30_june_11-pdf-1.pdf

- c) Alison E. Gale, "Robinson Treaty Métis Historical Report." Report prepared for Claims Research and Assessment Directorate, Department of Indian Affairs and Northern Development, March 1998;¹⁴
- d) Praxis Research Associates. "Research Report: Historic Métis in Ontario: Wawa and Environs." Report prepared for the Ministry of Natural Resources of the Government of Ontario, August 1999;¹⁵
- e) Gwynneth C.D. Jones, "The Historical Roots of Métis Communities North of Lake Superior." Report prepared for the Métis Nation of Ontario, March 2015;¹⁶
- f) Victor P. Lytwyn, "Historical Report on the Métis Community at Sault Ste. Marie." Report prepared for R v Powley, March 1998;¹⁷
- g) Arthur J. Ray, "An Economic History of the Robinson Treaties Area Before 1860." Report prepared for R v Powley, March 1998;¹⁸ and

¹⁴ Alison E. Gale, "Robinson Treaty Métis Historical Report." Report prepared for Claims Research and Assessment Directorate, Department of Indian Affairs and Northern Development, March 1998. <http://www.metisnation.org/media/141017/inac%20report%20-%20robinson%20treaty%20metis.pdf>

¹⁵ Praxis Research Associates. "Research Report: Historic Métis in Ontario: Wawa and Environs." Report prepared for the Ministry of Natural Resources of the Government of Ontario, August 1999. <http://www.metisnation.org/media/141020/ontario%20report%20-%20michipicoten.pdf>

¹⁶ Gwynneth C.D. Jones, "The Historical Roots of Métis Communities North of Lake Superior." Report prepared for the Métis Nation of Ontario, March 2015. [http://www.metisnation.org/media/586242/mno_report_on_historic_metis_north_of_lake_superior_\(march2015\).pdf](http://www.metisnation.org/media/586242/mno_report_on_historic_metis_north_of_lake_superior_(march2015).pdf)

¹⁷ Victor P. Lytwyn, "Historical Report on the Métis Community at Sault Ste. Marie." Report prepared for R v Powley, March 1998. <http://www.metisnation.org/media/141026/powley%20case%20report%20-%20victor%20lytwyn.pdf>

¹⁸ Arthur J. Ray, "An Economic History of the Robinson Treaties Area Before 1860." Report prepared for R v Powley, March 1998. <http://www.metisnation.org/media/141029/powley%20case%20report%20-%20arthur%20ray.pdf>

- h) Joan Holmes & Associates, “Sault Ste. Marie Métis Historical Report.” Prepared for the Ontario Ministry of Natural Resources for R v Powley, August 1996.¹⁹

14. On January 12, 2018, an Independent Review of the Métis Nation of Ontario’s Harvester Card System was completed by an independent third party consultant based on criteria that was agreed to by Ontario and the MNO (the “Independent Review”). The Independent Review’s purpose was to objectively verify that the MNO Registry files for Harvesters Card holders document that these individuals ancestrally connect to historic Métis communities and meet the requirements of *Powley*. The Independent Review confirmed that the MNO has a reliable system for identifying Métis rights-holders with 100% of the Harvesters Card files that were randomly sampled—some of which were held by members of the Northern Lake Superior and Sault Ste. Marie Métis communities—being verified as meeting the criteria set out in *Powley*.²⁰

15. On April 30, 2018, the MNO signed a *Framework Agreement on Métis Harvesting in Ontario* with the Ontario Ministry of Natural Resources and Forestry (“MNRF”) This *Agreement* recognizes the existence of Métis harvesting rights in Ontario and accommodates Métis rights in the area that will be impacted by the LSL.²¹

16. In addition, the MNO is in formal negotiations with both Canada and Ontario in relation to Métis rights, land related issues and self-government. On December 11, 2017, the *MNO-Canada-Ontario Framework Agreement for Advancing Reconciliation* was executed.²²

¹⁹ Joan Holmes & Associates, “Sault Ste. Marie Métis Historical Report.” Prepared for the Ontario Ministry of Natural Resources for R v Powley, August 1996.
<http://www.metisnation.org/media/141032/powley%20case%20report%20-%20joan%20holmes.pdf>

²⁰ InterGroup, “An Independent Review of the Métis Nation of Ontario’s Harvester Card System Final Report.” Prepared for the Government of Ontario and the Métis Nation of Ontario, January 2018, Executive Summary [MNO Evidence, Appendix M]. A copy of the full report is available at <http://www.metisnation.org/media/654736/final-report-of-inter-group-without-appendix-c.pdf>.

²¹ Framework Agreement on Métis Harvesting in Ontario between the Métis Nation of Ontario and the Ministry of Natural Resources and Forests, executed on April 30, 2018 [MNO Evidence, Exhibit F].

²² Framework Agreement for Advancing Reconciliation between Métis Nation of Ontario, Government of Canada, Province of Ontario, signed on December 11, 2017 [MNO Evidence, Appendix N].

17. Some of the history of these two regional Métis communities and their rights is summarized in the MNO Occupied Lands Report for the NextBridge Infrastructure LP East-West Tie Transmission Project (the “MNO Occupied Lands Report”) prepared by Calliou Group. This section of the MNO Occupied Lands Report was jointly authored with the MNO.²³

18. As set out above, both the Northern Lake Superior Métis Community and the Sault Ste. Marie Métis Community live, use and rely on their traditional territories for their unique Métis way of life, and have collectively-held Métis rights protected by section 35 of the *Constitution Act, 1982* that may be impacted by the proposed LSL. Based on the above, the MNO asserts that deep consultation is required with the MNO—as the representative of these two regional rights-bearing Métis communities—which may include measures to accommodate these communities’ rights, if necessary, in relation to the LSL.

19. Hydro One has had no direct or meaningful engagement or consultation with the MNO in relation to the LSL. The only correspondence the MNO has received from Hydro One and Ontario in relation to the LSL are attached.²⁴

20. The MNO has received no communication from Ontario nor from Hydro One regarding how the consultation process with Ontario or with Hydro One will proceed regarding the LSL.

21. Hydro One’s project schedule stated that consultation with Métis and First Nations was to start in February 2018,²⁵ and, as demonstrated by the attached letters, absolutely no consultation with the MNO has occurred. The MNO has provided a summary of its concerns with respect to the eleventh-hour nature of the LSL and the difficulties it poses for Métis consultation and economic participation in a letter to the Ministry of Energy dated March 21, 2018.²⁶

²³ Calliou Group, “Occupied Lands Report: NextBridge Infrastructure LP East-West Tie Transmission Project.” Report prepared for the Métis Nation of Ontario, March 2017, section 5 [MNO Evidence, Appendix O].

²⁴ Letters from Hydro One to the MNO Greenstone, North Shore, and Thunder Bay Metis Councils, dated April 30, 2018 [MNO Evidence, Appendix P]; Letter from the Ministry of Energy to the MNO, dated March 2, 2018 [MNO Evidence, Appendix Q].

²⁵ Hydro One Application for the Lake Superior Link Project, EB-2017-0364, dated February 15, 2018, Exhibit B, Tab 1, Schedule 1 at 12 (“LSL Application”); LSL Application, Exhibit B, Tab 11, Schedule 1 Project Schedule at 1.
<http://www.rds.oeb.ca/HPECMWebDrawer/Record/603654/File/document>.

²⁶ Letter from the MNO to the Ministry of Energy, dated March 21, 2018 [MNO Evidence, Appendix R].

3. Environmental Assessment

A. *Hydro One Cannot Use MNO Studies Completed for the EWT*

22. The MNO and Nextbridge have engaged in extensive consultation activities over the span of four years regarding the EWT. Much of this was in the context of the environmental assessment (“EA”) for the EWT, and is detailed in the consultation log that forms part of NextBridge’s EA.²⁷

23. As part of that consultation, the MNO undertook two studies: (1) the Project Specific Traditional Land Use Study and Evaluation Criteria: NextBridge Infrastructure’s East-West Tie Transmission Project, and, (2) the MNO Occupied Lands Study (together, the “MNO Studies”). The MNO Studies solely focused on and collected data with respect to the potential impacts flowing from the EWT’s proposed route.

24. Chapter 17 of NextBridge’s Amended Environmental Assessment Report: Indigenous Current Use of Lands and Resources for Traditional Purposes refers to and relies extensively on the MNO Studies, in addition to community engagement sessions and discussions with the MNO (as set out in the above-mentioned consultation log) based on the MNO Studies and EWT’s proposed route.²⁸

25. It is not the case that another proponent could simply pick up NextBridge’s Amended Environmental Assessment Report and use it effectively without also having access to the underlying information that informed it, such as the MNO Studies. Hydro One will not have access to this information, even if Hydro One and Ontario negotiate a measure to allow it to use

²⁷ NextBridge Infrastructure LP, Amended Environmental Assessment Report for the East-West Tie Transmission Project, February 2018, Appendix 2-IX.
http://www.nextbridge.ca/~media/Microsites/Nextbridge/Documents/EWT%20Appendices/Appendix%20I%20through%203III/EWT_Amend_EA_Appendix_02-IX_Indigenous_Consultation_Log_February2018.pdf?la=en.

²⁸ NextBridge Infrastructure LP, Amended Environmental Assessment Report for the East-West Tie Transmission Project, February 2018, Section 17: Indigenous Current Use of Lands and Resources for Traditional Purposes.
http://www.nextbridge.ca/~media/Microsites/Nextbridge/Documents/EWT%20Appendices/Amended%20EA%20Report%20for%20the%20East-West%20Tie%20Transmission%20Project/EWT_Amend_EA_Section_17_Indigenous-Land-Resource-Use_February2018.pdf?la=en.

some NextBridge's EA work because it cannot use the MNO Studies or its underlying information without the MNO's consent.

26. The MNO will not provide consent for the MNO Studies and their underlying information to be used for the LSL because this information was collected specifically for the EWT and cannot—based on their structure and the data collected—be arbitrarily and indiscriminately applied to an EA for the LSL, which is a new transmission project with a different route. Because the information gathered in the MNO Studies is project-specific and assesses impacts on Métis rights and interests based on the EWT route, additional studies would need to be commissioned to assess the impacts of the LSL on Métis rights and interests.

27. The Scopes of Work for Calliou Group, the third-party consultants used to research and draft the MNO Studies, sets out that the MNO Studies and associated technical review of Nextbridge's EA impacts to Métis rights and interests was specifically crafted for the EWT and its proposed route.²⁹

28. Specifically, the MNO Project Specific Traditional Land Use Study and Evaluation Criteria: NextBridge Infrastructure's East-West Tie Transmission Project, states:

Information collected for this Study is the sole property of the Métis Nation of Ontario. The information contained within this project-specific Study is meant for a single application only, for use in the Environmental Assessment and associated review for the Nextbridge Infrastructure East-West Tie Transmission Project. Citation, use or reproduction of the information contained in this Report for any other purpose is permissible only with the written consent of the Métis Nation of Ontario.³⁰

29. In addition, the Executive Summary of the MNO Project Specific Traditional Land Use Study and Evaluation Criteria: NextBridge Infrastructure's East-West Tie Transmission Project also provides that:

²⁹ Calliou Group, "Statement of Work for the Project Specific Traditional Land Use Study and Evaluation Criteria: NextBridge Infrastructure's East-West Tie Transmission Project." Prepared for the Métis Nation of Ontario, April 2014 (excerpts) [MNO Evidence, Appendix S]; Calliou Group, "Proposal for Occupied Lands Study and Technical Review, East West Tie Transmission Project." Prepared for the Métis Nation of Ontario, April 2016 (excerpts) [MNO Evidence, Appendix T].

³⁰ Calliou Group, "Project Specific Traditional Land Use Study and Evaluation Criteria: NextBridge Infrastructure's East-West Tie Transmission Project." Report prepared for the Métis Nation of Ontario, November 2016, disclaimer [MNO Evidence, Appendix U].

...this Report sets out the process for the selection of Métis Nation of Ontario specific Evaluation Criteria, related to the proposed East-West Tie Transmission Project and a summary of information related to the Evaluation Criteria. The Métis Nation of Ontario expects that the information on this Report will be used by NextBridge Infrastructure and their consultants in the identification of potential positive and negative effects of the Project on MNO...³¹

30. Similarly, the MNO Occupied Lands Report states,

Information collected for the Métis Nation of Ontario Occupied Lands Report for the NextBridge Infrastructure LP East-West Tie Transmission Project remains the sole property of the Métis Nation of Ontario. The information contained within this document is meant for a single application only. Citation, use or reproduction of the information contained in this document for any other purpose is permissible only with the written consent from the Métis Nation of Ontario.³²

31. Each MNO citizen that participated in the MNO Studies signed a consent form. The MNO warranted to participating citizens through that form that the information collected would be used specifically for the EWT. The consent form for the MNO Occupied Lands Study provided that:

This Métis Nation of Ontario (MNO) questionnaire is designed to supplement information collected for the Project Specific Traditional Land Use Study and Evaluation Criteria Summary: NextBridge Infrastructure's East-West Tie Transmission Project. This questionnaire seeks to collect information about the potential for a reduction in Métis access to preferred locations of harvest within the local and generalized study areas identified by NextBridge. **I understand that the purpose of this questionnaire is to assist MNO in gathering information specifically related to the NextBridge Infrastructure East-West Tie**

³¹ Calliou Group, "Project Specific Traditional Land Use Study and Evaluation Criteria: NextBridge Infrastructure's East-West Tie Transmission Project." Report prepared for the Métis Nation of Ontario, November 2016, Executive Summary at 2 [MNO Evidence, Appendix U].

³² Calliou Group, "Occupied Lands Report: NextBridge Infrastructure LP East-West Tie Transmission Project." Report prepared for the Métis Nation of Ontario, March 2017 at 2 (excerpts) [MNO Evidence, Appendix O].

Transmission Project. I understand that MNO will produce a report based on the results of the questionnaire.³³ [emphasis added]

32. Given that assessing potential impacts to Métis rights and interests from the LSL would require that new studies be undertaken in order to be legitimate, the MNO would not consent to the MNO Studies being used by Hydro One. Neither Hydro One, Ontario, NextBridge or the Board could use the MNO Studies without the MNO's consent, regardless of any arrangements or directions ordered by third parties.

33. As noted above, no such studies have been proposed by Hydro One, there is no agreement in place for capacity for such studies, nor have any other substantive consultation activities yet occurred.

B. Pukaskwa National Park

35. Hydro One has proposed routing changes to the EWT for about 20% of the proposed route, including traversing Pukaskwa National Park, segments on either side of Pukaskwa National Park, and differing temporary workspaces and access roads for these altered segments.³⁴

34. NextBridge's proposed route, at one point, included traversing Pukaskwa National Park, a route which was modified after Parks Canada made clear that based on Indigenous and stakeholder feedback, it would not be feasible to route the EWT through the Park.³⁵

35. In the context of the EWT, on February 14, 2014—prior to Parks Canada's decision—the MNO wrote to Parks Canada with its concerns that Parks Canada had not fulfilled its

³³ Calliou Group, "Occupied Lands Report: NextBridge Infrastructure LP East-West Tie Transmission Project." Report prepared for the Métis Nation of Ontario, March 2017, Schedule A: Consent Form [MNO Evidence, Appendix O].

³⁴ LSL Application, Exhibit B, Tab 2, Schedule 1, Project Overview Documents at 4. <http://www.rds.oeb.ca/HPECMWebDrawer/Record/603654/File/document>.

³⁵ Nextbridge, "Project Information, Project Details." http://www.nextbridge.ca/project_info.aspx; NextBridge Application for the New East-West Tie Line Project, EB-2017-0182, dated July 31, 2017 ("EWT Application"), Exhibit I, Tab 1, Schedule 1, Attachment 1, Letter from Parks Canada to Enbridge Pipelines Inc., dated February 11, 2014, at 1. <http://www.rds.oeb.ca/HPECMWebDrawer/Record/586241/File/document>.

consultation obligations with the MNO regarding potential impacts to Métis rights within Pukaskwa Park.³⁶

36. As NextBridge modified its route to avoid the Park, these concerns were never addressed. Given this, the MNO believes that a Detailed Impact Assessment would be necessary if Hydro One pursues its proposed route for the LSL as including Pukaskwa Park, which would typically require at least 6–12 months to complete.³⁷

37. Similar to Ontario's recognition of Métis harvesting rights, Canada, pursuant to its own federal interim policy with respect to Métis harvesting, recognizes that Métis harvesting "may occur, where permitted under existing policies and accommodations, for the purposes of food, social and ceremonial requirements ... to ensure the continuation of culturally appropriate harvesting practices within the boundaries of conservation, public health and safety."³⁸

4. First Nation and Métis Participation

38. Ontario's Long-Term Energy Plan calls for First Nation and Métis communities whose traditional territories are impacted by energy projects—and specifically transmission lines—to be given opportunities to economically participate in those projects; this participation has social and

³⁶ Letter from Métis Nation of Ontario to Parks Canada, dated February 14, 2014 [MNO Evidence, Appendix V]. Note that the 2004 MNO-Ontario harvesting agreement referenced in this letter has since been replaced with the MNO-MNRF Framework Agreement on Métis Harvesting in Ontario dated April 30, 2018, previously attached as Appendix F.

³⁷ Parks Canada outlines this for Hydro One. See LSL Application, Status of Environmental Assessment, Letter from Parks Canada to Hydro One, dated November 27, 2017, Exhibit C, Tab 1, Schedule 2, Attachment 2.
<http://www.rds.oeb.ca/HPECMWebDrawer/Record/603654/File/document>.

³⁸ Government of Canada. *A Reference Manual for Federal Enforcement Personnel on Harvesting by Métis*. February 2007 [MNO Evidence, Appendix W]. Métis harvesting is permitted and occurs within Pukaskwa Park, as detailed in the letter from MNO to Parks Canada, dated February 14, 2014, previously attached as Appendix V.

well as economic value.³⁹ This commitment is distinct from Indigenous consultation obligations Ontario may have.

39. This distinction—between Crown consultation and economic participation—was acknowledged and reflected in the Board’s previous decisions with respect to the EWT. In its Phase 2 Decision and Order, the Board states that:

There is a distinction between this criterion (First Nations and Métis Participation) and the criterion addressed later in this decision (First Nations and Métis Consultation). The former arises from Ontario socio-economic policy and the latter is related to a constitutional obligation. Ontario’s Long Term Energy Plan states:

Where new transmission lines are proposed, Ontario is committed to meeting its duty to consult First Nations and Métis communities in respect of their aboriginal and treaty rights and accommodate where those rights have the potential to be adversely impacted. Ontario also recognizes that Aboriginal communities have an interest in economic benefits from future transmission projects crossing through their traditional territories and that the nature of this interest may vary between communities.⁴⁰

³⁹ Province of Ontario, *Ontario’s Long-Term Energy Plan 2017: Delivering Fairness and Choice* at 134: “The Province also appreciates the unique social benefits that can accrue to First Nations and Métis with their participation in energy projects. Measuring and assessing these non-financial benefits could help the government take a broader and more inclusive view of outcomes when deciding on energy policies and projects.” https://files.ontario.ca/books/ltep2017_0.pdf. Also see Province of Ontario, *Achieving Balance: Ontario’s Long-Term Energy Plan 2013* at 73: “The province expects that companies looking to develop new transmission lines will, in addition to fulfilling consultation obligations, involve potentially affected First Nation and Métis communities, where commercially feasible and where there is an interest.” <https://www.ontario.ca/document/2013-long-term-energy-plan>.

⁴⁰ Ontario Energy Board, Phase 2 Decision and Order in EB-2011-0140, August 7, 2013 at 14–15. https://www.oeb.ca/oeb/Documents/EB-2011-0140/Dec_Order_Phase2_East-WestTie_20130807.pdf.

40. When the Board was evaluating applications for designation for the EWT, “the Board kept in mind the distinction between participation and consultation” and these were separate criteria.⁴¹

41. The MNO and NextBridge, since late 2013, have signed a series of Capacity Funding Agreements (“CFAs”) relating to consultation activities and economic participation discussions (consultation activities and economic participation discussions were dealt with in separate CFAs). In contrast, Hydro One has proposed an inadequate 45 days to negotiate economic participation with affected Indigenous communities.⁴² The MNO and NextBridge have engaged in over four years of inter-related and intensive consultation activities and negotiations on economic participation. Given this, the 45-day timeline proposed by Hydro One is completely unrealistic, particularly when no consultation activities have yet occurred, as set out in the attached evidence.

⁴¹ Ontario Energy Board, Phase 2 Decision and Order in EB-2011-0140, August 7, 2013 at 8 and 15. https://www.oeb.ca/oeb/Documents/EB-2011-0140/Dec_Order_Phase2_East-WestTie_20130807.pdf.

⁴² LSL Application, Indigenous Communities, Exhibit H, Tab1, Schedule 1 at 5. <http://www.rds.oeb.ca/HPECMWebDrawer/Record/603654/File/document>.



Métis Nation of Ontario
Office of the President

May 14, 2018

Hydro One Networks Inc.
483 Bay Street
South Tower – 6th Floor
Toronto, Ontario M5G 2P5

Attn: David F. Denison, Chairman of the Board of Directors, Hydro One Networks Inc.
Mayo Schmidt, President and CEO, Hydro One Networks Inc.

Dear Mr. Denison & Mr. Schmidt:

RE: Request for Meeting in Relation to Hydro One's Lake Superior Link Project

I am writing as the President of the Métis Nation of Ontario ("MNO"). I am requesting a meeting with Hydro One Networks Inc. ("Hydro One") on an urgent basis to discuss the corporation's troubling conduct and failings in relation to the proposed Lake Superior Link Project (the "LSL").

For over a decade now, the MNO has strived to build a positive working relationship with Hydro One. This has included cooperation on projects such as the Bruce to Milton Transmission Line ("B2M"), amongst others. Notably, flowing from B2M, the MNO entered into both a consultation as well as an accommodation agreement with Hydro One. With Hydro One's previous Indigenous Relations staff, such as Leanne Cameron, we believed there was a respectful relationship built in part on the understanding that Ontario Métis and our rights would not be treated as "less than" other Indigenous communities.

Given this history, the MNO is shocked and insulted by Hydro One's recent actions regarding the LSL. Hydro One has unilaterally pre-determined and dismissed the rights and interests of the two rights-bearing Métis communities represented by the MNO that will be impacted by the LSL: the Northern Lake Superior Métis community and the Sault Ste. Marie Métis community.¹ A map of these Métis communities in relation to the LSL is attached to this letter.

Not only has Hydro One disrespected and disregarded the need for deep consultation with these Métis communities, it has ignored explicit direction both from Ontario and the Ontario Energy Board (the "Board") regarding the importance of economic participation of **both** First Nations **and** the Métis in new transmission projects in the province. Hydro One has decided—without any advance discussions or recognition of our interests—to exclude the MNO from potential equity in the LSL. This demonstrates

¹ More information on these Métis communities can be found in the MNO Written Evidence, EB-2017-0364, LSL Motion ("MNO Evidence"). The MNO's evidence also outlines the rights, interests, and concerns of the Métis Communities which require deep consultation.

a complete disregard for the Crown's longstanding commitments and direction in repeated Long-Term Energy Plans ("LTEPs").²

Prior to detailing Hydro One's disrespectful conduct and failings in relation to the LSL, the MNO wants to make clear that consultation and economic participation are distinct in relation to new transmission projects in Ontario. Ontario's LTEPs set out the clear expectation that transmitters will fulfill consultation obligations **and** explore economic participation with **both** First Nation **and** Métis communities.³ This distinction was repeatedly recognized by the Board and incorporated into its Phase 2 Decision and Order on the East-West Tie ("EWT"), wherein the Board separately evaluated First Nations and Métis Consultation, and First Nations and Métis Participation, as two of its nine criteria used to evaluate competing bids to be designated as the transmitter for the EWT.⁴

In 2013, Hydro One and its partners' attempt to be designated for the EWT failed in part because of its problematic approach to Métis consultation and its exclusion of meaningful opportunities for Métis economic participation. It is appalling that—five years later—Hydro One is now trying to revive this failed approach through the backdoor in a flawed, costly and eleventh-hour leave to construct application; an application which does not even include its original First Nation partners anymore. Let me be clear: the MNO will not allow Métis rights and interests, nor Métis participation in any new transmission line based on longstanding Crown commitments, to be sacrificed through Hydro One's ill-conceived LSL.

If Hydro One's LSL application is allowed to proceed further, we will likely end up in the courts. The costs of this misadventure will ultimately be borne by your shareholders and Ontario ratepayers.

The MNO has diligently participated in and relied on the Crown's commitments and the Board's decisions in relation to the EWT, for going on eight years. Through this process, we have achieved meaningful consultation as well as participation in relation to the EWT. This has been achieved because NextBridge (the designated transmitter for the EWT) has followed through on the commitments made in their designation bid, and has taken seriously the LTEP's commitments and the Board's previous decisions.

We will not allow Hydro One's LSL application—that disrespects and excludes Métis on its face—to proceed. While Hydro One may be able to try to play "fast and loose" with the spirit and intent of Ontario's legislation and policies, the

² Province of Ontario, *Achieving Balance: Ontario's Long-Term Energy Plan 2013* at 73, ("2013 LTEP"). <https://www.ontario.ca/document/2013-long-term-energy-plan>. Province of Ontario, *Ontario's Long-Term Energy Plan 2017: Delivering Fairness and Choice* at 134, https://files.ontario.ca/books/ltep2017_0.pdf ("2017 LTEP").

³ 2013 LTEP at 73.

⁴ Ontario Energy Board, Phase 2 Decision and Order in EB-2011-0140, August 7, 2013 at 14–15. https://www.oeb.ca/oeb/Documents/EB-2011-0140/Dec_Order_Phase2_East-WestTie_20130807.pdf ("Phase 2 Decision").

Crown—which has constitutional duties and obligations owing to the Métis—cannot. The honour of the Crown demands that these commitments be upheld. Hydro One’s LSL application and conduct undermines and makes a mockery of these same commitments.

The remainder of this letter details just some of the ways in which Hydro One’s LSL approach and application are flawed. Clearly, the consultants and advisors driving this misadventure to date are not acting in the best interests of the corporation, Ontario ratepayers or reconciliation.

1. Hydro One has Pre-Judged and Disrespected Métis Rights, Interests and Claims in its Approach to Consultation

The MNO received its first correspondence from Hydro One about the LSL on April 30, 2018. This letter stated that Hydro One wanted to begin consultation with the MNO “immediately.”⁵

Unbeknownst to the MNO, Hydro One had already determined—prior to sending the April 30 letter—that the rights, interests and claims of Métis communities were inferior to those of six First Nations.⁶ This is evidenced by a letter from Hydro One Vice President of Indigenous Relations Derek Chum to Kate Kempton, counsel to the six First Nations, dated two weeks before any contact was made with the MNO:

At the same time, we will also be engaging with the First Nations and Métis communities that are less directly affected including the Métis Nation of Ontario. Although the frequency of meetings will be less than with the BLP communities, their input is valuable and informative.⁷ [emphasis added]

This statement is inaccurate, ill-informed, and offensive. It demonstrates that Hydro One is not committed to meaningful consultation with the Métis and that it likely cannot effectively discharge its consultation obligations with respect to the LSL for three reasons:

- a. **Hydro One made a determination about the level of consultation and impacts without any direction from the Crown—or even one discussion with the MNO—about Métis rights, interests, and claims in the area.⁸ Meaningful and**

⁵ MNO Evidence, Appendix P.

⁶ These First Nations include: Pays Plat First Nation, Fort William First Nation, Red Rock Indian Band, Pic Mobert First Nation, Michipicoten First Nation and Biigtigong Nishnaabeg First Nation.

⁷ Written Evidence of Hydro One, EB-2017-0364, LSL Motion, Attachment 12, at 2 (“Hydro One Evidence”).

⁸ The MNO would note that in November of 2017, Hydro One requested that Ontario delegate procedural aspects of consultation to it and further requested that Ontario provide a list of First Nations and Métis communities with Ontario’s strength of claim analysis. Ontario provided such a list after Hydro One has filed its Leave to Construct Application on February 15, 2018. This list from Ontario includes three MNO Community Councils and the MNO itself. This list is not triaged in any way. Ontario has not directed Hydro One to conduct differing levels of consultation with the Métis versus First Nations.

honourable consultation must be informed by discussions, facts and evidence, not by playing one Indigenous group against another (*i.e.*, diminishing the rights and interests of one group in order to potentially curry favour with another). Through these actions, Hydro One has demonstrated that Hydro One is not able to discharge procedural aspects of the Crown's consultation obligations owing to the Métis in relation to the LSL.

- b. **Hydro One has pre-judged consultation outcomes.** Simply put, how can Hydro One make statements about effects on Indigenous peoples when the consultation process on the LSL has not even begun? Clearly, Hydro One is not committed to assessing LSL's effects on Métis rights and interests with an open mind, since it has already pre-determined a certain outcome. This is the antithesis of consultation. The MNO cannot imagine that this conduct is in keeping with the Memorandum of Understanding Hydro One signed with Ontario on consultation in relation to the LSL—however, this agreement has not been shared with the MNO to date. The fact that the MNO has been kept in the dark about the consultation process is itself inconsistent with the Supreme Court of Canada's recent statements that “[g]uidance about the form of the consultation process should be provided so that Indigenous peoples know how consultation will be carried out to allow for their effective participation.”⁹
- c. **By disrespecting and dismissing the Métis communities that live, use, and rely on the territory through which the LSL will pass, Hydro One has effectively “poisoned the well” for consultation on the LSL.** Positive relationships, which are required to discharge delegated consultation obligations, cannot be built on pre-judged, biased and prejudiced foundations. As the Supreme Court of Canada has recognized, consultation is about an “ethic of ongoing relationships.”¹⁰ Why would our communities engage in a pre-determined consultation process with a proponent that has a closed mind? How can they trust Hydro One to even listen when it has already determined consultation outcomes?

Taken together, in the MNO's opinion, these factors demonstrate that Hydro One is not up to or sincerely committed to meaningful Métis consultation on the LSL.

(2) Hydro One Has Excluded Métis from Meaningful Economic Participation

Consultation and economic participation are not synonymous. Economic participation does not replace consultation and accommodation, or vice versa. As was stated in the Board's Phase 2 Decision and Order for the EWT:

⁹ *Clyde River (Hamlet) v Petroleum Geo-Services Inc.*, 2017 SCC 40 at para 23.

¹⁰ *Rio Tinto Alcan Inc. v Carrier Sekani Tribal Council*, 2010 SCC 43 at para 38.

There is a distinction between this criterion (First Nations and Métis Participation) and the criterion addressed later in this decision (First Nations and Métis Consultation). The

former arises from Ontario socio-economic policy and the latter is related to a constitutional obligation. Ontario's Long Term Energy Plan states:

Where new transmission lines are proposed, Ontario is committed to meeting its duty to consult First Nations and Métis communities in respect of their aboriginal and treaty rights and accommodate where those rights have the potential to be adversely impacted. **Ontario also recognizes that Aboriginal communities have an interest in economic benefits from future transmission projects crossing through their traditional territories and that the nature of this interest may vary between communities.**¹¹ [emphasis added]

Contrary to what Hydro One appears to think, Ontario's economic participation commitments are not—in and of themselves—"accommodation."¹² Accommodation flows from the constitutional duty to consult and may require, for instance, a change to a project, licensing conditions, joint monitoring, compensation or even denial of a sought approval. On the other hand, Ontario's LTEPs make clear that transmitters must consult (and necessarily accommodate if the situation requires it) **as well as** explore economic participation with proximate First Nations **and** Métis communities where there is an interest.¹³

Given the MNO's almost eight years of active participation regarding the EWT,¹⁴ Hydro One is well aware that the MNO has an interest in economic participation in any transmission line in this area. If Hydro One had bothered to speak with the MNO, read previous Board decisions in relation to the EWT or thought back to some of the factors that contributed to its failure to be designated to build the EWT in the first place,¹⁵ this would have been clear.

Despite this, Hydro One made the decision to—once again—only contemplate equity participation for six First Nations. This decision was made before Hydro One had made any contact with the MNO (and this contact was to discuss consultation, not economic

¹¹ Phase 2 Decision at 14-15.

¹² Hydro One Evidence, Attachment 12 at 2. BLP asked Hydro One for details on its approach to accommodation (specifically referring to economic participation), and Hydro One's response clearly accepts the premise that economic participation is accommodation.

¹³ 2013 LTEP at 73; 2017 LTEP at 134.

¹⁴ The MNO has been involved in the EWT process since 2012, when it made submissions to ensure that First Nations and Métis Participation was included as a designation criterion for the EWT.

¹⁵ In its failed designation bid for the EWT, the Board commented Hydro One's proposal for First Nations and Métis participation included "more limited opportunity for other affected First Nations and Métis communities to participate in the various aspects of the project and no opportunity for equity participation." Phase 2 Decision at 39.

participation). Mr. Chum's April 12, 2018 letter (recall that Hydro One did not contact the MNO until April 30, 2018) to Ms. Kempton states that:

Should the OEB award Hydro One leave to construct the Lake Superior Link Project, we are committed to offering BLP an opportunity to own 34% in a limited partnership ...¹⁶ [emphasis added]

Hydro One's evidence demonstrates that it has no intention of opening further equity for the Métis:

In Hydro One's s. 92 application for the LSL, Hydro One references achieving agreements with Indigenous communities within 45 days from receipt of OEB approval of its Application. **This 45-day timeframe is in relation to finalizing any terms and conditions that may be agreed upon between Hydro One and the First Nations partners in Bamkushwada Limited Partnership (BLP) to establish mutually agreeable terms with regards to a limited partnership that will own the Lake Superior Link assets.¹⁷ [emphasis added]**

It is obvious that Hydro One has not learned from its previous failed EWT designation application. First Nations and Métis participation was a filing requirement for the EWT.¹⁸ All Hydro One has addressed in its LSL application is potential First Nation participation. Instead of remedying its past failings, Hydro One has decided to compound its previous insult to the Métis by effectively seeking to resurrect its unsuccessful EWT bid, and in doing so, perpetuating its exclusionary and discriminatory attitude towards the Métis. This attitude ignores Hydro One's obligations as a proponent with delegated consultation obligations, as well as the current state of the law and policy in Ontario. It appears that the "new" Hydro One is even worse the old one when it comes to respectfully dealing with the MNO and the Métis.

As discussed above, for the Board to grant, or for Ontario to allow, Hydro One's LSL application to move forward based on its same failed model from the EWT designation process would be unconscionable. It would also be a breach of the honour of the Crown based on the commitments made to the Métis in repeated LTEPs, the MNO's reliance on those commitments, and the fact that the MNO has an economic participation arrangement with NextBridge. Hydro One's current approach makes a mockery of these commitments by Ontario as well as the designation process for the EWT through its disregard for the Board's determinations in that process. **The MNO will ensure the Crown's honour is upheld, through the courts if necessary.**

The MNO is requesting an urgent meeting with Hydro One on these issues. Given Hydro One's apparent indifference towards its relationship with the Métis and its exclusionary

¹⁶ Hydro One Evidence at 12.

¹⁷ Hydro One Evidence at 41.

¹⁸ Ontario Energy Board, Phase 1 Decision and Order in EB-2011-0140, July 12, 2012 at 4.

[file:///C:/Users/mstrachan/Downloads/Dec_Order_Phase1_EWT_20120712%20\(1\).PDF](file:///C:/Users/mstrachan/Downloads/Dec_Order_Phase1_EWT_20120712%20(1).PDF)

strategy in relation to the LSL to date, we expect this request to be ignored. Until these fundamental issues are resolved, our Community Councils and regional leadership will not be meeting or responding to further meeting requests in relation to the LSL. While we recognize that we have reciprocal obligations in relation to consultation, the MNO will not engage with a proponent that has so flagrantly disregarded its delegated obligations from the Crown.

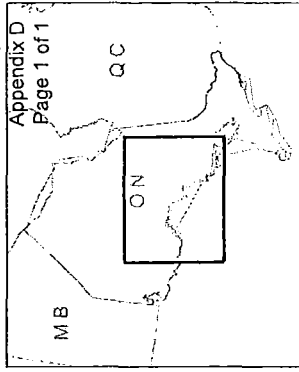
We look forward to hearing from you in relation to the MNO's request.

Yours very truly,



Margaret Froh
President

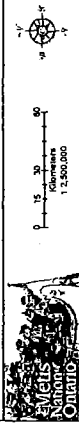
- c.c. MNO Lakehead/Nipigon/Michipicoten Regional Consultation Committee, including the Thunder Bay Métis Council, the Greenstone Métis Council, and the Superior Northshore Métis Council
MNO Historic Sault Ste. Marie Regional Consultation Committee, including the Historic Sault Ste. Marie Métis Council and the North Channel Métis Council
Roberta Jamieson, Board of Director, Hydro One Networks Inc.
Honourable Glenn Thibeault, Minister of Energy
Jason Madden and Colin Salter, Pape Salter Teillet LLP



Legend

- East-West Transmission Line
- Métis Consultation Protocol Areas**
 - Lakehead/Nipigon/Michipicoten
 - Sault Ste Marie Region
- Métis Traditional Harvesting Territories**
 - Abitibi/Temiscamingue
 - Historic Sault Ste. Marie
 - James Bay
 - Lake of the Woods/Lac Seul
 - Lakehead
 - Michipicoten
 - Nipigon
 - Rainy Lake/Rainy River
- ★ Locations Identified As Part of Sault Ste. Marie Métis Community in R. v. Powley
- MNO Community Councils**
 - Administrative Boundaries
 - Office or Mailing Address Location
- Treaty Territories**
 - Robinson Huron Treaty
 - Robinson Superior Treaty
- First Nations Identified for Consultation**
 - First Nation

Métis Communities and Proposed East-West Tie Transmission Project
(Territories and Administrative Geography)



1 had one request about how to organize the actual argument
2 phase of the motion. I had presumed that the moving party
3 would begin, and all those supporting the motion would
4 follow that, followed by intervenors opposing the motion
5 and Hydro One, followed by some reply from NextBridge, and
6 OEB Staff would fit in there somewhere. I don't know that
7 they would be taking a position, but all parties need an
8 opportunity to respond to their comments as well, I think.

9 So if anybody has any thoughts on that, you can
10 perhaps let me know off the record, or if you have time
11 constraints, and I'm aware Ms. Kempton has a time
12 constraint, let me know. Okay? Thanks.

13 Let's begin then if there is nothing further with our
14 first panel of the day, the Métis Nation of Ontario.

15 Ms. Strachan, I think you have one witness here and
16 one or more on the telephone. Thank you.

17 MS. STRACHAN: Yes, thank you, Megan Strachan, counsel
18 to the MNO, so here in person we have president, Margaret
19 Froh, of the Métis Nation of Ontario, and on the phone we
20 have Germaine Conacher and Tracy Campbell, who are both
21 consultants with MNP, which is previously --

22 [teleconference announcement]

23 MS. STRACHAN: -- which is previously Calliou Group,
24 and they were the consultants that prepared the Métis
25 Nation of Ontario's traditional land use studies. And also
26 on the line is Jason Madden, who is also counsel to the
27 MNO.

28 MÉTIS NATION OF ONTARIO - PANEL 1

1 Margaret Froh

2 Germaine Conacher

3 Tracy Campbell

4 MS. LEA: Thank you, and I think, Mr. Warren, you have
5 some questions for this group.

6 MR. WARREN: I do not.

7 MS. LEA: You do not. Do Board Staff have any
8 questions for the Métis Nation of Ontario then?

9 MS. CRNOJACKI: We do have a few questions --

10 MS. LEA: You do.

11 MS. CRNOJACKI: -- for the Métis Nation for --

12 MS. LEA: Thank you.

13 MS. CRNOJACKI: -- Ontario.

14 MS. LEA: Please proceed.

15 QUESTIONS BY MS. CRNOJACKI:

16 MS. CRNOJACKI: The MNO evidence, paragraph 21, that
17 indicates that as of May 7th, 2018 there was no
18 consultation with the MNO, the MNO also noted that it had
19 sent a summary of its concerns with respect to the
20 eleventh-hour nature of the LSL and the difficulties it
21 poses for Métis Nation consultation and economic
22 participation in a letter you sent to the Ministry of
23 Energy. The letter is dated March 21st, 2018.

24 Our first question is: Since May 2018 has the MNO
25 been contacted by Hydro One?

26 MS. FROH: So good morning.

27 MS. CRNOJACKI: Good morning.

28 MS. FROH: Yes, so we haven't had follow-up specific

1 to the April 30th letter directly with them, other than we
2 initiated contact with Hydro One. We issued a letter to
3 their board of directors on May 14th outlining our concerns
4 and requesting to meet on an urgent basis to discuss those
5 concerns. And since that time we -- which was just earlier
6 this week -- we did receive a preliminary response from a
7 staff member, and I understand that there will be a
8 response, because my letter was directed directly to the
9 Chair of the board and the president and CEO. So we're
10 anticipating a response back from that.

11 MS. CRNOJACKI: Thank you.

12 In your view, is there a way for Hydro One to meet its
13 duty to consult if Hydro One's leave-to-construct
14 application is not dismissed by the OEB? And in your
15 opinion, in your estimation, what would be the reasonable
16 time frame for Hydro One to discharge its duty to consult
17 regarding the LSL project?

18 MS. FROH: I think that it's going to be a challenge
19 in terms of the timelines that I understand are in play
20 with this particular leave. It took us four years to come
21 to the place where we are right now through a very robust
22 engagement process with NextBridge, both in terms of the
23 duty to consult, but also on the economic participation end
24 of things. That has taken a long time, and ultimately
25 consultation is about building relationships.

26 I have serious concerns about the ability to be able
27 to meet those consultation obligations in light of the
28 timing of this, as well as the fact that the fact that

1 there is a real concern around what Hydro One -- some of
2 the assumptions that it appears to have made with regard to
3 the impact on Métis Nation of Ontario regional rights-
4 bearing communities, and to that extent that is very much
5 what this letter is about that I referenced earlier.

6 I don't believe it's in the record, but it does lay
7 out the concerns that we have with regard to consultation
8 and the concerns that we have with the ability to actually
9 follow through on that within the timelines that have been
10 provided.

11 So that outlined our concerns, but also the concerns
12 about moving forward. And in particular, we have concerns
13 about essentially the assumptions that have been made by
14 Hydro One have poisoned the well, so to speak, in terms of
15 consultation.

16 If we are going to be moving forward with Hydro One
17 through this process, we're going to be starting from a
18 deficit position. Given that consultation really is about
19 establishing that relationship of trust, that, I think,
20 will pose significant challenges for us in order to do
21 that.

22 MS. CRNOJACKI: Our final last question today for the
23 MNO. Can you please describe any impact on your
24 communities if the 2020 project in-service date is delayed?

25 MS. FROH: So for us, this is very much about starting
26 from scratch again.

27 As I mentioned earlier, it has taken over four years
28 to come to the place where we are with NextBridge, both in

1 terms of the duty to consult and accommodate, but also in
2 terms of the economic participation.

3 If we were to have to start that process all over
4 again, we have very serious concerns, A, about the ability
5 to complete it, particularly in the timelines that have
6 been identified. I think that that's next to impossible.
7 But also there is no guarantee that we are going to
8 actually come out the other end with the benefits for
9 communities that we've been successful in -- that we're on
10 the verge of achieving in our discussions with NextBridge.

11 This will put us back, we believe, at least -- it took
12 us four years to do this work with NextBridge. It's going
13 to take us a very extended period of time to have that kind
14 of deep consultation and engagement with Hydro One.

15 So that would ultimately be -- the impact is starting
16 from scratch again is a real risk for our communities.

17 MS. CRNOJACKI: Thank you very much. These are all
18 our questions.

19 MS. LEA: Thank you. Anyone else with questions for
20 the Métis Nation of Ontario?

21 Thank you very much for taking the time, both those on
22 the phone and yourself here in the room. I really
23 appreciate it. And thank you, Ms. Strachan.

24 So the next group is BZA. Mr. Esquega and Ms.
25 MacDonald, I believe you're on the line.

26 BIINIJITIWABIK ZAAGING ANISHNAABEK - PANEL 1

27 Chief Melvin Hardy

28 MR. ESQUEGA: Good morning. It's Etienne Esquega

TAB 17

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.

AFFIDAVIT OF CHIEF DEAN SAYERS

I, **CHIEF DEAN SAYERS**, of the Batchewana First Nation, in the Province of Ontario,
MAKE OATH AND SAY AS FOLLOWS:

1. I am a member and elected Chief of the Batchewana First Nation ("BFN"), and thus have knowledge of the matters to which I here depose, except for those matters that are stated to be based on information and belief and, where so stated, I have provided the source of the information and believe it to be true.
2. I have served as Chief of BFN for 6 terms, starting in 2005, and am now in my seventh term. I currently live at the Rankin Reserve of the First Nation at Sault Ste. Marie but I grew up at Batchewana Bay on Lake Superior. The Obadjiwon Reserve on Batchewana Bay is the northernmost of our four BFN reserves.

3. BFN is a "band" within the meaning and for the purposes of the *Indian Act*, RSC 1985, c I-5, s. 2(1), with two reserves at Sault Ste. Marie, Rankin Reserve and Whitefish Island Reserve on the St. Mary's River, and two reserves, Goulais Bay Reserve and Obadjiwon Reserve, on Lake Superior north of Sault Ste. Marie.
4. As directed by Council and on behalf of BFN, I am providing this Affidavit as evidence in support of the First Nation's intervention in this proceeding.
5. At this point I can indicate that BFN has engaged with both NextBridge and Hydro One with respect to different projects in recent years. Those engagements and negotiations have been respectful and successful. One of the major points to be made in terms of the East-West Tie Line Proposals, however, is that NextBridge has engaged with BFN, as described below, while there has been no engagement or contact with BFN on the part of Hydro One.
6. On the basis of our engagement with NextBridge, BFN has provided a letter of support dated April 18, 2018, attached to this my Affidavit as Exhibit "A".

ISSUES

7. In this Affidavit, and in oral submissions to be made to the Board commencing May 24, 2018, the following topics are and will be addressed:
 - (a) The Original Reserve of the Batchewana First Nation
 - (b) First Nation Rights and Jurisdiction

- (c) Indigenous Consultation
- (d) The EA Transfer
- (e) The In-Service Date

THE ORIGINAL RESERVE OF THE BATCHEWANA FIRST NATION

8. Our Elders and Ancestors have found it strange that anyone other than Indigenous Nations should determine or define their traditional lands and resources. In the context of Canadian constitutional arrangements, however, the Royal Proclamation of 1763 was an act of the British Crown stating that, as one of "the several Nations or Tribes of Indians, with whom We [*the Crown*] are connected", BFN lands and resources were "reserved" to us as our "Hunting Grounds".
9. It was another 76 years before the Crown attempted to delineate our lands. In 1849, in preparation for the treaty to be negotiated the following year, Messrs. Vidal and Anderson were sent out to travel along the north shore of Lake Huron and the north and east shores of Lake Superior to enquire into the nature, populations and territories of the First Nations. Part of their Report was a plan showing their estimation of the lands of the respective First Nations, and part of that plan is attached to this my Affidavit as Exhibit "B".
10. On Exhibit "B", there is an area outlined commencing at the mouth of the Pukaskwa River, moving north and east until it meets an arc intended, I believe, to approximate

the height of land, and along that arc are the words "Batchewaunnung, Michipicoten, Sault Ste. Marie Bands."

11. We consider Exhibit "B" to present a reasonably accurate depiction of our Original Reserve, though we take exception to the apparent exclusion of Otter Head and other lands in, north and east of present day Pukaskwa National Park. On the other hand, the failure of Vidal-Anderson to delineate the irregular contour of the height of land may properly indicate lands beyond that contour our people did use.
12. In 1850, Treaty Commissioner William Benjamin Robinson decided to negotiate two treaties rather than one: The Robinson Huron Treaty and The Robinson Superior Treaty. The stated boundary between the two runs from Batchewana Bay on Lake Superior to the height of land. While BFN is a signatory only to the Robinson Huron Treaty, our harvesting and other rights in the other treaty area consistent with our Original Reserve have been recognized by court decisions.
13. Attached to this my Affidavit as Exhibit "C" is a map showing the East-West Tie Line Proposed Route with the Vidal-Anderson "boundaries" added as broken red lines. I am advised by our consultant, Mr. Greer, that the length of the Proposed Route within our Original Reserve is slightly more than 100 km.

FIRST NATION RIGHTS AND JURISDICTION

14. BFN has consistently maintained and asserted its rights to resources, resource-sharing and resource management within its Original Reserve. These are consistent

with the responsibilities conferred on us by the Creator and we see our relationships with the Crown, including the Covenant Chain and our Treaties as also consistent with those continuing responsibilities.

15. BFN made its position clear to all concerned by publication of its Notice of Assertions, a copy of which is attached to this my Affidavit as Exhibit "D". The Notice appeared in newspapers in Ottawa, Toronto, Sault Ste. Marie and Thunder Bay in June of 2011. Its purpose was to assist interested parties, including other governments, "in understanding BFN's position historically and in the modern political, social, economic and legal fabric." BFN also relies upon the requirement for "free, prior and informed consent" as prescribed by the United Nations Declaration of the Rights of Indigenous Peoples to which Canada has adhered.

16. BFN does not shy away from the exercise of its rights and jurisdiction, though it does not seek or desire confrontation. As the Notice of Assertions indicates, however, and experience demonstrates, BFN is always willing to engage in respectful negotiations and has been many times successful in achieving mutually beneficial results.

INDIGENOUS CONSULTATION

17. This is a matter of constitutional entitlement, as we have been advised by our legal counsel and informed by many decisions of the Supreme Court of Canada.

18. In the context of the present proceeding before the OEB, it is apparent that Ontario has directed NextBridge to consult with, among others, "the Ojibways of Batchewana" (see NextBridge Application herein filed 2017-07-31, Exhibit H, Tab 1, Schedule I, Attachment I at p. 389). I can report that NextBridge has engaged with BFN in an appropriate and respectful manner consistent with its role as mandated by the Province.
19. NextBridge is currently close to concluding a Relationship Agreement it has negotiated with BFN regarding the East-West Tie Project. BFN believes it will be signed within the next eight weeks.
20. I regret to say that Hydro One has not engaged with BFN with respect to the East-West Tie Project. There has been a complete failure to consult on the part of Hydro One on the Lake Superior Link. Information provided to Batchewana First Nation to date has only dealt with proposed work by Hydro One at the Wawa Transmission facility and, in that regard, there has been no direct contact and no communications between Hydro One and BFN.
21. BFN is profoundly concerned at what appears to be an estimate of as little as 45 days to complete a full program of Indigenous Consultation. Even more concerning is the lack of a plan to consult, in advance of major decisions, including decisions by this Board.

22. It is the experience of BFN, consistent that Hydro One cannot conclude proper consultation and accommodation in advance of the proposed In-Service Date. Such a dilatory process and such a result would be completely unacceptable to BFN.

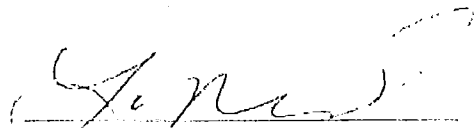
THE IN-SERVICE DATE

23. The proposed In-Service Date by NextBridge is the end of 2020. Hydro One proposes a date sometime in 2021. From the materials we have reviewed, it appears to BFN that any or all of the following factors might adversely affect Hydro One's ability to meet that date:

- (a) Proper Indigenous Consultation – as detailed above;
- (b) Timely Agreement with Parks Canada – noting that there is no prospect of any early agreement to upgrade the existing line through Pukaskwa National Park;
- (c) Permission for Hydro One to rely on the Environmental Assessment work done by NextBridge to support Hydro One's Application for a Licence to Construct – which appears to turn on a determination of whether Hydro One's latest version of its Application is a "new" proposal requiring a new environmental assessment, and which raises issues of fairness as well; and
- (d) The "Completeness" of Hydro One's Application.

25. I make this Affidavit in support of BFN's intervention on the said Motion as set out
above and for no other or improper purpose.

SWORN BEFORE ME at the Rankin
Reserve in the City of Sault Ste. Marie,
Province of Ontario, this 7th day of May, 2018


A-Commissioner, etc.


CHIEF DEAN SAYERS

1 and Chief Sayers, are you there?

2 MR. HENDERSON: Yes, we are.

3 CHIEF SAYERS: Yes.

4 MS. LEA: Great. I think, Mr. Warren, Batchewana
5 First Nations, you have some questions for them.

6 **BATCHEWANA FIRST NATION OF OJIBWAYS - PANEL 1**

7 **Dan Sayers**

8 **QUESTIONS BY MR. WARREN:**

9 MR. WARREN: Yes, Chief Sayers, my name is Robert
10 Warren. I am counsel for Hydro One Networks in this
11 matter. Can you hear me?

12 CHIEF SAYERS: Yes, I can.

13 MR. WARREN: I have just three or four questions for
14 you, Chief Sayers.

15 The first is, do I understand the affidavit you filed
16 that you do not yet have a completed agreement with
17 NextBridge with respect to participation in their
18 development; is that right?

19 CHIEF SAYERS: We're close. Maybe Bill could expand a
20 little more. Bill is my legal counsel [audio dropout] he's
21 there.

22 MR. HENDERSON: Yes, the Chief's affidavit anticipates
23 a conclusion of an agreement by early July.

24 CHIEF SAYERS: Yes.

25 MR. WARREN: And without telling me the details of
26 it, is it an economic participation agreement?

27 CHIEF SAYERS: Yes, we have an expectation with a lot
28 of the proponents within our territory, and there is always

1 an economic flavour to it. Yes, I guess I could safely say
2 that.

3 MR. HENDERSON: Yes, we not be saying much more, Mr.
4 Warren.

5 MR. WARREN: Does -- do you have, Chief Sayers, an
6 exclusivity agreement with NextBridge?

7 CHIEF SAYERS: A what kind of agreement?

8 MR. WARREN: An exclusivity agreement, an agreement
9 that requires you to deal only with NextBridge and with no
10 one else?

11 CHIEF SAYERS: I don't think so. That word has never
12 come up at the tables I've been at.

13 MR. WARREN: Do you, at any -- at this point, have
14 any form of agreement with NextBridge?

15 CHIEF SAYERS: We are close to the agreement. I'm not
16 sure if there's -- am I missing something, Bill?

17 MR. HENDERSON: No, there is the expectation of an
18 agreement being --

19 CHIEF SAYERS: Yeah.

20 MR. HENDERSON: -- completed in the next several
21 weeks, and there is no other agreement in place.

22 MR. WARREN: And my question, Chief Sayers, to you is
23 this: Is the position of the Batchewana First Nation that
24 it will not under any circumstances deal with Hydro One
25 Networks with respect to consultation or entering into a
26 participation agreement?

27 CHIEF SAYERS: The First Nation has a historic
28 inherited obligation to protect the entire territory that

1 was set out in my affidavit, and we are open for
2 relationship development with whomever. We don't have a
3 closed-door policy. I can't see why we wouldn't have any
4 further relationship with anybody else.

5 MR. WARREN: Thank you very much, Chief Sayers. I
6 appreciate your time.

7 MS. LEA: Thank you, Mr. Warren. I think the OEB
8 staff have some question for you, Chief Sayers.

9 **QUESTIONS BY MS. CRNOJACKI:**

10 MS. CRNOJACKI: Good afternoon, this is Zora
11 Crnojacki. I will ask you just several questions regarding
12 your consultation with Hydro One and some maybe questions
13 to expand on what you put in your affidavit of evidence.

14 We would like to ask you about the status and timing
15 of Batchewana First Nation communication with Hydro One
16 regarding Lake Superior Link project to date.

17 CHIEF SAYERS: Okay. So I'm not sure specifically
18 what you mean.

19 MS. CRNOJACKI: I mean, was there any communication
20 initiated by Hydro One regarding consultation about Lake
21 Superior Link proposed project?

22 CHIEF SAYERS: There was a letter that was sent more
23 recently. It was after we sent the affidavit in. There
24 was a letter in the mail that I hadn't seen. It was the
25 fourth, I think, or something like that. But, yeah, there
26 was nothing at the time when I created my affidavit.

27 MS. CRNOJACKI: Thank you.

28 CHIEF SAYERS: Unless my recollection is not correct,

1 but I'm pretty sure that is the case.

2 MS. CRNOJACKI: Thank you --

3 MR. HENDERSON: Perhaps I can assist. There is
4 communication from Hydro One dated March the 5th in
5 relation to the environmental assessment of the expansion
6 of the Marathon transformer station, which was basically
7 information that it had been filed during the notice
8 period, and there was a letter of invitation to consult
9 dated April the 30th that was stamped as received in the
10 Batchewana First Nation offices on May the 4th.

11 CHIEF SAYERS: Yes [audio dropout]

12 [Reporter appeals.]

13 MR. HENDERSON: Yes, as the Chief said, he hadn't seen
14 it when he swore his affidavit on April -- May the 7th.

15 CHIEF SAYERS: Yeah, that was just recently, just in
16 the last couple weeks.

17 MS. CRNOJACKI: Okay, thank you very much.

18 In your evidence you raised a number of concerns with
19 respect to Hydro One meeting [audio dropout] consult.

20 MR. HENDERSON: I'm sorry, there was a noise there.

21 MS. CRNOJACKI: That's okay. I will repeat the
22 question. I will start over.

23 We know that your evidence raises a number of concerns
24 about Hydro One's ability to meet its duty to consult
25 regarding Lake Superior Link project.

26 In your view, is there a way that Hydro One can meet
27 its duty to consult if its application is not dismissed by
28 the OEB and if it is heard -- continued to be heard by the

1 Board?

2 CHIEF SAYERS: In my own perspective, when we have
3 other proponents, it takes, like, months, if not, like,
4 half a year to a year to go through our rigorous process as
5 a government that we have for consideration of any project.
6 It is highly unlikely that there would be an expedited
7 process, and I'm not even sure what the expedited process
8 would look like, what that means. Like, is there a time
9 line that you are talking about?

10 MS. CRNOJACKI: Can you maybe give us some estimate of
11 what -- you just mentioned it is difficult to give a
12 reasonable time frame for the duty to consult discharged by
13 Hydro One, but what would be your best -- best guess or
14 best estimate?

15 CHIEF SAYERS: We have -- as a First Nation we set the
16 bar a little higher, as far as engagement with proponents
17 are concerned, and we reserve the right, as per Canada
18 [audio dropout] informed consent. In order to get that we
19 have our own onerous environmental assessment process. We
20 also have a permitting process where it allows us to be
21 more definitive in what we expect to see in the work that
22 happens to give consideration to allowing a proponent to
23 move forward with their proposal, so we do flora and fauna
24 assessments, we do sacred site assessments, we have elders
25 out on the land, we have pipe ceremonies, we have different
26 cultural events, we do sacred burial mound assessments, we
27 do a really expensive listing of our onerous environmental
28 assessment process. We have community meetings in our four

1 -- our three communities, Rankin, Batchewana, Goulais, and
2 Sault Ste. Marie. So there's four communities that we have
3 advance notice of so people can plan so they can come and
4 they can hear about the information, they can hear about
5 the project and provide their thoughts on it.

6 We also work with elders in a particular area that
7 know about whether or not there is moose in the area,
8 whether there is herds in the area, whether there are
9 different fish in a particular area, medicine assessments.
10 It is an extensive process that you can't just do it in two
11 days. Like, we've got to give it -- like we really should
12 have a little bit of engagement and work in every season of
13 the year. So to do a good one, it would probably take a
14 year, maybe longer.

15 MS. CRNOJACKI: Thank you very much. And my final
16 question would be: If you could please describe for us any
17 impact on your communities if to the 2020 project in-
18 service is delayed?

19 CHIEF SAYERS: Sorry, I don't follow that question.

20 MS. CRNOJACKI: NextBridge's proposed in-service date
21 is 2020, and the question we have is what impact on your
22 communities do you anticipate if this 2020 in-service date
23 is delayed beyond the proposed date.

24 CHIEF SAYERS: I would say employment and training.
25 There would be employment opportunities missed.

26 We, as a people, also have our own visioning
27 processes, our own strategic plans around the entire
28 territory and how we see that evolving.

1 I can't really go into depth as to what the finer
2 details of our in-house internal planning process looks
3 like. But we are, as you may be aware, involved
4 extensively in energy, and this may have some impact on our
5 plans around our strategy with regards to energy. But I
6 can't be any more definitive than that at this time.

7 MS. CRNOJACKI: These are all my questions. Thank you
8 very much.

9 MS. LEA: Thank you very much, Mr. Henderson and Chief
10 Sayers. We really appreciate you taking the time to be
11 with us today, and thanks very much for the answers to the
12 questions you've given.

13 CHIEF SAYERS: Thank you very much.

14 MS. LEA: Mr. Adamson, if your witnesses could step
15 forward. Just while this panel is taking its seats, I
16 unfortunately have an unavoidable conflict at 4:00. So I'm
17 going to leave the room at 4:00, no disrespect to anybody's
18 witnesses or anybody's questions. That's just the way it
19 is for me today.

20 And I just wanted to remind you that we are starting
21 at 9:00 a.m. tomorrow in order to attempt to get through
22 before 6:00 o'clock tomorrow night.

23 Let's all work towards that very laudable goal, all
24 right. Thanks very much.

25 Mr. Adamson, if you could introduce your witnesses,
26 that would be great, thank you.

27 MR. ADAMSON: The Ministry of the Environment and
28 Climate Change's witnesses are Anna Maria Cross, who is the

TAB 18

KT2-2

ONTARIO ENERGY BOARD

IN THE MATTER OF sections 70 and 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF a Board-initiated proceeding to designate an electricity transmitter to undertake development work for a new electricity transmission line between Northeast and Northwest Ontario: the East-West Tie Line.

EB-2011-0140

EWT LP
Argument in Chief

April 18, 2013

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EB-2011-0140

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1 Executive Summary

2 The tables below present an overview of EWT LP's submissions.

Key Criteria	EWT LP
Relevant Knowledge and Experience	Through EWT LP's partners and their related entities, and its technical team, EWT LP has strong local knowledge and extensive experience in technical design, regulatory affairs and stakeholder consultation. This knowledge and experience is directly relevant to the development of electricity transmission projects in northern Ontario and, in particular, to the proposed East-West Tie project (the "Project"). EWT LP's knowledge and experience reduces both the Project cost and schedule and, more importantly, helps build the necessary "social licence" for the Project to move to completion.
Schedule and Cost	EWT LP has based its schedule and development costs on a plan comprising more than 300 discrete tasks and a comprehensive review of potential development risks. EWT LP's approach to technical design, system studies, the environmental assessment, land acquisition and consultation provides additional flexibility to respond to new risks. EWT LP's methodical and detailed approach will help prevent both schedule delays and cost overruns, and also provides the Board a prudent and realistic budget for EWT LP's development activities.
Technical Design	In addition to the reference option, EWT LP has considered three additional alternatives. One alternative is the use of cross-rope suspension ("CRS") structures, which are new to Ontario but which have been successfully used in similar terrain and conditions in northern Quebec since the 1970's. A CRS alternative could reduce total costs by \$116 million, with an accompanying improvement in structural integrity and therefore electrical reliability. EWT LP has set out in detail the methodology and decision criteria it will use to determine the most cost-effective and viable technical design given the needs, terrain, conditions, environment, land availability and constructability.
Consultation	EWT LP's development plan is founded on the need to acquire a "social license" to develop, construct and operate the Project. This fundamental tenant runs through every aspect of the development plan. As has been seen recently elsewhere, projects lacking a valid social licence experience repeated delays, cost overruns and in many instances have to be abandoned. EWT LP has provided a detailed plan for how it intends to consult with the public, with agencies and with Aboriginal communities both to ensure proper and meaningful stakeholder engagement in the Project and to mitigate permitting risk.
Routing & Land Acquisition	Employing its extensive local knowledge, EWT LP has assessed the potential route in segments and has considered a number of alternatives in each, including the use of existing corridors in the more densely populated areas around Thunder Bay. The final route will incorporate the results of the environmental assessment and input from stakeholders. EWT LP plans to implement a fair and principled land acquisition plan that will adopt extensive consultation and incentive mechanisms as a means to promote timely and voluntary land assembly requirements.

Key Criteria	EWT LP
Aboriginal Participation	EWT LP's partner Bamkushwada LP ("BLP") is comprised of the six First Nation Communities most directly affected by the Project. BLP will contribute extensive local knowledge and relationships, assistance in consultation, and has a vested interest in the success of the Project. This fact, coupled with additional plans to provide economic support opportunities to other First Nation and Métis communities, demonstrates that EWT LP has established participation that is in the best interest of the Project.

Applicant	Summary of Key Shortcomings of the Other Applicants' Proposed Development Plans
RES	<ul style="list-style-type: none"> RES's technical design fails (i) to reflect the physical attributes of its preferred H-frame structure and the impact those attributes have on the foundations and associated costs; (ii) to properly characterize the technical aspects of its selected ACSS conductor; (iii) to appreciate the cascade failure risk of the preferred design and the need to mitigate that risk; and (iv) to make the fundamental connection between the nature of RES's preferred structures and the geological characteristics of the land on which the structures will be placed. Although RES's partner, MidAmerican, has U.S. development experience, this experience is not directly relevant to development in the Project area, given the regulatory differences between the U.S. and Ontario, and the unique approach to stakeholder consultation that is necessary in northern Ontario. RES has the second longest overall schedule to in-service. RES's application is predicated on the Board accepting a fixed-price scheme with incentives for achieving certain construction cost targets. RES's incentive approach is to RES's advantage but not the ratepayers'.
UCT	<ul style="list-style-type: none"> UCT's development schedule is aggressive and will be difficult to achieve. For example, the schedule fails to account for the seasonality of certain environmental studies and assumes only two rounds of public consultation will be required. This significantly increases the risk of project delay and cost overruns during project development. UCT's recommendation of a double circuit Y-structure is unproven and technically problematic. UCT filed no evidence of any operational experience with this design. Like RES, UCT proposes an incentive scheme that is a departure from rate-making principles and unfair to ratepayers. UCT has limited relevant experience developing electricity transmission in Ontario and other relevant areas of Canada, yet UCT has not supplemented that experience with qualified and experienced consultants.

Applicant	Summary of Key Shortcomings of the Other Applicants' Proposed Development Plans
AOLP	<ul style="list-style-type: none"> • AOLP has proposed a risky development schedule that is not likely achievable, particularly because it has not identified and developed sufficient mitigation measures to address key development risks. AOLP identified only seven generic construction and development risks in total. • AOLP intends to develop the project with minimal stakeholder input. AOLP's plans to consult with the public and Aboriginal communities are inadequate, and its consultation budget is one quarter that of other applicants. • AOLP has not provided a comprehensive land acquisition strategy as part of its development plan. • AOLP's decision to self-sole source development and construction to its owner, SNC-Lavalin, is inconsistent with the Board's Affiliate Relationship Code.
I/TC	<ul style="list-style-type: none"> • I/TC's original development budget is approximately double the estimate of most other applicants, yet I/TC provided very little information to justify either prudence of this budget or its value to ratepayers. Rather, in its interrogatory responses, I/TC attempted to amend its application to restate its budget. • Although Iecon has significant experience constructing transmission lines in South America and Africa, neither Iecon nor TransCanada have demonstrated transmission development experience relevant to the Project area. • I/TC's decision to self-source construction to Iecon's affiliate Isolux is potentially inconsistent with the Board's Affiliate Relationship Code. • It is questionable whether the joint I/TC proposal is eligible for designation, given that the joint application is in respect of an entity that is yet to be created and licensed.
CNP	<ul style="list-style-type: none"> • CNP did not demonstrate that it has sufficient relevant experience to develop the Project. • CNP provided very little evidence regarding <u>how</u> it would develop the Project if designated. • CNP's overall schedule to in-service is two years longer than the shortest schedule proposed by EWT LP.

1 **I. Introduction**

2 These are the submissions of EWT LP made in respect of the Ontario Energy Board's
3 (the "Board") proceeding EB-2011-0140 to designate a licensed transmitter to develop the East-
4 West Tie Line (the "Project").

5 ***EWT LP***

6 EWT LP was purposely formed to bring together three partners: the six First Nation communities
7 most directly affected by the development of the Project, through their partnership in
8 Bamkushwada LP ("BLP");¹ Great Lakes Power Transmission EWT LP ("GLPT-EWT");² and
9 Hydro One Inc. ("Hydro One").³ Post-designation, the partners of EWT LP and their applicable
10 partner related entities will act as one and employ their collective knowledge and expertise to
11 develop the Project.

12 ***Board objectives***

13 The Board's objectives, expressed both in the statute and in the Board's orders, are the lens
14 through which the Board must assess each designation application and select a designated
15 transmitter.

¹ BLP is a newly formed limited partnership comprised of six limited partners: (1) Red Rock Indian Band, (2) Pays Plat First Nation, (3) Ojibways of the Pic River First Nation, (4) Pic Moberg First Nation, (5) Michipicoten First Nation and (6) Fort William First Nation (together, the "Participating First Nations"). The communities of the Participating First Nations are all located within 40 km of the existing East-West Tie line, which lies entirely within their traditional territories and also crosses two of the Participating First Nations' reserves. The Project will be in the vicinity of the existing East-West Tie line, and as a result the Participating First Nations will be directly affected by the Project.

² GLPT-EWT is a partnership of Brookfield Infrastructure Holdings (Canada) Inc. ("BIH") and Great Lakes Power Transmission Inc. ("GLPT"), both of which are the partners of the licensed transmitter Great Lakes Power Transmission LP ("GLPTLP") and are indirectly controlled by Brookfield Infrastructure Partners LP ("Brookfield Infrastructure"). GLPT-EWT is part of the Brookfield Infrastructure Power and Utilities Group ("Brookfield Utilities Group"). As such, GLPT-EWT will be able to draw on the Brookfield Utilities Group's international expertise and significant capital resources to develop and construct the Project.

³ Hydro One is a holding company that is wholly-owned by the Province of Ontario. Hydro One's largest wholly-owned subsidiary is Hydro One Networks Inc. ("HONI"). HONI owns and is in the business of planning, constructing, operating and maintaining transmission and distribution networks across Ontario. HONI's transmission and distribution businesses are regulated by the Board (ET-2003-0035 and ED-2003-0043).

1 Key among these are the objectives set out for the Board in the *Ontario Energy Board Act, 1998*,
2 particularly, (i) protecting the interests of consumers with respect to prices and the adequacy,
3 reliability and quality of electricity service; and (ii) promoting economic efficiency and cost
4 effectiveness in the generation, transmission, distribution, sale and demand management of
5 electricity.⁴

6 The Board articulated the purposes of the designation process in its Phase 1 Decision and Order:
7 “The Board’s primary objective in this proceeding is to select the most qualified transmission
8 company to develop, and to bring a leave to construct application for, the East-West Tie line.”⁵
9 Consistent with its statutory objectives, the Board established for this proceeding the core
10 objective of providing benefit to ratepayers through economic efficiency.⁶ The Board clarifies
11 this core objective in its Transmission Project Development Planning policy report:

12 “Within the context of transmission investment policy, economic efficiency can
13 be understood to mean achieving the expansion of the transmission system in a
14 cost effective and timely manner.....”⁷

15 Therefore, in selecting the most qualified transmitter to develop and to bring a leave to construct
16 application for the Project, the Board must evaluate which development plan will be most cost
17 effective and timely.

18 From the Board’s and ratepayers’ perspectives, a cost-effective and timely development plan is
19 one that not only proposes a reasonable development budget,⁸ but also expresses how the
20 transmitter will manage a complex project and control costs.⁹

⁴ *Ontario Energy Board Act, 1998*, SO 1998, c 15, Sch B, ss. 1(1)1 and 2.

⁵ Ontario Energy Board, Phase 1 Decision and Order (July 12, 2012), p. 3.

⁶ Ontario Energy Board, Phase 1 Decision and Order (July 12, 2012), p. 5.

⁷ Ontario Energy Board, EB-2010-0059, Board Policy: Framework for Transmission Project Development Plans (August 26, 2010), <http://www.ontarioenergyboard.ca/OEB/_Documents/EB-2010-0059/Framework_Transmission_Project_Dev_Plans_20100826.pdf>, p. 3.

⁸ Ontario Energy Board, Phase 1 Decision and Order (July 12, 2012), p. 17.

⁹ Ontario Energy Board, Phase 1 Decision and Order (July 12, 2012), p. 12.

1 Based on these objectives, the Board established filing requirements with which to evaluate
2 designation applications. In effect, to satisfy the Board's objectives, a development plan must
3 fully (i) establish cost estimates that are reasonable and a schedule that is reliable; (ii) enable
4 costs to be effectively managed; (iii) provide the most appropriate and achievable technical
5 design and, where possible, an innovative design given the geography, system need and
6 stakeholder considerations; and (iv) establish a plan to obtain the "social license" to develop the
7 Project through consultation with the public, government agencies and First Nation and Métis
8 communities. The applicant with the plan that best meets these criteria will most likely bring the
9 most cost-effective and timely leave to construct application to the benefit of ratepayers.

10 Ultimately, "applicants should be compared on the basis of applications as filed."¹⁰ To do so, the
11 Board must consider each application as filed and in its entirety. If an application is predicated
12 upon invalid assumptions, and is in part unacceptable or unworkable, the Board cannot ignore,
13 waive or remedy those parts of the application but instead must deny that application. To do
14 otherwise would be comparable to amending the application, and such a result would not reflect
15 the intent of the applicant in the application as originally filed.

16 *EWT LP best satisfies the Board's objectives*

17 Within these parameters, EWT LP has prepared a development plan that satisfies the Board's
18 criteria and objectives. Drawing on its partners' extensive and relevant experience, EWT LP's
19 development plan presents: (i) a detailed task based approach to establish a project schedule and
20 costs that are reasonable, reliable and controllable; (ii) a clear choice of technical alternatives and
21 a clear approach to establish a workable and cost effective design; and (iii) detailed Aboriginal
22 and Public Consultation plans, together with Aboriginal participation, designed to help EWT LP
23 achieve the "social license" to develop, construct and operate the Project.

24 As noted above, as part of economic efficiency, cost control is an important objective for the
25 Board. An important aspect of cost control is the ability to manage and mitigate risks that could

¹⁰ Ontario Energy Board, EB-2011-0140, Procedural Order No. 5 (January 8, 2013), p. 2.

1 cause an applicant to exceed its development budget. Applicants must understand project risks
2 and mitigate those risks to ensure that final development costs are reasonable. In this regard, the
3 lowest development budget does not necessarily translate into the most reasonable cost, since
4 “cutting corners” by failing to identify and mitigate project risks may lower the development
5 budget but elevate the risk that an applicant will be unable to control its costs. A balance must be
6 struck. EWT LP’s approach strikes the correct balance by providing a cost effective plan at
7 reasonable cost based on a reliable and timely schedule. EWT LP’s development plan is built
8 around mitigating risk and the management of costs. All aspects of the development plan are
9 directed to this result. It is the thread that binds the development plan together. For example:

- 10 • Relevant Knowledge and Experience - Through EWT LP’s partners and their related
11 entities, and its technical team, EWT LP has strong local knowledge and extensive
12 experience in technical design, regulatory affairs and stakeholder consultation. This
13 knowledge and experience is directly relevant to the development of electricity
14 transmission projects in northern Ontario and, in particular, to the Project. EWT LP’s
15 knowledge and experience reduces both the Project cost and schedule and, more
16 importantly, helps build the necessary “social licence” for the Project to move to
17 completion.
- 18 • Schedule and Cost - EWT LP has based its schedule and development costs on a plan
19 comprising more than 300 discrete tasks and a comprehensive review of potential
20 development risks. EWT LP’s approach to technical design, system studies, the
21 environmental assessment, land acquisition and consultation provides additional
22 flexibility to respond to new risks. EWT LP’s methodical and detailed approach will help
23 prevent both schedule delays and cost overruns, and also provides the Board a prudent
24 and realistic budget for EWT LP’s development activities.
- 25 • Technical Design - In addition to the reference option, EWT LP has considered three
26 additional alternatives. One alternative is the use of cross-rope suspension (“CRS”)
27 structures, which are new to Ontario but which have been successfully used in similar
28 terrain and conditions in northern Quebec since the 1970’s. A CRS alternative could
29 reduce total costs by \$116 million, with an accompanying improvement in structural
30 integrity and therefore electrical reliability. EWT LP has set out in detail the
31 methodology and decision criteria it will use to determine the most cost-effective and
32 viable technical design given the needs, terrain, conditions, environment, land availability
33 and constructability.
- 34 • Consultation - EWT LP’s development plan is founded on the need to acquire a “social
35 license” to develop, construct and operate the Project. This fundamental tenant runs
36 through every aspect of the development plan. As has been seen recently elsewhere,

1 projects lacking a valid social licence experience repeated delays, cost overruns and in
2 many instances have to be abandoned. EWT LP has provided a detailed plan for how it
3 intends to consult with the public, with agencies and with Aboriginal communities both
4 to ensure proper and meaningful stakeholder engagement in the Project and to mitigate
5 permitting risk.

- 6 • Routing - Employing its extensive local knowledge, EWT LP has assessed the potential
7 route in segments and has considered a number of alternatives in each, including the use
8 of existing corridors in the more densely populated areas around Thunder Bay. The final
9 route will incorporate the results of the environmental assessment and input from
10 stakeholders. EWT LP plans to implement a fair and principled land acquisition plan that
11 will adopt extensive consultation and incentive mechanisms as a means to promote timely
12 and voluntary land assembly requirements.

- 13 • Aboriginal Participation - EWT LP's partner BLP is comprised of the six First Nation
14 Communities most directly affected by the Project. BLP will contribute extensive local
15 knowledge and relationships, assistance in consultation, and has a vested interest in the
16 success of the Project. This fact, coupled with additional plans to provide economic
17 support opportunities to other First Nation and Métis communities, demonstrates that
18 EWT LP has established participation that is in the best interest of the Project.

19 EWT LP's risk mitigation strategy is in contrast to the approach of other applicants. In an effort
20 to distinguish themselves some applicants, like AltaLink Ontario, L.P. ("AOLP") and Upper
21 Canada Transmission, Inc. ("UCT"), have adopted aggressive schedules. However, in so doing,
22 they have ignored relevant and material risks and made unrealistic assumptions without any
23 corollary mitigation plans should these assumptions prove non-viable. Because schedule and
24 costs are interrelated, ignoring relevant and material risks will likely lead to delays and cost
25 escalation. Others, such as UCT and RES Canada Transmission LP ("RES"), have attempted to
26 be innovative in their technical design but these designs are either ill-conceived or poorly suited
27 for this Project. Some, like RES, require a financial inducement to manage costs or to operate
28 efficiently, while others, like Icon Transmission, Inc. ("Icon") and TransCanada Power
29 Transmission (Ontario) LP ("TransCanada" and, together with Icon, "ITC") and AOLP,
30 require sole source contracts (without competitive pricing). Many of the applicants have
31 approached the preparation of their designation applications from the perspective of wishing to
32 distinguish their plans in one or two aspects, such as a short schedule or an innovative design,
33 whereas EWT LP has focused on preparing a balanced and comprehensive plan that will be most
34 cost-effective for rate payers.

1 In the submissions that follow, EWT LP sets out its submissions first with respect to its
2 development plan, followed by its submissions regarding the development plans of each of the
3 other applicants, and a response to Board staff's submissions.

4

II. EWT LP's Development Plan

As mentioned above, EWT LP's development plan demonstrates, more than that of any other applicant:

- a detailed and reliable project schedule and reasonable costs to help ensure the Project is built on-time and on-budget;
- an innovative and feasible suite of technical design alternatives that will ensure the most cost-effective project is ultimately built; and
- comprehensive Aboriginal and public consultation plans, and a land acquisition strategy, that will ensure EWT LP achieves the social license necessary to develop, construct and operate the Project.

It is important to note that not only does EWT LP's designation application describe what EWT LP will do to develop the Project, it also sets out for the Board exactly how EWT LP is going to do it. For example, EWT LP has produced:

- a detailed Gantt chart that breaks down general development activities into more than 300 discrete tasks;¹¹
- detailed project workflow plans both for its regular and accelerated development schedules, which ensure all project tasks are coordinated, all schedule risks are captured and clearly demonstrate to the Board exactly how EWT LP will undertake project development;¹²
- a detailed plan to develop the terms of reference and undertake an environmental assessment;¹³
- a detailed plan for meaningful Aboriginal and public consultation¹⁴ and an extensive list of potential consultees;¹⁵
- a detailed set of land acquisition compensation principles;¹⁶

¹¹ EWT LP Designation Application, Appendix 7C.

¹² EWT LP Designation Application, Appendices 7A and 7B.

¹³ EWT LP Designation Application, Appendix 9A.

¹⁴ EWT LP Designation Application, Appendix 10A.

¹⁵ EWT LP Designation Application, Appendix 9B.

- 1 • a detailed engineering methodology for refining the Project design;¹⁷
- 2 • a detailed methodology for refining the Project route;¹⁸
- 3 • a summary of relevant government land use policies that will be taken into consideration
- 4 when refining the Project route;¹⁹
- 5 • a detailed procurement policy;²⁰ and
- 6 • detailed construction safety policies.²¹

7 As discussed in greater detail below, EWT LP has satisfied the Board's filing requirements.
8 EWT LP has presented a cost-effective and timely plan for delivering the Project.

9 **A. Relevant Experience and Knowledge**

10 Not all transmission projects face the same challenges. The challenges that arise during project
11 development will depend on the local geographical, social and regulatory environment.
12 Experience and knowledge in developing transmission projects, generally, or in other
13 jurisdictions is not necessarily relevant to developing the Project.

14 In this regard, EWT LP has demonstrated that it has both the experience and knowledge
15 sufficient to develop a transmission project, and the experience and knowledge specifically
16 relevant to the successful development of this project. This expertise comes from years of
17 developing, constructing and operating major transmission lines in Ontario, including those
18 situated within the Project area. More than any other applicant, EWT LP has:

- 19 • meaningful participation arrangements in place with First Nations communities most
- 20 directly affected;

¹⁶ EWT LP Designation Application, Appendix 4E.

¹⁷ EWT LP Designation Application, Appendix 6C.

¹⁸ EWT LP Designation Application, Appendix 9D.

¹⁹ EWT LP Designation Application, Appendix 9F.

²⁰ EWT LP Designation Application, Appendix 4D.

²¹ EWT LP Designation Application, Appendix 4F.

- 1 • detailed knowledge of the geophysical and environmental conditions of the Project area;
- 2 • positive relationships with other local and Aboriginal communities;
- 3 • extensive experience working in the regulatory regime governing transmission
- 4 infrastructure in Ontario; and
- 5 • a strong and experienced team of technical advisors.

6 To complement the experience of its partners and its management team, EWT LP has also
7 assembled a team of experts in consultation, environmental assessment, land acquisition and
8 electrical engineering to assist in its development and design process. As a result, EWT LP has,
9 in its view, prepared the development plan that is best suited for the Project, and will be best able
10 to overcome, in a cost-effective and timely manner, the challenges that will arise during Project
11 development.

12 *EWT has meaningful participation arrangements in place with local First Nations partners*

13 The communities of the Participating First Nations are all located within 40 km of the existing
14 East-West Tie line, which lies entirely within their traditional territories and also crosses two of
15 the Participating First Nations' reserves. Through BLP, the Participating First Nations are equal
16 equity partners in EWT LP.

17 BLP and the Participating First Nations exercised their commercial choice in deciding to partner
18 with EWT LP. It has taken EWT LP's partners over three years to develop an enduring
19 relationship based on trust, respect and equality and ultimately to negotiate and agree on how the
20 Participating First Nations will participate in EWT LP. A key aspect of this relationship is BLP's
21 equal representation in the governance of EWT LP. BLP is equally represented on the board of
22 EWT LP's general partner and will chair this board on a rotating basis.²² The Participating First
23 Nations will therefore have a leadership role in the development, construction and operation of
24 the Project. No other applicant has included equal governance representation in its plans for
25 Aboriginal participation.

²² EWT LP Designation Application, Exhibit 3, p. 4, lines 18-20.

1 BLP's participation arrangement is beneficial for the Project. As discussed below, BLP and the
2 Participating First Nations are invaluable sources of local and traditional knowledge; they have
3 been, and will continue to be instrumental in shaping and executing EWT LP's development
4 plans for the Project. Because EWT LP is exposed to the risk of cost disallowance for permitting
5 delays and cost-overruns during development, the Participating First Nations have an incentive
6 to ensure that EWT LP's plans for routing, consultation and environmental review are
7 comprehensive and properly managed. These shared risks will help ensure the Project is
8 developed cost-effectively and in adherence to the Project schedule.

9 Unlike other applicants that are not willing to share governance control with potential Aboriginal
10 partners, the Participating First Nations, through BLP, will have a real and demonstrable
11 opportunity to shape the Project development work and optimize EWT LP's environmental
12 assessment, consultation and routing processes based on their local expertise. EWT LP has
13 proposed a unique model of Aboriginal participation in energy infrastructure that is entirely
14 consistent with government policy.

15 No other applicant has demonstrated the positive relationships that EWT LP through its partners
16 has with Aboriginal communities. These positive relationships are built on a foundation of trust,
17 which takes time to develop and is essential for meaningful Aboriginal engagement. Whereas
18 many applicants like UCT propose to enter into a working relationship with First Nations in the
19 Project area immediately after designation, EWT LP can, without delay and immediately
20 following designation, draw on the experience of BLP and the Participating First Nations in
21 conducting the environmental assessment and consultation in the Project area. BLP's early
22 participation in the project planning process and its active engagement in development work,
23 especially environmental assessment and consultation, will significantly lower the risk of Project
24 cost overruns and delays. Other applicants have cited examples of engagement with First Nations
25 communities in other parts of Ontario or Canada, but they cannot assume that they will have a
26 positive relationship with the First Nations communities in the Project area or that trusting and
27 collaborative working relationships will mature overnight.

1 In addition, EWT LP has proposed other opportunities for Aboriginal participation in the Project
2 outside of equity participation. EWT LP will give priority with respect to employment, training
3 and commercial opportunities to Aboriginal community members and to businesses owned or
4 controlled by an Aboriginal community or its members. EWT LP will match community
5 resources to Project needs and help enhance Aboriginal participation in the Project by, for
6 example, pre-qualifying Aboriginal community businesses and members for the provision of
7 certain goods and/or services; providing feedback on any gaps in qualifications and information
8 on how to remedy those gaps and become more competitive bidders; holding workshops for
9 Aboriginal community businesses or members to develop or enhance their ability to qualify and
10 bid effectively; requiring bidders on major contracts to include plans for Aboriginal content
11 and/or participation; and ensuring Aboriginal businesses and members are kept informed of
12 contracting and employment opportunities during Project construction.²³ All Aboriginal
13 communities will have an opportunity to participate in the Project.

14 *EWT LP has detailed knowledge of the geophysical and environmental conditions of the*
15 *Project area*

16 EWT LP, through its partners, has extensive knowledge about the geophysical and
17 environmental conditions of the Project area along the northern shores of Lake Superior. This
18 knowledge distinguishes EWT LP from other applicants. It has enabled EWT LP to identify the
19 risks and opportunities associated with the local environment as well as a suite of technical
20 designs that are particularly well suited for the area.

21 This experience will be drawn from each of EWT LP's partners and their related entities. First,
22 because the Project area is located entirely within the traditional territories of the Participating
23 First Nations, BLP brings to EWT LP intimate knowledge of the local geography, seasonal
24 weather patterns and traditional land use activities in the Project area. In addition, the Ojibways
25 of the Pic River First Nation, Pic Mobert First Nation and Pays Plat First Nation bring extensive
26 experience in developing generation projects and associated transmission infrastructure in the

²³ See EWT LP Designation Application, Exhibit 3, pp. 7-8.

1 challenging climate and terrain of the Project area.²⁴ Furthermore, the Ojibways of the Pic River
2 First Nation and Red Rock Indian Band bring particular familiarity with the Project area's forests
3 and topography from approximately 30 years of local commercial forestry harvesting and
4 management experience.²⁵

5 BLP's extensive traditional knowledge of the potential environmental impacts of the Project will
6 inform EWT LP's routing and consultation process and result in more efficient, more cost-
7 effective and lower risk Project development. As indicated in EWT LP's designation application,
8 BLP's knowledge will play a particularly important role in focusing the environmental
9 assessment. For example, BLP will assist in identifying important and/or sensitive local flora and
10 fauna species and mapping their distribution, population status, seasonal ranges and movements
11 for the Natural Environment Existing Conditions Report component of the ToR.²⁶

12 Post-designation, EWT LP also has access to the knowledge and experience of Great Lakes
13 Power Transmission LP ("GLPTLP"), which has a long and successful presence in this part of
14 Ontario. GLPTLP owns and operates transmission facilities that extend northwards from Sault
15 St. Marie to Wawa, where it shares a common connection point with the existing East-West Tie.
16 This presence has given GLPTLP extensive experience in the local geographic and
17 environmental challenges that may affect the development, construction and operation of
18 transmission facilities in proximity to the Project area. For example, GLPTLP successfully
19 developed the Transmission Reinforcement Project on the eastern shores of Lake Superior, one
20 of the longest electricity transmission lines built in Ontario in recent years. In doing so, it gained
21 a deep and current understanding of key environmental features of the Lake Superior area, such
22 as presence of local endangered species, the seasonal challenges in accessing construction sites,
23 and ways to mitigate the risks that those challenges pose to successful Project development.²⁷

²⁴ See EWT LP Designation Application, Exhibit 2, pp. 4-5.

²⁵ EWT LP Designation Application, Exhibit 2, p. 6.

²⁶ See EWT LP Designation Application, Appendix 9A, pp. 19-21.

²⁷ See EWT LP Designation Application, Exhibit 2, pp. 7-8.

1 Through years of right of way and facility maintenance, GLPTLP has also gained extensive
2 experience in the materials and equipment that best withstand the climate, and the engineering
3 and design requirements dictated by the geography. This enables EWT LP – unlike RES, for
4 example – to understand why a steel H-frame is a problematic and expensive tower design given
5 the bedrock in the area, and therefore to propose more feasible technical designs.²⁸ It also
6 enables EWT LP – unlike AOLP, for example – to understand the seasonal challenges of
7 completing the fieldwork necessary for an environmental assessment and to develop a schedule
8 that does not ignore these risks.

9 Hydro One's partnership in EWT LP also adds to this experience. Hydro One, through Hydro One
10 Networks Inc. ("HONI"), owns and operates approximately 96% of the transmission system in
11 Ontario, one of the largest transmission systems in North America, including the existing East-
12 West Tie and the related transmission stations to which the Project will connect.²⁹ Post-
13 designation, EWT LP will benefit from HONI's direct experience operating the existing
14 transmission line in the Project area.

15 *EWT LP has extensive experience with the regulatory regime governing transmission*
16 *infrastructure in Ontario*

17 EWT LP's experience with Ontario's regulatory regime governing transmission project
18 development is superior to that of other applicants. Post-designation, EWT LP will benefit from
19 HONI's experience as a licenced transmitter and as the developer and operator of the Bruce-to-
20 Milton Transmission Reinforcement Project – Ontario's most recent and significant transmission
21 project and one that required the same consultation and environmental assessment processes as
22 will be applicable to the Project. In fact, through HONI's experience with the Bruce-to-Milton
23 project, EWT LP is the only applicant with relevant experience completing an individual
24 environmental assessment for a transmission project in Ontario. EWT LP's team also has

²⁸ Wood pole lines, both single pole and H-frames are used extensively in northern Ontario, especially at 115 kV. Wood pole H-frames are typically shorter than steel H-frames due to the limited availability of tall trees. The spans are correspondingly shorter and the issues surrounding foundations are more easily overcome.

²⁹ See EWT LP Designation Application, Exhibit 2, pp. 9-11.

1 significant experience satisfying the procedural aspects of the Crown's duty to consult in
2 connection with transmission projects.³⁰

3 In addition, GLPTLP, in developing its Transmission Reinforcement Project, was required to
4 complete many EA studies and to obtain many of the same required permits and approvals.
5 Furthermore, as noted above, the Participating First Nations bring to BLP experience in
6 permitting a number of generation projects in operation or under development in the Project area,
7 including the Umbata Falls Generating Station, the Twin Falls Generating Station, the Gitchi
8 Animki Hydroelectric Project, the Lower Lake Hydroelectric Project, the High Falls Generating
9 Station and the Manitou Falls Generating Station.³¹

10 Both HONI and GLPTLP are familiar with operating transmission infrastructure. In Appendices
11 4D, 4E and 4F of its designation application, EWT LP has set out in detail the operating policies
12 and procedures that it will employ in operating the Project in accordance with the Transmission
13 System Code and good utility practice.

14 The depth of EWT LP's experience and that of its management team is not easily acquired. It
15 comes through years of experience working with regulators in interpreting and applying the
16 regulatory regime to specific project circumstances. EWT LP has the ability to draw on its
17 partners' existing relationships with the regulatory agencies that will govern the Project to ensure
18 that the Project is developed on-time and on-budget. For example, the sum total of RES's
19 regulatory experience in Ontario relates to two wind generation projects with less than 60km of
20 associated private transmission lines.³²

21 *EWT LP has assembled a strong and experienced team of technical advisors*

22 EWT LP's development team also includes a strong and experienced team of technical advisors
23 for the Project. The four experienced consultants retained for the Project will provide specialized

³⁰ For example, see EWT LP Designation Application, Exhibit 2, p. 19, lines 19-21.

³¹ EWT LP Designation Application, Exhibit 2, pp. 4-5.

³² See RES Designation Application, Exhibit E, Tab 5, Schedule 2.

1 skills, resources and advice to assist EWT LP's development of the Project. Power Engineers
2 Inc. ("Power Engineers") has over 35 years of experience as one of the largest specialist
3 transmission and distribution engineering firms in North America, including more than 20 years
4 of project experience in Ontario and across Canada, and will assist EWT LP in engineering
5 design and route selection.³³ AECOM Canada Ltd. ("AECOM") has extensive experience
6 completing environmental assessments in Ontario and has worked on more than 27,000 km of
7 transmission line projects worldwide.³⁴ It will assist EWT LP in co-ordinating and implementing
8 all the consultations, studies, field work, assessments and evaluations required for Project
9 environmental assessment and route selection. Shared Value Solutions ("SVS") is experienced in
10 consultation, particularly Aboriginal consultation, and will assist EWT LP by coordinating,
11 scheduling, facilitating and documenting all public engagement activities associated with the
12 Project, including procedural aspects of the Crown's duty to consult with First Nations and Métis
13 communities that the Crown may delegate to EWT LP.³⁵ Altus Group Inc. ("Altus") is an
14 experienced real estate service provider and will assist EWT LP in Project siting, routing and the
15 valuation and acquisition of land and land rights.³⁶

³³ For example, Power Engineers has designed transmission line connections for various Ontario renewable generation projects, including the Greenwich, Talbot, Prince, Erie Shores and Kruger wind projects and the Umbata Falls hydroelectric project. Power Engineers was also engaged from 1993 to 2009 in the repair of the 287 kV, 88km Rio Tinto Alcan Transmission Line in the coastal mountains of British Columbia, which involved rugged and remote access issues, deep snow, helicopter work and managing poor weather scheduling. See EWT LP Designation Application, Exhibit 4, p. 12, lines 10-15 and Appendix 4C - Power Engineers Experience.

³⁴ For example, AECOM led the individual environmental assessment for Ontario Highway 407 East Extension, which included five rounds of consultation involving a Regulatory Agency Group, Municipal Technical Advisory Group and Community Advisory Group; multiple public information centres and public/stakeholder workshops; field trips with regulatory agencies; and consultation with First Nations communities. See EWT LP Designation Application, Appendix 4C - AECOM Experience.

³⁵ For example, SVS led a traditional knowledge and land-use study with the Red Sky Métis Independent Nation in conjunction with an environmental assessment consultation process regarding the Marathon PGM Metals mine. SVS conducted video and participatory GIS (geographic information system) interviews with a broad section of the community and continues to assist the community with peer reviews of permitting and approvals documentation and participation in panel review hearings in connection with the mine. See EWT LP Designation Application, Exhibit 4, p. 18, lines 23-32.

³⁶ For example, Altus performed land acquisition activities in connection with approximately 350 properties along the approximately 180 km right of way for the Bruce to Milton Transmission Reinforcement Project. Altus provided value benchmarking along the proposed route; prepared pre-expropriation property specific valuations

1 **B. Schedule and Cost**

2 *Shortest schedule and lowest cost do not necessarily equate to best plan*

3 EWT LP's development schedule (and, in turn, its cost estimate) is based on a realistic, bottom-
4 up and task-based assessment of the Project. In particular, EWT has:

- 5 • proposed the most comprehensive, reliable development schedule;
- 6 • identified opportunities for schedule compression and cost savings;
- 7 • undertaken the most detailed risk analysis and mitigation planning; and
- 8 • presented the most accurate and reasonable cost estimates.

9 No other applicant has undertaken such a comprehensive approach and thereby provided such
10 reliable Project schedule and cost estimates. As a result, the development plans of all other
11 applicants pose significantly higher risks that the Project will run over-budget and beyond
12 schedule and, ultimately, not achieve the Board's objective of delivering a cost-effective and
13 timely new transmission project with the inherent capability to manage costs.

14 In project development, a balance must always be struck between minimizing time and expense
15 and ensuring the comprehensiveness of consultation activities, technical studies and the
16 environmental assessment. Schedule and cost are directly interrelated. Changes in schedule are
17 very likely to have a cost impact. The better a developer is able to establish and manage its
18 schedule, the more likely the developer can maintain its cost estimate. Developers that
19 overemphasize low cost solutions or scheduling shortcuts are in reality creating risks that these
20 development activities will not be satisfactorily completed without material cost and schedule
21 overruns. The shortest schedule and the corresponding lower cost do not necessarily equate to
22 the best or most reliable schedule or cost estimate. It is the methodology and the building blocks
23 used to create the schedule and cost estimates that will dictate whether Project risks have been

and property specific expropriation valuations; and completed more than 200 market value appraisals with regard to injurious affection. See EWT LP Designation Application, Appendix 4C - Altus Experience.

1 understood and factored into the schedule in a balanced manner to give an on-time and on-
2 budget result.

3 *EWT LP has proposed the most comprehensive, reliable development schedule*

4 EWT LP's development schedule is based on a detailed Gantt chart which breaks down
5 development of the Project into approximately 300 discrete tasks and subtasks.³⁷ This detail is
6 necessary to ensure that no development tasks are omitted from the schedule, particularly with
7 respect to the critical path environmental assessment process.

8 EWT LP has developed detailed Project workflow plans both for its regular and accelerated
9 development schedules.³⁸ These workflow plans ensure that all Project tasks are coordinated and
10 all schedule risks are captured. They also clearly demonstrate exactly how EWT LP will
11 undertake Project development.

12 Drawing on its extensive experience and knowledge of the Project area, EWT LP has identified
13 innovative ways to expedite the Project development schedule and to reduce Project costs. Based
14 on its analysis, the development phase of the Project, up to the point of filing the application for
15 leave to construct, is expected to take between 23 months and 32 months, depending on the
16 complexity of environmental issues encountered and the level of public support. The ways in
17 which EWT has identified opportunities for schedule compression and cost savings are discussed
18 further below.

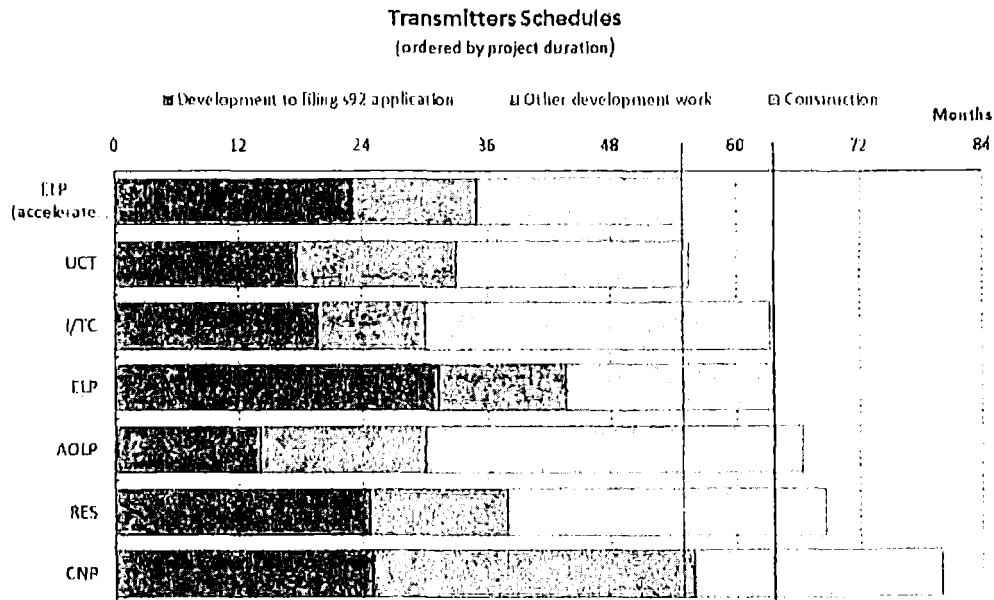
19 EWT LP also estimates that Project construction could be completed within 22 months from the
20 date the construction contract is executed. Assuming designation on August 1, 2013, EWT LP
21 will therefore bring the Project into service in approximately five years. Figure 1 below
22 illustrates EWT LP's schedule compared to other applicants.³⁹

³⁷ See EWT LP Designation Application, Appendix 7C.

³⁸ See EWT LP Designation Application, Appendices 7A and 7B.

³⁹ It should be noted that other applicants will not have the immediate benefit of Aboriginal partners' input into their development plans, and they may experience schedule delays due to the time required to negotiate equity partnerships with Aboriginal communities.

Figure 1 - Transmitters' Schedules⁴⁰



EWT LP has distinguished itself from other applicants in the comprehensiveness and robustness of its Project schedule. Through its task-based approach, EWT LP took great care to ensure that its Project schedule accounted for all of the significant steps in the most critical path aspect of Project development – namely, the individual environmental assessment (“EA”) that the Project must complete pursuant to Ontario’s *Environmental Assessment Act*⁴¹ (the “EAA”). There are two main stages of the individual EA process. The first is developing and obtaining approval from the Ministry of the Environment (“MOE”) of a focused terms of reference for the environmental assessment (“ToR”), which addresses the rationale for and alternatives to the proposed Project and provides the “roadmap” for the EA. The second is completing and obtaining the MOE’s approval of the EA itself, which will include the assessment of and the development of mitigation measures for the Project’s potential impacts.

⁴⁰ ELP (accelerated schedule) assumes the environmental issues will be less complex and less public consultation will be required, as discussed further below.

⁴¹ RSO 1990, Chapter E.18.

1 *Terms of Reference for the Environmental Assessment*

2 The ToR can only be prepared, submitted and approved when sufficient detailed development
3 work including routing has been completed to adequately describe the Project, and after
4 sufficient public consultation has been completed to confirm the range of routing alternatives and
5 satisfy the requirements of the EAA. Transmitters like UCT and AOLP cannot reasonably expect
6 to receive the MOE's approval for a proposed ToR without first considering a range of Project
7 alternatives and performing adequate consultation. Because they have not considered these
8 aspects, their development schedules are unreliable, as discussed further in Sections III-C
9 and III-D below. Moreover, it is much more efficient to complete an EA using ToR that reflect a
10 Project design endorsed by key stakeholders than to forge ahead with a plan based on poorly
11 considered alternatives, only to have stakeholders raise concerns with those alternatives at a later
12 date.

13 In addition, although the regulations under the EAA state that the government's review and
14 approval of the ToR should take no more than 12 weeks (3 months), they also give the MOE the
15 ability to extend the deadline for completing this review if the Minister believes there is a
16 compelling reason to do so.⁴² In contrast, AOLP's schedule expects the MOE to review and
17 approve its ToR within as little as one month of submission,⁴³ which, as discussed in Section III-
18 C below, makes its schedule and cost estimates highly uncertain.

⁴² EAA, s. 7(3). In reality, the MOE ToR review often requires longer than 12 weeks. For example, the MOE required 8 months to review the ToR for Bruce to Milton, and the Board did not proceed with the oral phase of the Bruce to Milton leave to construct proceeding until the ToR were approved. See MOE, Bruce to Milton Transmission Reinforcement Project - Terms of Reference, <http://www.ene.gov.on.ca/environment/en/industry/assessment_and_approvals/environmental_assessments/projects/STDPROD_082721.html?page=2> ("Date Submitted: August 3, 2007 ... Decision Date: April 4, 2008"); and Ontario Energy Board, EB-2007-0050, Decision and Order (September 15, 2008), s. 2.3.4.

⁴³ AOLP's development schedule allows for a scenario where the ToR are finalized in the 5 months after designation, submitted to the MOE on August 30, 2013 and approved within one month on September 30, 2013. See AOLP Designation Application, Appendix 13.

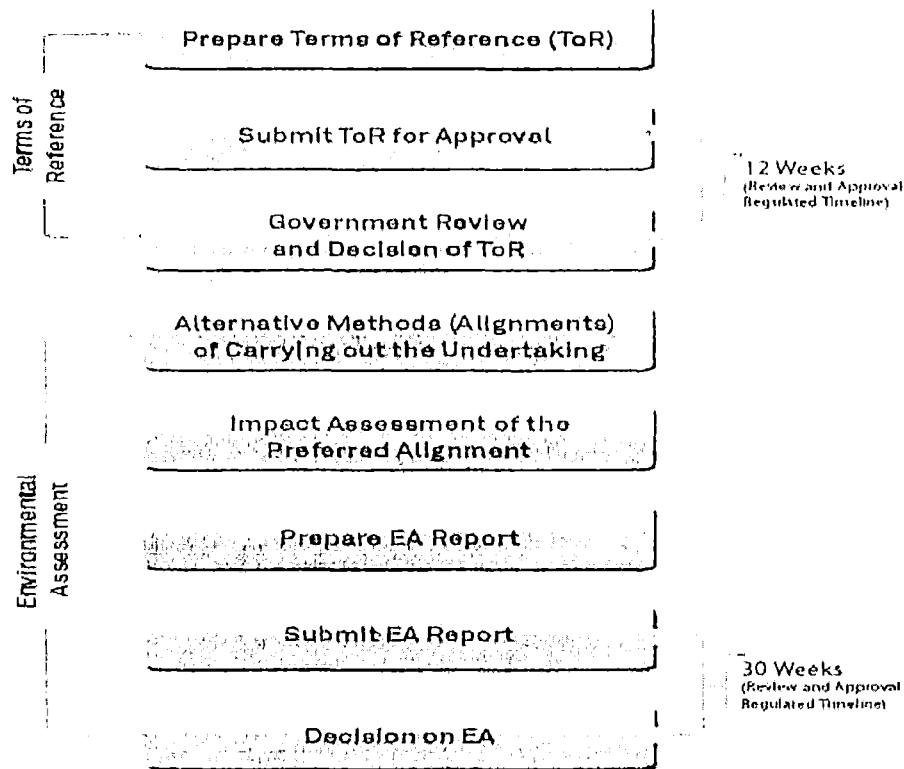
1 *Environmental Assessment*

2 Once the ToR have been approved, the EA itself can commence. This stage will include
3 substantial public consultation and the completion of detailed environmental field studies. The
4 field work has to be undertaken over a period of no shorter than one year (*i.e.*, one complete
5 ecological cycle) so that the environmental impact of the line and its construction can be studied
6 in each of the four seasons. There are also certain seasonal limitations to the studies. For
7 example, certain breeding habitats can only properly be studied in the relevant breeding season,
8 and certain impacts to birds can only be properly assessed during key migration seasons. The
9 completion of the environmental assessment phases therefore typically takes 12-24 months
10 depending on the complexity of the undertaking and degree of public interest.⁴⁴

11 An overview of the EA process was set out in Figure 7.2 of EWT LP's designation application and
12 is included below for reference as Figure 2.

⁴⁴ MOE, Environmental Assessment and Approvals Branch, *Code of Practice - Preparing and Reviewing Environmental Assessments in Ontario* (October 2009), p. 13.

Figure 2 - Overview of EA Process



EWT LP submits that aggressive assumptions about the timeline for completing any of these steps, if proven wrong, can create cascading delays through each subsequent step. Such delays could be at the expense of ratepayers. Applicants such as UCT and AOLP (as discussed further in Sections III-B and III-C) propose accelerated development schedules that make questionable assumptions about the EA process. For example, AOLP has scheduled submittal of its ToR within approximately 2-4 months of designation,⁴⁵ despite the fact that according to the MOE Code of Practice for *Preparing and Reviewing ToR for EAs in Ontario* (the “Code”), preparing the ToR requires on average 6-9 months.⁴⁶ Similarly, UCT assumes that it will be able to prepare

⁴⁵ See AOLP Designation Application, Appendix 16.

⁴⁶ MOE, Environmental Assessment and Approvals Branch, *Code of Practice - Preparing and Reviewing Terms of Reference for Environmental Assessments in Ontario* (October 2009), p. 8.

1 a draft environmental assessment report within 4 months⁴⁷ and submit its final environmental
2 assessment report in a further two months,⁴⁸ but a full year of field studies is required to ensure
3 that a full seasonal cycle is captured under the EA.⁴⁹ Given this 6 month timeline and the EA
4 requirements for a full year of field studies, UCT is presumably planning to undertake at least
5 half of its seasonal field studies prior to ToR approval. However, its schedule and costs will
6 likely be impacted if the MOE requires any revisions to the ToR that involve additional field
7 studies. Unlike these applicants, EWT LP has factored into its development schedule
8 assumptions about the EA process consistent with MOE practice guidelines.⁵⁰

9 EWT LP's approach to critical path EA scheduling reflects its approach to scheduling generally:
10 in essence, EWT LP has prepared its development plan to provide the Board with a balanced
11 view of the cost and time required to develop the Project up to the filing of the leave to construct.

12 *EWT has identified opportunities for schedule compression and cost savings*

13 EWT LP has built into its schedule a possibility of accelerating the development of the Project if
14 certain circumstances occur. It may be possible to accelerate EWT LP's development work by as
15 much as nine months.

16 The following circumstances could give rise to such an accelerated schedule:

- 17 • If the first series of public open houses in January 2014 reveals that the public has fewer
18 concerns about the Project, its design and its location than anticipated, it may be possible
19 to commence environmental field studies two months earlier than scheduled;

⁴⁷ UCT Designation Application, Appendix 15 - NextBridge Project Execution Chart, PROVEA1090, Prepare Draft EA Report (27-Feb-12 to 04-Aug-14).

⁴⁸ UCT Designation Application, Appendix 15 - NextBridge Project Execution Chart, PROVEA1120, Prepare and Submit Final EA to MOE (Finish 15-Oct-14).

⁴⁹ The Code notes that developing a full environmental assessment usually requires 12-24 months. See MOE, Environmental Assessment and Approvals Branch, *Code of Practice - Preparing and Reviewing Environmental Assessments in Ontario* (October 2009), p. 13.

⁵⁰ See EWT LP Designation Application, Exhibit 7, pp. 43-44.

- 1 • If the initial environmental field studies reveal that there are fewer credible alternative
2 alignments than expected based on EWT LP's initial routing workshop, then it may be
3 possible to advance the LiDAR survey from early summer 2015 to late summer 2014;
- 4 • The environmental field studies could reveal that the proposed design results in fewer
5 significant environmental concerns than anticipated; and
- 6 • If the environmental field studies reveal fewer significant environmental concerns than
7 anticipated and if the appropriate mitigation measures for any identified concerns are well
8 established, it may also be possible to eliminate the fourth series of open houses.

9 Given these opportunities, it may be possible to accelerate EWT LP's development work by as
10 much as approximately eight months.⁵¹ The Project budget would also be reduced by up to
11 \$3.2 million.⁵²

12 EWT LP has provided a development schedule range within which the Board can be confident
13 that risks will be managed. In contrast, other competitors have not broken down their Project
14 schedules in such detail and have not reflected the impact certain risks may have to their
15 schedules. For example, AOLP has provided the Board with their best-case development
16 scenario, without giving the Board an indication of how the materialization of certain risks, such
17 as delayed designation or a delay in ToR approval, would impact its schedule. As discussed
18 further in Section III-C below, AOLP has made unduly risky assumptions regarding: (i) its
19 ability to submit its ToR very quickly post-designation, without any significant opportunity for
20 the consultation and technical work necessary to develop a focused ToR; (ii) the timeline within
21 which the MOE will approve the ToR; (iii) the timing of certain seasonal studies that must be
22 completed for the EA; and (iv) the timeline for submitting the EA report for the MOE's
23 approval. AOLP's schedule can only get longer - resulting in higher costs - than that which was
24 presented in its designation application. EWT LP, on the other hand, has the ability to respond to
25 changes and to shorten the schedule and reduce costs for ratepayers.

26 EWT LP has also considered other opportunities to accelerate development and construction. For
27 example, EWT LP has identified opportunities to:

⁵¹ EWT LP Designation Application, Exhibit 7, p. 44, lines 16-20.

⁵² EWT LP Designation Application, Exhibit 8, p. 6, line 29.

- reduce critical path delays by commencing system impact assessment and customer impact assessment studies upon selection of the preferred route and prior to finalization of line design;
- compress development timelines by integrating the technical design of the line with assessment of its environmental impacts;
- speed the commencement of construction by acquiring land right options prior to receiving the Board's leave to construct; and
- accelerate the entire construction process through the use of CRS transmission structures, which are lighter and easier to assemble than traditional transmission towers.

EWT has undertaken the most detailed risk analysis and mitigation planning

As shown in the table below, EWT LP has also distinguished itself from other designation applicants in the degree to which its development plan considers and develops mitigation measures for potential risks to the project schedule, thereby reducing the risk that unforeseen contingencies will run the Project over budget or extend its schedule. EWT LP has identified risks to costs and schedule during both the development and construction phases and developed corresponding mitigation strategies.⁵³

	Development Risks	Development & Construction Risks	Construction Risks	Total All Risks
AOLP	-	7	-	7
CNP	7	-	5	12
ELP	36	-	22	58
I/C	19	-	6	25
RES	11	-	22	33
UCT	3	9	16	28

For example, EWT LP considered the potential risk of receiving Board designation later than anticipated under its development schedule. EWT LP developed a mitigation strategy regarding

⁵³ See EWT LP Designation Application, Exhibit 7, pp. 17-25 and 33-39; and Exhibit 8, pp. 13-17 and 25-27.

1 impacts to its environmental assessment studies, but acknowledged that if it is not able to
2 complete summer field studies until summer 2015, this could potentially impact its overall
3 development program by up to six months. In contrast, as discussed further in Sections III-A, III-
4 B and III-C below, RES, UCT and AOLP failed to identify a change in their assumed
5 designation date as a potential Project risk and failed to mitigate against this risk or indicate how
6 it may affect their development schedules.⁵⁴ Canadian Niagara Power Inc. (“CNP”) generally
7 noted “designation is delayed” as a potential schedule risk, but did not develop a mitigation plan
8 or identify effects on its development schedule beyond observing that a “delay of two weeks
9 would cause a minor effect, while a delay of two years would cause a major effect.”⁵⁵

10 As a second example, EWT LP identified that acquiring permits across Crown lands (including
11 national parks, provincial parks, and Ministry of Natural Resources (“MNR”) buffer zones) was
12 a complex process potentially subject to delay. As a result, EWT LP developed a mitigation
13 strategy of (i) meeting with the MNR and appropriate parks and land use agencies at the earliest
14 opportunity to understand their potential issues and to ensure those issues are properly
15 considered during the environmental assessment and technical design of the line, including its
16 construction; and (ii) actively considering routes that avoid parks and MNR buffer zones, where
17 any additional cost of the alternative route is justified given the balance of lower environmental
18 impact, permitting delays and the need to expropriate land.

19 In contrast, AOLP did not identify this risk regarding Crown land permits.⁵⁶ RES noted that it
20 might encounter “[u]nanticipated problems in securing options for land and access rights” but
21 only developed a general mitigation strategy.⁵⁷ It is unclear whether CNP intended to encompass

⁵⁴ For example, UCT did not identify its designation date assumption as one of its three development-specific risks. See UCT Designation Application, Figure 19, p. 103. See also AOLP Designation Application, Table 7.2-1 East-West Tie Line Schedule and Cost Risk Assessment, p. B-103; and RES Designation Application, Exhibit N, Tab 2, Schedule 4, Table N-1.

⁵⁵ CNP Designation Application, Exhibit 7, p. 11, lines 10 and 23-24.

⁵⁶ AOLP Designation Application, Table 7.2-1 East-West Tie Line Schedule and Cost Risk Assessment Development and Construction, p. B-103.

⁵⁷ See RES Designation Application, Exhibit N, Tab 2, Schedule 3, p. 1 (“Early and proactive outright with all private, public and Crown entities from which land rights will be needed. Extensive work already completed by the Applicant in connection with this Application.”).

1 this risk within its general category of “Legal or environmental challenges”, but, as discussed
2 further in Section III-E below, it did not identify a mitigation strategy beyond having retained
3 legal counsel.⁵⁸

4 The failure of other applicants to identify specific key schedule risks indicates a willingness to
5 assume, and pass on to ratepayers, greater risk and exposure to delays and cost overruns. The
6 failure to take such risks into account and to develop specific mitigation strategies creates a risky
7 schedule and one that can be easily derailed if and when those risks transpire. Schedules and
8 budgets that are not based on comprehensive sets of tasks are less prepared to address risks and
9 potential cost overruns because they do not take into account a wide range of risks. Because
10 EWT LP’s schedule factors in each key development activity and how it mitigates potential
11 Project risks, it is more comprehensive and therefore likely more reliable than those of other
12 applicants.

13 *EWT LP has proposed the most accurate and reasonable cost estimates*

14 EWT LP has taken the same rigorous approach to developing its development, construction and
15 O&M cost estimates as it has taken in developing its project schedule. Ultimately, EWT LP’s
16 goal was to ensure that all significant costs were, to the extent possible, appropriately reflected in
17 these estimates. In addition to being fully transparent, this reduces the risk that unforeseen
18 contingencies will run the Project over-budget. This approach is fundamental to the Board’s
19 evaluation of which designation application is the most cost-effective option.

20 *Development Costs*

21 In preparing its development cost estimate, EWT LP began by assigning a cost to each task or
22 group of tasks set out in its Gantt chart at Appendix 7C of EWT LP’s application. Based on the
23 total cost of each of these individual actions, EWT LP’s estimated budget for completing Project
24 development up to filing an application for leave to construct is in the range of \$17.1 million to
25 \$22.1 million, depending on whether the scope of development work can be reduced.

⁵⁸ CNP Designation Application, p. 101, lines 9-10.

1 This estimate is not only rigorous but also competitive with the development estimate of all other
2 applicants. As seen in Figure 3 below, only AOLP proposes a significantly lower development
3 estimate; however, as discussed above and in Section III-C below, this estimate is premised on a
4 development plan that risks running the Project over-budget and extending its schedule.

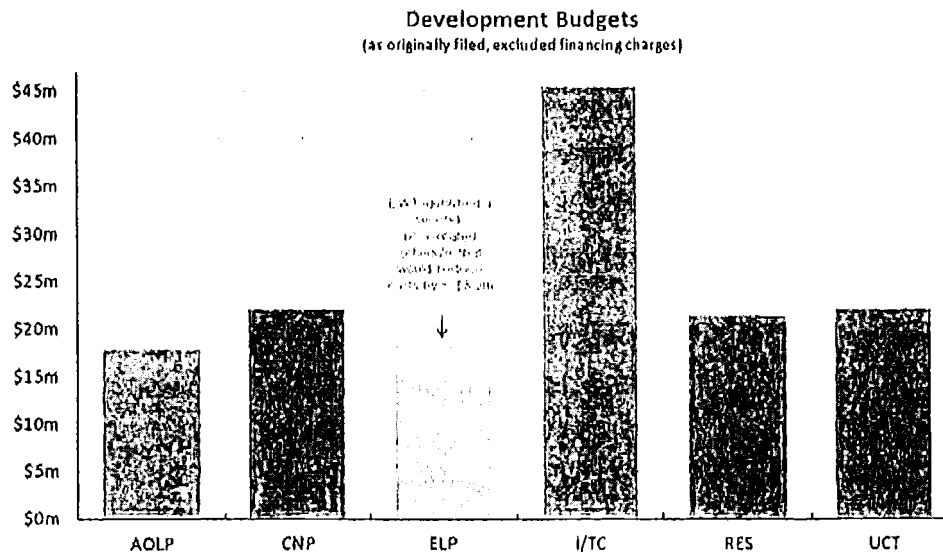
5 Moreover, even though EWT LP's development estimate is similar to those proposed by UCT,
6 RES and CNP, none of these applicants' estimates are based on a similarly comprehensive
7 development plan that provides a basis for cost management. For example, as discussed in
8 Section III-E below, CNP has not prepared a detailed schedule of development tasks on which to
9 base its cost estimates;⁵⁹ RES has proposed a technical design that is not appropriate for northern
10 Ontario and has not considered foundation costs and foundation installation scheduling in its
11 budget and schedule; and UCT has assumed that it will be able to prepare an environmental
12 assessment in less than 6 months,⁶⁰ which is 6-18 months less than Code guidelines.⁶¹ EWT LP
13 can offer a comprehensive development plan for the lowest cost.

⁵⁹ CNP Designation Application, p. 98, lines 25-26.

⁶⁰ UCT Designation Application, Appendix 15 - NextBridge Project Execution Chart, PROVEA1090, Prepare Draft EA Report (Start 27-Feb-12) and PROVEA1120, Prepare and Submit Final EA to MOE (Finish 15-Oct-14).

⁶¹ See MOE, Environmental Assessment and Approvals Branch, *Code of Practice - Preparing and Reviewing Environmental Assessments in Ontario* (October 2009), p. 13.

Figure 3 - Development Budgets



Construction Costs

EWT LP's construction cost estimates, although necessarily less precise than its development estimates, were also prepared with a view to being as comprehensive as possible. In this regard, EWT LP did not develop its estimated budget for the construction of the Reference Case in isolation. Rather, it involved its engineering consultant, Power Engineers, in preparing the estimate and then sought input on the estimate from two major North American construction companies, Kiewit Corporation and Valard Construction LP. Based upon the Reference Option, EWT LP estimates the construction costs, including AFUDC, to be in the range of \$340 million to \$510 million for a double circuit overhead line,⁶² which is lower than most and competitive with all other applicants (see Figure 4 below). EWT LP is also the only transmitter to have provided a detailed description of how construction costs were derived, including volumes and unit prices.⁶³

⁶² EWT LP Designation Application, Exhibit 8, p. 23.

⁶³ See EWT LP Designation Application, Appendix 6A, p. 7 and Appendix A, Figures 1 and 2, and Appendix 6D, pp. 18-19 and Appendix B; RES Designation Application, Exhibit P, Tab 1, Schedule 1, p. 3 and Exhibit P, Tab

1 Furthermore, EWT LP's construction cost estimate for the CRS design is the lowest construction
2 estimate provided by any applicant. As discussed further below, the use of CRS structures could
3 reasonably be expected to reduce construction cost by approximately \$116 million (see Figure 4
4 below).⁶⁴ EWT LP is committed to evaluating innovative yet proven technical designs that may
5 yield significant cost savings for ratepayers. In contrast, as discussed in Section III-B below,
6 UCT's proposed guyed structure alternative is not technically feasible and therefore cannot be
7 relied upon to deliver any potential cost savings.

8 EWT LP remains committed to reducing these construction costs to the extent possible. Unlike
9 AOLP or I/TC, EWT LP has not proposed to sole-source its construction of the Project from
10 related parties. AOLP proposes to subcontract engineering, procurement and construction
11 ("EPC") work to its affiliate, SNC Lavalin,⁶⁵ and I/TC intends to enter into a fixed fee EPC
12 contract with Iccon's affiliate, Isolux, which will explicitly not be at cost on a transparent basis
13 or without mark-ups for profit.⁶⁶ These applicants provide no justification as to how such
14 arrangements would be most cost-effective for ratepayers or explain how they would be
15 compliant with the Board's *Affiliate Relationship Code for Electricity Distributors and*
16 *Transmitters* (the "ARC"). EWT LP believes that ratepayers will benefit from competitive
17 procurement.

18 Finally, unlike AOLP and RES, EWT LP has not found it necessary to include a bonus scheme
19 for achieving cost savings and avoiding cost over-runs, which ratepayers expect Ontario
20 transmitters to achieve as part of their regulatory obligations. The traditional cost of service
21 model obliges Ontario transmitters to ensure that their capital and operating expenditures are
22 prudent and reasonable.

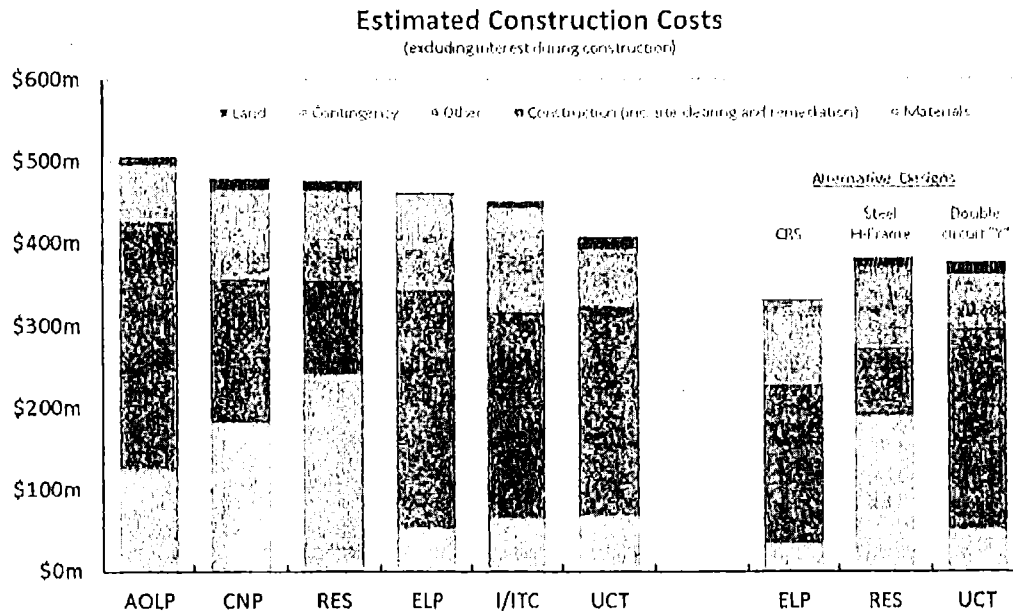
4, Schedule 1, p. 2; UCT Designation Application, p. 118; AOLP Designation Application, p. B-112; I/TC Designation Application, Exhibit 8, p. 6; and CNP Designation Application, pp. 110 and 116 and Appendix X.

⁶⁴ EWT LP Designation Application, Exhibit 6, p. 18, lines 1-15.

⁶⁵ AOLP Designation Application, p. B-5.

⁶⁶ I/TC Designation Application, Exhibit 2, p. 3, lines 24-27.

Figure 4 – Estimated Construction Costs



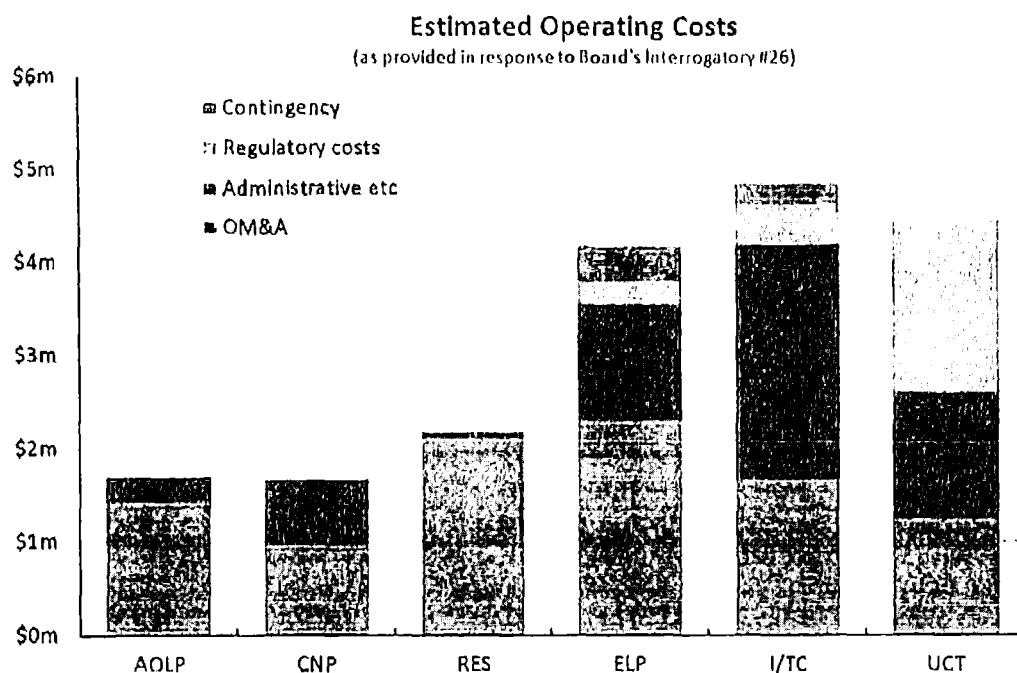
O&M Costs

EWT LP approached its O&M cost estimate in the same rigorous way as its development and construction estimates. Unlike any other applicant, EWT LP through its partners has extensive experience in operating and maintaining transmission lines in the Project area and prepared its estimates using the cost categories given in the Board's Accounting Procedures Handbook. As a result, EWT LP's O&M estimate is reasonable. Certain applicants like AOLP, RES and CNP allocate either no or almost no budget for regulatory costs, an unusual omission for a public utility that will be before the Board in regulatory matters. In its designation application, CNP also omitted administration costs from its O&M budget, which it subsequently estimated to be more than \$700,000 annually.⁶⁷ Although actual O&M expenditures will not be incurred until sometime in the future for the designated transmitter, EWT LP already has a solid understanding

⁶⁷ CNP Response to Board Interrogatory #29 to All Applicants, p. 1.

1 of the expected reasonable costs necessary to operate major transmission infrastructure in
 2 Ontario.

3 **Figure 5 – Estimated Operating Costs**



4

5 **C. Technical Design**

6 The designated transmitter's ability to develop an innovative yet feasible technical design will be
 7 critical to ensuring that a leave to construct application will present a cost-effective and timely
 8 proposal for ratepayers. Ultimately, the applicants must be evaluated not only on the strength of
 9 their proposed designs but also on their plans (or lack thereof) to assess those designs to ensure
 10 the greatest benefit for ratepayers. In addition to meeting the Board's technical design criteria,
 11 EWT LP distinguishes itself from other applicants because:

- 12 • EWT LP has proposed a suite of potential technical designs, which could result in the
 13 greatest cost savings and reliability for ratepayers (including an approximately \$116
 14 million savings if a single circuit cross-rope suspension option proves to be the preferred
 15 alternative over the Reference Case); and

- 1 • Unlike other applicants, EWT LP has set out a plan to assess its suite of alternatives⁶⁸
- 2 during the development phase by including the broadest range of alternatives and
- 3 identifying the specific studies required for the selection of the best option, rather than
- 4 prejudging the result.

5 *EWT LP's alternatives*

6 EWT LP's suite of alternatives include the following:

- 7 • the Board's Reference Option, a conventional double circuit line design based on the X10
- 8 family of steel lattice towers;
- 9 • a modified Reference-based design, without the single loop galloping criteria;⁶⁹
- 10 • a single circuit design;⁷⁰ and
- 11 • a single circuit design with CRS.⁷¹

⁶⁸ EWT LP Designation Application, Appendix 9D - Route Selection Process.

⁶⁹ EWT LP commissioned Power Engineers to study the assumptions underlying the reference option to determine whether modified design parameters with prudent limits would increase value to ratepayers and whether any alternative, innovative technical designs would be technically feasible in the Project area while at the same time reducing costs for ratepayers. Further to this assessment, Power Engineers identified the single loop galloping criteria as overly conservative. Adhering to the galloping criteria using traditional tower designs such as the X10 will require shorter spans and this will increase the number of towers required and hence the construction and maintenance cost of the line. However, Power Engineers noted that the existing East-West Tie, which has relatively long spans using the X7 tower family, does not comply with the Board's galloping criteria, yet Hydro One Networks Inc. reported that the line had performed satisfactorily with no issues caused by galloping. EWT LP has therefore proposed to assess the galloping criteria in the development phase prior to finalizing the choice of towers in order to achieve the most cost effective technical design.

⁷⁰ EWT LP also considered additional innovative alternatives that also achieve reliability and cost-savings for ratepayers. EWT LP therefore commissioned Power Engineers to study single circuit alternatives as well. In particular, Power Engineers considered the electrical performance of a 795 kcmil Drake Conductors in a 2 bundle arrangement and concluded that it would have equivalent electrical performance to the single line options studied by the Independent Electricity System Operator ("IESO") in its August 18, 2011 Feasibility Study for Reinforcing the East-West Tie. The IESO concluded that a single circuit line complies with all reliability standards but unlike a double circuit line would require the IESO to take post-contingency actions to prepare for a second contingency. Power Engineers indicated that steps could be taken to make a single circuit line more reliable than the design studied by the IESO for relatively small incremental costs. Doing so would reduce but not eliminate the difference in performance of a single circuit line compared to a double circuit line. Again, EWT LP has presented this alternative for further study during the development phase.

⁷¹ EWT LP recognized the potential for even further cost savings associated with a single line alternative that used a tower design that has been proven to work in conditions similar to northern Ontario. In this regard, EWT LP explored how the cost-benefit analysis would change if a single line option were considered in combination with CRS structures. Power Engineers noted in the same report that CRS structures, though new to Ontario,

1 These four potentially feasible designs present a range of alternatives for the Board that, once
2 assessed further in the development phase, are likely to yield the most cost-efficient design for
3 ratepayers. In contrast, RES and UCT appear committed to developing only one technical design
4 even before any development work has been completed.

5 Moreover, EWT LP has not presented a range of alternatives at the expense of proposing viable
6 designs. All are strong alternatives that warrant further consideration. This is unlike the
7 applications of RES and UCT, which have proposed technical design options that are ill-suited
8 for the Project area. For example, as discussed in greater detail in Section III-A below, RES's
9 technical design fails to:

- 10 • properly characterize the technical aspects of its selected ACSS conductor;
- 11 • understand the physical attributes of its preferred H-frame structure and the impact those
12 attributes have on the needed foundations and associated costs;
- 13 • appreciate cascade failure risk of the preferred design and the need to mitigate that risk;
14 and
- 15 • make the fundamental connection between the nature of RES's preferred structures and
16 the geological characteristics of the land on which the structures will be placed.

17 Similarly, as discussed further in Section III-B below, UCT has not demonstrated that its
18 recommended design, a double circuit "Y" tower, has been successfully used by either UCT or
19 another transmitter in similar conditions to the East-West Tie, or in any conditions. Based on the
20 evidence filed, the design appears to be completely untested and very likely unworkable. Thus,
21 of all the applicants, only EWT LP has proposed a range of technically credible design options
22 that can be brought into the development phase to determine which one will provide better value
23 for ratepayers.

have been widely and successfully used in other jurisdictions including 2,000 km of lines in northern Quebec. Power Engineers also notes that CRS structures have a significantly lower construction cost compared to conventional free-standing steel lattice towers. Power Engineers estimates a new single circuit East-West Tie line using CRS structures would be approximately \$116 million less expensive than a conventional double circuit line based on the existing X10 tower family.

1 *EWT's plan for evaluating alternatives*

2 As mentioned above, EWT LP has presented a range of alternatives and a plan for assessing the
3 costs and benefits of those alternatives during the development stage. Project development for a
4 new transmission line of this rating and length will involve ongoing engineering work, extensive
5 discussions with land owners and other stakeholders, the acquisition of land rights, the
6 completion of an environmental assessment and consultation with First Nations and Métis
7 communities.⁷² Unlike other applicants, EWT LP has set out these design activities in great
8 detail.⁷³ For example, EWT LP provides a road map for the studies it will conduct during the
9 development phase to evaluate each proposed alternative's impact on the region's transmission
10 network. Such studies include an assessment of power flow and reactive power requirements
11 under normal and contingency conditions; preliminary lightning performance analyses; and line
12 impedance comparisons for different circuit and conductor/bundling configurations.

13 With four technically sound alternatives ready to evaluate, a comprehensive plan already in place
14 to complete that evaluation, and that evaluation plan factored into its schedule, EWT LP is well
15 positioned to begin its technical design refinement promptly upon designation. No other
16 applicant is as prepared to test the key assumptions underlying the Reference-Based Design and
17 undertake the studies necessary to evaluate a range of credible alternatives to see which can be
18 adopted at a lower cost. Those that have advocated innovative designs (RES and UCT) have not
19 factored such an evaluation into their schedules. As mentioned, EWT LP's preliminary estimates
20 suggest a potential savings of \$116 million, relative to the Reference-Based Design, by pursuing
21 a single circuit CRS design. No other applicant's technical design alternatives offer that degree
22 of cost savings. And no other applicant is as well prepared as EWT LP to assess its design
23 alternatives in the development phase to determine the most technically appropriate design for
24 the Project and the most cost-effective design for ratepayers.

⁷² As discussed in Sections 7, 9 and 10 of its Designation Application, EWT LP has developed a detailed consultation plan and schedule which factors in numerous technical design activities.

⁷³ See EWT LP Designation Application, Appendix 6C.

D. Consultation and Land Acquisition

EWT LP's development plan establishes how it will obtain a "social license" to develop, construct and operate the Project. In particular:

- EWT LP's Aboriginal and Public Consultation is unparalleled among the applicants' plans in its detail and in its commitment to community-based consultation;
- EWT LP, unlike other applicants, has a comprehensive land acquisition strategy that ensures early consultation and attempts to minimize the need to expropriate land after the leave to construct is filed; and
- EWT LP has proposed the most comprehensive plan for routing the Project of any applicant.

This focus on building broad-based stakeholder support through consultation is critical to being able to expeditiously and cost-effectively develop and construct the Project.

EWT LP has proposed the most effective plans for Aboriginal and public consultation

Developing a social license through broad-based community consultation is critical to successful project development. A number of Ontario electricity projects -- including the Oakville generating station, the York Region Transmission Reinforcement Project, and the Scarborough Bluffs offshore wind project -- were recently cancelled, in part because they did not achieve the necessary social license. Recognizing this and consistent with its community-centric approach to development, EWT LP has developed robust and comprehensive plans for consulting with Aboriginal communities, and for consulting with municipalities, federal and provincial agencies, landowners and the public.⁷⁴ The consultation plans have been prepared not only to meet the statutory consultation requirements of the *Environmental Assessment Act*, but also to solicit stakeholder input at the earliest opportunity and throughout the Project and to appropriately incorporate this input into the final Project design. EWT LP will build relationships and work alongside stakeholders over the course of Project development, including via sixty open house sessions (equally covering both local and Aboriginal consultation) conducted at a number of

⁷⁴ See EWT LP Designation Application, Appendix 10A.

1 locations across the Project area. EWT LP's development schedule allows for more time to
2 consult and integrate stakeholder feedback, which will in turn reduce the risk that Project permits
3 or construction are opposed. This could ultimately enable EWT LP to accelerate the development
4 and construction processes.

5 EWT LP's 32-page Aboriginal and community consultation plan is the most robust,
6 comprehensive and detailed of any applicant. It sets out in detail EWT LP's principles and
7 approach to Aboriginal and local consultation and ensures conformity with regulatory
8 requirements and best practices. It also includes detailed work plans identifying specific
9 consultation tasks for each phase of the Project. In contrast, CNP did not produce an Aboriginal
10 consultation plan, as discussed further in Section III-E below, in direct contravention of Board
11 filing requirements.⁷⁵

12 EWT LP, through its partners, also has unique experience that will enable it to ensure the
13 successful implementation of its consultation program. For example, BLP's participation from
14 the beginning of the Project planning process has been significant in shaping EWT LP's
15 approach to Project development and consultation. BLP will continue to advise EWT LP on the
16 appropriate consultation strategy for the Project. Many of the Participating First Nations bring to
17 EWT LP the unique perspective of having been both consultor and consultee in power and
18 infrastructure developments in the Project area. For example, the Participating First Nations have
19 not only conducted consultation in the Project area among other local and Aboriginal
20 communities and stakeholders in conjunction with their own generation projects, such as Umbata
21 Falls,⁷⁶ but have also been subject to consultation in the Project area, such as in conjunction with
22 the Marathon PGM Metals mine.⁷⁷ As a result, BLP is particularly sensitive to the challenges in
23 the consultation process, especially with respect to Aboriginal communities. The Participating
24 First Nations also have long-standing relationships with other Aboriginal communities, land
25 owners, municipalities and agencies in the Project area, which will facilitate EWT LP's rapid

⁷⁵ Ontario Energy Board, Phase 1 Decision and Order (July 12, 2012), Appendix A - Filing Requirements for Designation Applications, Requirement #10.1.

⁷⁶ EWT LP Designation Application, Exhibit 2, pp. 4-5.

⁷⁷ See EWT LP Designation Application, Exhibit 10, p. 10.

1 understanding of key Aboriginal and local issues that may affect the location, design and
2 construction of the Project.

3 Ultimately, EWT LP's consultation plan recognizes that meaningful consultation requires giving
4 stakeholders genuine opportunities to shape the design and route of the Project. EWT LP is not
5 taking the "design first, consult later" approach favoured by some proponents. Proponents such
6 as AOLP and UCT, that intend to approach stakeholders with a ready-made plan for Project
7 development, will likely not be offering meaningful opportunities to receive and integrate public
8 feedback and, as a result, risk encountering delays and cost impacts due to public opposition.

9 *EWT LP has proposed the most effective land acquisition strategy*

10 EWT LP recognizes that obtaining the land rights necessary to develop the Project presents
11 challenges that, if not anticipated and managed, can trigger expropriation hearings and otherwise
12 significantly delay the Project schedule and increase costs. Therefore, EWT LP plans to meet
13 with landowners at the earliest opportunity to identify and evaluate potential routes with the
14 benefit of landowner input. It will work with landowners, owners of interests in the land and
15 government authorities to identify parcels where the existing land use would be consistent with
16 or benefit from the construction of the Project and use this information to impose different
17 ratings when evaluating corridor preference.⁷⁸ EWT LP will make every effort to reach voluntary
18 agreements with property owners and to avoid potential routes that would require the
19 expropriation of multiple properties.⁷⁹ This proactive approach benefits ratepayers by reducing
20 the risk of having to return to the Board after a leave to construct has been granted to seek
21 expropriation of land rights -- a time consuming and expensive process. EWT LP has also set out
22 specific detailed plans for the acquisition of different categories of land rights, including private
23 land, Crown land, crossings, Reserve land, provincial and national parks.⁸⁰

⁷⁸ EWT LP Designation Application, Exhibit 9, pp. 2-3.

⁷⁹ EWT LP Designation Application, Exhibit 7, p. 18.

⁸⁰ EWT LP Designation Application, Exhibit 9, pp. 5-11.

1 Furthermore, EWT LP will adopt a set of detailed land acquisition principles for the Project
2 based on land acquisition principles that were accepted by the Board in connection with the
3 Bruce to Milton Transmission Reinforcement Project.⁸¹ EWT LP's land acquisition principles
4 will include principles of property owner choice, transparent appraisal procedures and incentive
5 compensation for voluntary and timely land acquisition.⁸² A principled and consistent approach
6 to land acquisition will help ensure landowners are treated -- and perceive themselves to be
7 treated -- fairly.

8 *EWT LP has proposed the most comprehensive routing plan*

9 EWT LP has identified a number of routing considerations, particularly in regard to the more
10 densely populated areas around Thunder Bay. Applying its extensive local knowledge, EWT LP
11 has broken the potential route into four segments and analyzed the particular routing concerns of
12 each segment.⁸³ In the segment between Thunder Bay to Nipigon, EWT LP has identified
13 potential benefits in rationalizing some of the existing transmission infrastructure and using an
14 existing ROW corridor for the new line, which have not been identified by any other applicant.⁸⁴
15 EWT LP has also developed a detailed methodology for refining the Project route⁸⁵ and
16 compiled a summary of the relevant land use policies that will need to be taken into
17 consideration.⁸⁶ In addition, EWT LP proposes holding a routing workshop between November
18 2013 and January 2014⁸⁷ (and, potentially, a second routing workshop between March and April
19 2014⁸⁸) to work with stakeholders to refine the final Project route.

⁸¹ See EWT LP Designation Application, Appendix 4E.

⁸² See EWT LP Designation Application, Exhibit 9, p. 7.

⁸³ See EWT LP Designation Application, Exhibit 9, pp. 18-36.

⁸⁴ See EWT LP Designation Application, Exhibit 9, pp. 22-24.

⁸⁵ EWT LP Designation Application, Appendix 9D.

⁸⁶ EWT LP Designation Application, Appendix 9F.

⁸⁷ See EWT LP Designation Application, Appendix 7A - Project Workflow (Regular) and Appendix 7B - Project Workflow (Accelerated).

⁸⁸ See EWT LP Designation Application, Appendix 7A - Project Workflow (Regular).

1 **E. Conclusion**

2 Only EWT LP has undertaken the necessary detailed Project planning work to ensure it has
3 budgeted appropriate time and resources to provide ratepayers with a comprehensive, cost-
4 effective and prudent plan for Project development, construction, operation and maintenance.

TAB 19

UNDERTAKING JT1.1:

UNDERTAKING

TR 1, page 21

Bamkushwada to file the exclusivity portions of the agreement which the Chiefs have with Nextbridge.

RESPONSE

Exclusivity; Non-Competition

During the term of this Agreement, BLP and the First Nations shall not, and shall cause each of their respective Affiliates and related parties (together, the "**Restricted Persons**") not to, directly or indirectly, whether alone or jointly with one or more Persons, engage in negotiations or discussions with any Person, solicit or entertain proposals from any Person, submit any indication of interest or bid to any Person, or provide to any Person information, in each case, other than with or to the Partnership, the General Partner or the Original Limited Partners, or their respective Affiliates or Representatives, regarding the Project, the Partnership, the System Upgrades and/or the existing East-West Tie transmission line, and/or any transaction that entails the pursuit or development of any of the foregoing with a developer other than the Partnership, or an intended objective of which is to impede, frustrate or compete with any of the foregoing (each, a "**Competing Transaction**"), nor shall any Restricted Person otherwise be involved with a Competing Transaction (whether as an investor, lender, advisor or in any other capacity) except, in each case, with the prior written consent of the General Partner in its capacity as general partner of the Partnership, in its sole discretion. BLP and each of the First Nations jointly and severally represents and warrants to the Partnership and the Original Limited Partners that none of them, nor any of the other Restricted Persons, have undertaken a Competing Transaction or taken any of the other actions prohibited by this Section since May 6, 2014, being the date of the "NextBridge Investment Term Sheet" between the Partnership, BLP and the First Nations.

TAB 20

KT2.1

1 Interrogatory 6

2 Questions

3 If you are selected as the designated transmitter, will the First Nation and Métis
4 communities identified by the Ministry of Energy in its letter to the Ontario Power
5 Authority ("OPA") dated May 31, 2011, and possibly other affected and interested First
6 Nation and Métis communities, be given an equal opportunity to participate in the
7 project? Will all affected (or interested) First Nation and Métis communities be given
8 equal opportunity for all forms of participation in the project (e.g. employment
9 opportunities, equity participation)?

10 Response

11 If EWT LP is selected as the designated transmitter, the identified First Nation and Métis
12 communities and possibly other affected and interested First Nation and Métis
13 communities will not only be accommodated, as appropriate, but may benefit from
14 economic participation in the development and construction of the Project. Where all
15 applicable technical and professional standards are met, the costs are commercially
16 reasonable and the BLP Participating First Nations are not selected to provide the goods
17 or services (due to lack of ability to provide or higher cost option), then EWT LP will
18 give priority with respect to employment, training and commercial opportunities to other
19 Aboriginal community members and to the businesses which they own or control.
20 Moreover, EWT LP's competitive procurement processes will pair community resources
21 and assets with Project needs in order to maximize the efficiency of the Project and
22 enhance Aboriginal participation in it. For more detail in this regard, see pages 7 and 8
23 of Part A, Exhibit 3 of EWT LP's designation application.

24 EWT LP is not contemplating changes to its ownership structure at this time. The
25 decision of the Participating First Nations to do business with each other, to form BLP,
26 and to become equal partners in EWT LP with companies of their own choice was an act
27 of self-determination. It has taken almost three years to develop the underlying
28 relationship. Their decision was based on a desire for participation in development,
29 construction and operations activities; for equity ownership; and for equal participation in
30 the corporate governance of the transmitter designated to own transmission facilities
31 crossing their traditional territories. This is congruent with the Participating First Nations
32 each having traditional territories directly impacted by the Project, since their
33 communities are all located within 40 km of the existing East-West Tie line and are the
34 closest to the proposed Project. Such proximity gives the Participating First Nations
35 unique routing, cultural and traditional knowledge regarding the Project area, and
36 existing relationships with the majority of landowners, municipalities and agencies in the
37 area.

38 First Nation and Métis participation from an equity perspective is not just a 'tick-the-box
39 exercise' for the purpose of satisfying criteria for the current process. For BLP and EWT

1 LP, it is also fundamental to the advancement of the Project and to the communities that
2 are directly affected.

3

1 Interrogatory 2

2 Questions

3 EWT LP has secured a 1/3rd equity partnership with Bamkushwada LP ("BLP"). BLP
4 consists of six directly affected First Nations communities. Are the participating First
5 Nations in BLP bound by an exclusivity clause that restricts the ability of other
6 applicants from developing similar participation relationships, either before or after
7 designation? In the event that EWT LP is not designated by the Board, can you advise
8 whether or not the entity that is designated will be able to consult with the participating
9 First Nations in BLP immediately after the Board issues its designation decision?

10 Response

11 The partners of EWT LP have mutually agreed to deal with each other on an exclusive
12 basis with respect to the Project before and after the date of designation. The Participating
13 First Nations did so voluntarily, and with the advice of independent legal counsel.

14 Because each of the partners of EWT LP play a role in the partnership's governance and
15 its designation plan, the exclusivity period before the Board's designation decision
16 provided stability to the partnership's structure. From BLP's perspective, it enables BLP
17 to manage Aboriginal involvement and (being a First Nations-owned entity) to speak as
18 one voice in respect of First Nations interests. The extension of the exclusivity period
19 after designation is only for a brief time and is to allow for sufficient time to wind up or
20 otherwise address issues arising from the commercial relationship between the partners
21 post-designation. Exclusivity only relates to economic participation in EWT LP and the
22 Project.

23 However, the Participating First Nations are not contractually prohibited in any way from
24 participating in consultation and accommodation with the Crown in respect of the
25 Project; providing information about their communities, history, people and asserted and
26 actual rights; or, participating in any consultation or negotiating any form of
27 accommodation with a designated transmitter who is not EWT LP. Accordingly, if EWT
28 LP is not designated by the Board, the entity that is designated will be able to consult
29 with the Participating First Nations in BLP immediately after the Board issues its
30 designation decision.

31

UNDERTAKING – JT 2.10

Undertaking

Hydro One to provide the details of the exclusivity language of agreements with BLP.

Response

Contrary to the assertions made by Ms. Kempton¹, and consistent with the understanding of Chief Collins as represented both in the Chief's testimony² and Affidavit³, the NextBridge exclusivity agreement with BLP – filed as JT 1.1 of this proceeding – precludes BLP First Nations from effectively consulting with Hydro One because of the NextBridge agreement's prohibition on the discussion of accommodation, as pointed out in the testimony of Chief Collins.

The EWT Implementaion Agreement, as shown below at Section 24.1, allowed for the Participating First Nations to participate in consultation and accommodation with a Designated Transmitter that was not EWT.

24.1 Exclusivity

24.1 The Participating First Nations, BLP, GLPTI, GLPT EWT and Hydro One Inc. acknowledge that they have been dealing with each other exclusively in connection with the Project and they, together with BLP Holding LP and Hydro One East-West Tie Inc., confirm and agree that they will not, subject to Section 25.2.2, enter into negotiations or entertain discussions with any other Person in respect of the development, construction, ownership or operation of the Project or attempt to own or build the Project on its own or with another Person, or support any other Person who wishes to build the Project. Instead, the Parties and the Participating First Nations will actively support EWT and promote its success. Notwithstanding anything to the contrary, nothing shall prevent the Participating First Nations from (i) participating in consultation and accommodation with the Crown in respect of the Project, (ii) providing information about their community, their history, their people and their asserted and actual rights to any Person for any purpose, or (iii) participating in any consultation or negotiating any form of accommodation with a Designated Transmitter that is not EWT. [emphasis added]

¹ Commencing at line 9 of page 18 of day 1 of the Technical Conference Transcript and ending on line 9 of page 20 of the Technical Conference

² Commencing at line 2 of page 12 of day 1 of the Technical Conference Transcript and ending on line 17 of the same page.

³ BLP First Nations Evidence, filed May 7, 2018 – Paragraph 30 of Chief Collins Affidavit

1 25.2.2 the exclusivity obligations set forth in Section 24 shall survive termination until
2 the later of (i) September 19, 2013, (ii) the date that is six (6) months after the date of
3 termination of this Agreement pursuant to Section 25.1, and (iii) if EWT is selected to be
4 the Designated Transmitter and the Project Agreement is entered into, six months after
5 the termination of the Project Agreement, provided that, if GLPT EWT and Hydro One
6 agree to abandon the Project and no longer pursue the development and construction of
7 the Project, then such exclusivity obligations shall terminate as of the date of such
8 agreement.

TAB 21

Hydro One Networks Inc.
Community Relations
483 Bay Street
South Tower, 6th Floor
Toronto, Ontario, M5G 2P5
www.HydroOne.com

Tel: 1-877-345-6799
Email: Community.Relations@HydroOne.com



May 28, 2018

Update for the Lake Superior Link Project

Via email

Dear Resident:

Hydro One Networks Inc. (Hydro One) has initiated the Terms of Reference for an Environmental Assessment (EA) under the Ontario *Environmental Assessment Act* for the proposed Lake Superior Link project. The Independent Electricity System Operator's (IESO) Updated Assessment of the Need for the East-West Tie Expansion, 2017 states that a new transmission line "...continues to be the recommended alternative to maintaining a reliable and cost-effective supply of electricity in Northwestern Ontario for the long term." The EA will consider two route alternatives for a new double-circuit 230 kilovolt transmission line between Lakehead Transformer Station (TS) near Thunder Bay and Wawa TS near Wawa.

The attached Notice of Commencement and invitation to Community Information Centres will be published in local newspapers leading up to the June Community Information Centres. The attached community flyer, which contains similar information, will be delivered to residents and interest groups in your community and along the project route.

We are eager to continue our conversation with you and hope you are able to attend a meeting in your area.

If you have further questions, please contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Mantifel".

Steven Mantifel
Manager, Special Projects

Attachments (2)

NOTICE OF COMMENCEMENT OF TERMS OF REFERENCE AND INVITATION TO COMMUNITY INFORMATION CENTRE Lake Superior Link Project – Hydro One Networks Inc.

Hydro One Networks Inc. (Hydro One) is initiating an Environmental Assessment (EA) under the *Environmental Assessment Act* for the proposed Lake Superior Link project. The Independent Electricity System Operator's (IESO) *Updated Assessment of the Need for the East-West Tie Expansion, 2017* states that a new transmission line "...continues to be the recommended alternative to maintaining a reliable and cost-effective supply of electricity in Northwestern Ontario for the long term." The EA will consider two route alternatives for a new 400 km, double-circuit 230 kilovolt transmission line between Lakehead Transformer Station (TS) near Thunder Bay and Wawa TS near Wawa, as shown on the map. The reference route generally parallels Hydro One's existing East-West Tie transmission corridor with the exception of a new section of corridor near Dorion and a section through Pukaskwa National Park where existing infrastructure would be modified. The reference route alternative generally parallels Hydro One's existing East-West Tie transmission corridor with the exception of a new corridor section near Dorion and a section that traverses around Pukaskwa National Park.

In March 2018, Hydro One hosted public information drop-ins along the project route to provide initial opportunities for stakeholders to learn more about the Lake Superior Link project, meet the project team and provide feedback. Hydro One is aware of the extensive consultation already completed on the reference route alternative and will make best efforts to streamline consultation and studies whenever possible.

The Planning Process

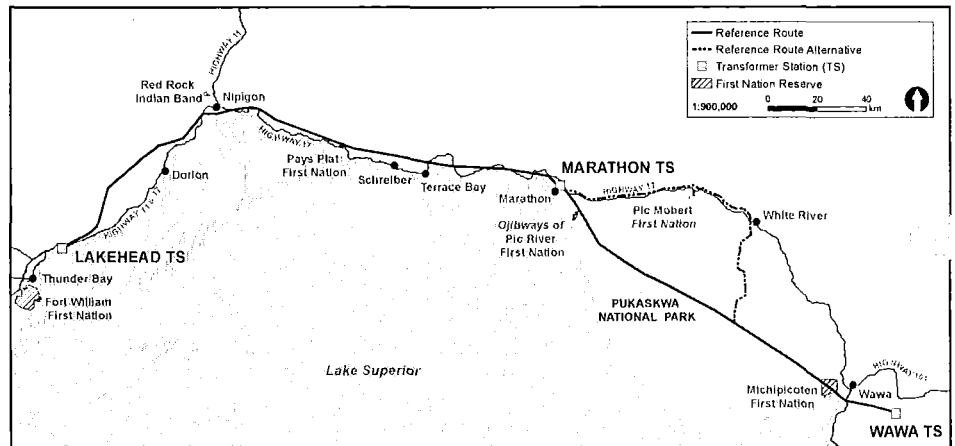
This EA will be carried out in accordance with the requirements of the Ontario *Environmental Assessment Act*. The first step is the preparation of a Terms of Reference (ToR) which will set out the framework and work plan for addressing *Environmental Assessment Act* requirements when preparing the EA, including an outline of the studies and consultation activities that will be undertaken. Important elements of this work will be to evaluate the reference route and reference route alternative, assess potential effects and determine measures to reduce or mitigate these effects.

A draft ToR will be made available for review and comment during early summer 2018. Hydro One anticipates that the ToR will be completed mid-summer 2018, at which point it will be submitted to the Minister of the Environment and Climate Change (Minister) for review and decision. If approved by the Minister, the EA will proceed as outlined in the ToR.

Consultation

Indigenous communities, government agencies, municipal officials, members of the public and other interested persons are encouraged to actively participate in the planning process. Consultation and engagement opportunities will be organized throughout the planning process and communicated via community newspaper advertisements, mailings and on the project website. Members of Hydro One's project team are always available to discuss the project with interested parties.

We will be hosting another round of Community Information Centres as outlined below to provide a project update and continue discussions about delivering tangible benefits to communities in the project area.



Please join us:

Monday, June 11, 2018

Thunder Bay
5 p.m. – 7:30 p.m.
Valhalla Inn – Viking Room
1 Valhalla Inn Road

Nipigon
5 p.m. – 7:30 p.m.
Royal Canadian Legion
Branch 32
102 5th Street

Tuesday, June 12, 2018

Red Rock
12 p.m. – 2 p.m.
Royal Canadian Legion Branch 226
43 Salls Street

Dorion
5 p.m. – 7:30 p.m.
Dorion Community Centre
175 Dorion Loop Road

Terrace Bay
5 p.m. – 7:30 p.m.
Terrace Bay Cultural Centre, 13 Selkirk Avenue

Wednesday, June 13, 2018

Schreiber
5 p.m. – 7:30 p.m.
Schreiber Municipal Gym
204 Alberta Street

Marathon
2 p.m. – 7 p.m.
Marathon Centre Mall
2 Hemlo Drive

Thursday, June 14, 2018

White River
5 p.m. – 7:30 p.m.
White River Community Centre
6 Winnipeg Street

Wawa
5 p.m. – 7:30 p.m.
Royal Canadian Legion
Branch 429
51 Broadway Avenue

Information gathered at these Community Information Centres will be used both to complete the ToR and to gather information toward completion of the EA.

For further information about this project, please contact:

Bruce Hopper, Environmental Planner
Hydro One Networks Inc.
T: 1-877-345-6799 / F: 416-345-6984
E: Community.Relations@HydroOne.com
Website: www.HydroOne.com/LakeSuperiorLink

All personal information in a submission – such as name, address, telephone number and property location – is collected, maintained, and disclosed by the Ministry of the Environment and Climate Change for the purpose of transparency and consultation. The information is collected under the authority of the *Environmental Assessment Act*, or is collected and maintained for the purpose of creating a record that is available to the general public, as described in s. 37 of the *Freedom of Information and Protection of Privacy Act*. Personal information you submit will become part of a public record that is available to the general public unless you request that your personal information remain confidential. For more information, please contact the Ministry of the Environment and Climate Change's Freedom of Information and Privacy Coordinator at 416-327-1434.

PROJET LAC DU CORRIDOR SUPÉRIEUR

AVIS — COMMENCEMENT DU CADRE DE RÉFÉRENCE ET INVITATION À UNE SÉANCE D'INFORMATION PUBLIQUE concernant le Projet du Corridor Lac Supérieur — Hydro One Networks Inc.

Hydro One Networks Inc. (Hydro One) entreprend actuellement, conformément à la *Loi sur les évaluations environnementales* de l'Ontario, une évaluation environnementale (EE) pour le Projet du Corridor Lac Supérieur. L'étude de la Société indépendante d'exploitation du réseau d'électricité (SIERE) – *Updated Assessment of the Need for the East-West Tie Expansion, 2017* – qui évalue la nécessité d'étendre la ligne de connexion Est-Ouest existante, indique qu'une nouvelle ligne de transport « demeure la solution de rechange recommandée pour maintenir dans le long terme un approvisionnement d'électricité fiable et rentable dans le Nord-Ouest de l'Ontario ». L'EE examinera deux itinéraires possibles pour l'implantation d'une nouvelle ligne de transport à deux circuits à 230 kilovolts, qui s'étendrait sur 400 km entre le poste de transformation (PT) de Lakehead, près de Thunder Bay, et le PT de Wawa, près de Wawa (voir la carte). L'itinéraire de référence globalement suit en parallèle le corridor de connexion Est-Ouest existant de Hydro One, sauf qu'un nouveau tronçon de corridor est prévu près de Dorion et qu'une section de l'infrastructure traversant le parc national Pukaskwa serait modifiée. L'autre itinéraire de référence globalement suit en parallèle le corridor de connexion Est-Ouest existant de Hydro One, sauf en ce qui concerne ici aussi un nouveau tronçon de corridor prévu près de Dorion et un autre tronçon qui passera à l'extérieur du parc national Pukaskwa.

En mars 2018, Hydro One a tenu des haltes-information le long de l'itinéraire envisagé pour permettre aux intervenants de mieux se renseigner sur le Projet du Corridor Lac Supérieur, de rencontrer l'équipe responsable et de faire part de leurs commentaires. Hydro One est au courant de la vaste consultation qui a été déjà menée sur l'autre route de référence et fera tout son possible pour simplifier la consultation et les études.

Processus de planification

L'EE est menée conformément aux exigences de la *Loi sur les évaluations environnementales* (la Loi). La première étape consiste à préparer un cadre de référence qui établit le plan des travaux et études à mener en réponse aux exigences de la Loi; le cadre indique en particulier les études et les activités de consultation qui seront entreprises. Une partie importante des activités consistera à examiner l'itinéraire de référence envisagé et l'autre itinéraire de référence, d'en évaluer les effets potentiels et de déterminer les mesures à prendre pour réduire ou atténuer ces effets.

Une version provisoire du cadre de référence sera mise à la disposition de la collectivité pour examen et commentaires au début de l'été 2018. Hydro One pense que le cadre de référence sera achevé en milieu d'été, après quoi il sera présenté au ministre de l'Environnement et de l'Action en matière de changement climatique (le ministre) pour examen et décision. S'il est approuvé, Hydro One entamera l'étude environnementale conformément au cadre de référence.

Consultation

Nous encourageons les parties intéressées, notamment les collectivités autochtones, les organismes gouvernementaux, les élus municipaux et les membres du public à prendre part au processus de planification. Des occasions de consultation et de participation seront organisées tout au long du processus de planification; elles seront annoncées dans les journaux locaux, au moyen d'envois postaux et sur le site Web du projet. Les membres de l'équipe Hydro One sont toujours disponibles pour discuter le projet avec les parties.

Nous tiendrons une autre série de séances d'information publique (voir ci-dessous) pour faire le point sur le projet et poursuivre les discussions sur les avantages tangibles que ce projet représente pour les collectivités de la région.

Joignez-vous à nous :

Lundi 11 juin 2018

Thunder Bay
17 h - 19 h 30
Valhalla Inn - Salle Viking
1 Valhalla Inn Road

Nipigon
17 h - 19 h 30
Légion royale canadienne
Filiale 32 – 102, 5^e Rue

Mardi 12 juin 2018

Red Rock
12 h - 14 h
Légion royale canadienne, Filiale 226
43, rue Salls

Dorion
17 h - 19 h 30
Centre communautaire, 175 Dorion Loop Road
Terrace Bay
17 h - 19 h 30
Centre culturel, 13, avenue Selkirk

Mercredi 13 juin 2018

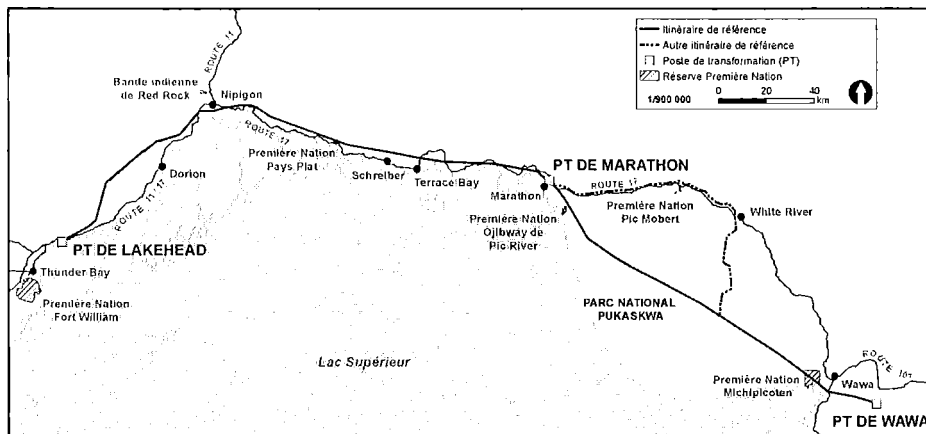
Schreiber
17 h - 19 h 30
Gymnase municipal
204, rue Alberta

Marathon
14 h - 17 h
Marathon Centre Mall
2 Hemlo Drive

Jeudi 14 juin 2018

White River
17 h - 19 h 30
Centre communautaire
6, rue Winnipeg

Wawa
17 h - 19 h 30
Légion royale canadienne
Filiale 429 – 51, av. Broadway



L'information recueillie aux séances d'information sera utilisée pour la préparation du cadre de référence et de l'évaluation environnementale.

Pour d'autres renseignements sur ce projet, veuillez contacter :

Bruce Hopper, Planificateur environnemental
Hydro One Networks Inc.
Tél. : 1 877 345-6799 / Téléc. : 416 345-6984
Courriel : Community.Relations@HydroOne.com
Site Web : www.HydroOne.com/LakeSuperiorLink

Tous les renseignements personnels requis lors de la soumission de commentaires, tels que le nom, l'adresse, le numéro de téléphone et l'adresse de la propriété, sont recueillis, conservés et divulgués par le ministère de l'Environnement et de l'Action en matière de changement climatique (MEACC) à des fins de transparence et de consultation. Ces renseignements sont recueillis en vertu de la *Loi sur les évaluations environnementales* ou sont recueillis et conservés dans le but de créer un dossier qui sera mis à la disposition du grand public, comme le prévoit l'article 37 de la *Loi sur l'accès à l'information et la protection de la vie privée*. Les renseignements personnels feront partie d'un dossier public qui sera à la disposition du grand public, sauf si vous demandez qu'ils soient tenus confidentiels. Pour obtenir de plus amples renseignements, veuillez contacter le coordonnateur de l'accès à l'information et de la protection de la vie privée du MEACC au 416 327-1434.

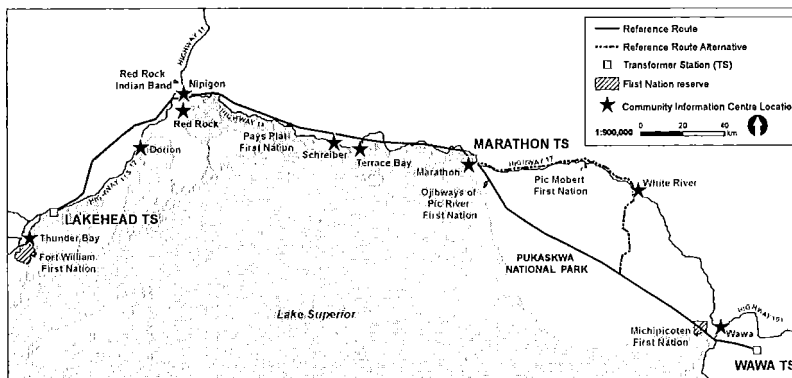


May 30, 2018

DEAR RESIDENT:

Powering northern Ontario is an important part of Hydro One's past and future. Hydro One has a vision for the North, which is why earlier this year we applied to the Ontario Energy Board for approval to construct a new transmission line between our Lakehead Transformer Station (TS) and our Wawa TS, as shown on the map below. Our project, the Lake Superior Link, is the most innovative and cost-effective solution for Ontario electricity customers. Hydro One is committed to delivering safe, reliable and affordable power to homes and businesses in the North.

We have initiated an Environmental Assessment (EA) under the *Environmental Assessment Act* for the proposed project. The EA will consider two route options for a new double-circuit 230 kilovolt transmission line between Lakehead Transformer Station (TS) near Thunder Bay and Wawa TS near Wawa, as shown on the map below. The reference route would primarily be built on or adjacent to Hydro One's existing East-West Tie transmission corridor, with the exception of a new corridor section near Dorion. Through Pukaskwa National Park, the existing line would be upgraded without widening the corridor. As shown below, the reference route alternative follows that same path, with the exception of a variance around Pukaskwa National Park.



WE WANT TO HEAR FROM YOU!

We started conversations with local communities in March during our first round of information drop-ins, and we would like to continue to speak with community members about how our proposed project will deliver tangible benefits. We will be hosting a series of Community Information Centres along the proposed route – please stop by to learn more about the EA process, get a project update, and provide your feedback.

FOR MORE INFORMATION, PLEASE CONTACT US:

Stephanie Hodsoll
Hydro One Community Relations
Tel: 1-877-345-6799
Email: Community.Relations@HydroOne.com
www.HydroOne.com/LakeSuperiorLink

PLEASE JOIN US:

MONDAY, JUNE 11, 2018

Thunder Bay
5 P.M. – 7:30 P.M.
Valhalla Inn
Viking Room
1 Valhalla Inn Road

Nipigon
5 P.M. – 7:30 P.M.
Royal Canadian Legion
Branch 32
102 5th Street

TUESDAY, JUNE 12, 2018

Red Rock
12 P.M. – 2 P.M.
Royal Canadian Legion
Branch 226
43 Salls Street

Dorion
5 P.M. – 7:30 P.M.
Dorion Community Centre
175 Dorion Loop Road

Terrace Bay
5 P.M. – 7:30 P.M.
Terrace Bay Cultural Centre
13 Selkirk Avenue

WEDNESDAY, JUNE 13, 2018

Schreiber
5 P.M. – 7:30 P.M.
Schreiber Municipal Gym
204 Alberta Street

Marathon
2 P.M. – 7 P.M.
Marathon Centre Mall
2 Hemlo Drive

THURSDAY, JUNE 14, 2018

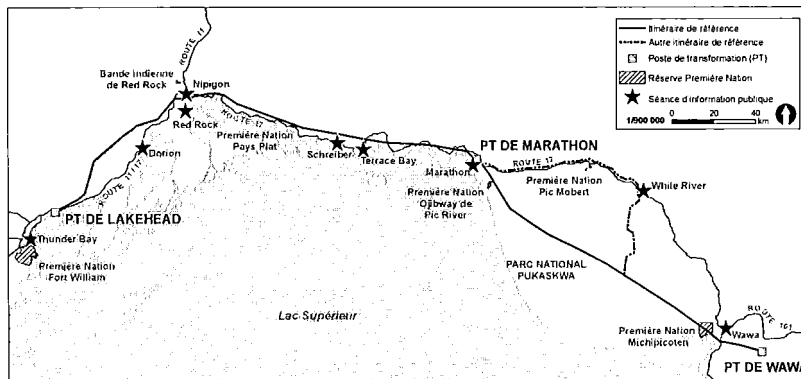
White River
5 P.M. – 7:30 P.M.
White River Community Centre
6 Winnipeg Street

Wawa
5 P.M. – 7:30 P.M.
Royal Canadian Legion
Branch 429
51 Broadway Avenue

CHÈRE RÉSIDENTE, CHER RÉSIDENT,

Approvisionner le Nord de l'Ontario en électricité est et sera toujours pour Hydro One une part importante de sa mission. Nous avons une vision pour cette région; c'est pourquoi, plus tôt cette année, nous avons demandé à la Commission de l'énergie de l'Ontario l'autorisation de construire une nouvelle ligne de transport entre notre poste de transformation (PT) de Lakehead et celui de Wawa (voir la carte). Notre projet, le Corridor Lac Supérieur, représente la solution la plus novatrice et la plus économique pour les abonnés d'électricité de l'Ontario. Hydro One est là pour assurer un approvisionnement sûr et fiable et de coût abordable aux habitations et aux entreprises du Nord.

Nous avons, conformément à la Loi sur les évaluations environnementales, entrepris une évaluation environnementale (EE) pour ce projet. L'EE examinera deux itinéraires possibles pour l'implantation d'une nouvelle ligne de transport à deux circuits à 230 kilovolts entre le PT de Lakehead, près de Thunder Bay, et le PT de Wawa. L'itinéraire de référence suivrait principalement le corridor de connexion Est-Ouest existant de Hydro One ou un tracé adjacent à ce corridor, à l'exception d'un nouveau tronçon qui serait aménagé près de Dorion. Dans le parc national Pukaskwa, la ligne existante serait renouvelée sans qu'il y ait élargissement du corridor. L'autre itinéraire de référence suit le même tracé, à l'exception d'un nouveau tronçon de corridor qui contournerait le parc national Pukaskwa.



NOUS SOUHAITONS CONNAÎTRE VOS COMMENTAIRES!

Nous désirons poursuivre la conversation entamée avec vous en mars, lors de notre première série de haltes-information, pour vous parler des avantages concrets que notre projet représente pour vous. Nous tiendrons plusieurs séances d'information publique le long de l'itinéraire proposé pour vous en dire plus sur le processus d'EE, faire le point sur le projet et recueillir vos commentaires.

POUR D'AUTRES RENSEIGNEMENTS, N'HÉSITEZ PAS À NOUS CONTACTER ::

Stephanie Hodsoll
Hydro One Community Relations
Tel: 1-877-345-6799
Email: Community.Relations@HydroOne.com

JOIGNEZ-VOUS À NOUS :

Lundi 11 juin 2018

Thunder Bay
17 h - 19 h 30
Valhalla Inn - Salle Viking
1 Valhalla Inn Road

Nipigon
17 h - 19 h 30
Légion royale canadienne
Filiale 32
102, 5^e Rue

Mardi 21 juin 2018

Red Rock
12 h - 14 h
Légion royale canadienne
Filiale 226
43, rue Salls

Dorion
17 h - 19 h 30
Centre communautaire
175 Dorion Loop Road

Terrace Bay
17 h - 19 h 30
Centre culturel
13, avenue Selkirk

Mercredi 13 juin 2018

Schreiber
17 h - 19 h 30
Gymnase municipal
204, rue Alberta

Marathon
14 h - 17 h
Marathon Centre Mall
2 Hemlo Drive

Jeudi 14 juin 2018

White River
17 h - 19 h 30
Centre communautaire
6, rue Winnipeg

Wawa
17 h - 19 h 30
Légion royale canadienne
Filiale 429
51, avenue Broadway

CROLL Elise

From: HOPPER Bruce
Sent: Wednesday, May 02, 2018 6:23 PM
To: adam.wright@ontario.ca
Cc: andrew.evers@ontario.ca; STAITE Patricia
Subject: Hydro One -Lake Superior Link Project -Draft Notice of Commencement of Terms of Reference
Attachments: LSL-Draft-NoCToR 2018 05 02.docx

Hi Adam,

Please find attached a draft Notice of Commencement (NoC) of Terms of Reference for Hydro One's Lake Superior Link project. We would like to request an expeditious review of this draft notice by the Ministry of Environment and Climate Change (MOECC). We will be happy to consider any comments the MOECC may have. Please note that the dates, times and venues of the Community Information Centres may change before finalizing this notice as we are currently securing venues.

Please feel free to contact me with any questions.

Sincerely,

Bruce Hopper
Environmental Planner
Environmental Services
Hydro One Networks Inc.
416-779-0257
bruce.hopper@hydroone.com

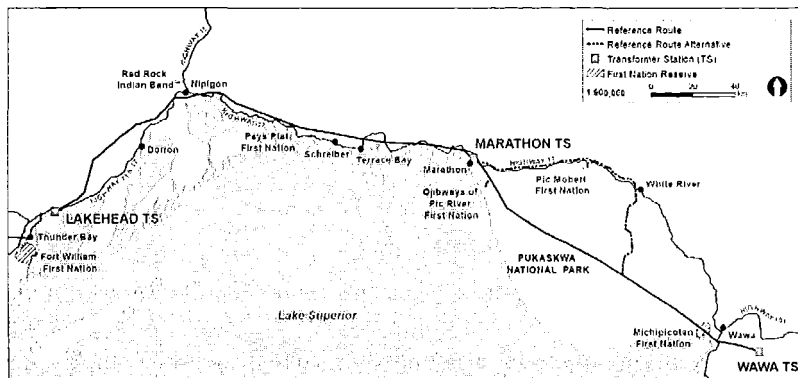
NOTICE OF COMMENCEMENT OF TERMS OF REFERENCE

Lake Superior Link Project

Hydro One Networks Inc.

Hydro One Networks Inc. (Hydro One) is initiating an Environmental Assessment (EA) under the *Environmental Assessment Act* for the Lake Superior Link project. The Independent Electricity System Operator's (IESO) Updated Assessment of the Need for the East-West Tie Expansion, 2017 states that a new transmission line "...continues to be the recommended alternative to maintaining a reliable and cost-effective supply of electricity in Northwestern Ontario for the long term." This project is required to ensure an adequate, safe, reliable and affordable supply of power to enable future growth and development in northern Ontario. The EA will consider two route alternatives for a new 400 km, double-circuit 230 kilovolt transmission line between Lakehead Transformer Station (TS) near Thunder Bay and Wawa TS near Wawa, as shown on the map. The reference route generally parallels Hydro One's existing East-West Tie transmission corridor.

In March 2018, Hydro One hosted public information drop-ins along the project route to provide initial opportunities for stakeholders to learn more about the project, meet the project team and provide feedback. Hydro One is aware of the extensive consultation already completed on the new line to date, and will make best efforts to streamline consultation wherever possible. This includes continued consideration of a regulatory measure to meet EA obligations avoiding duplication of study and consultation already completed. Concurrently, the Individual EA process will commence.



The planning process

This EA will be carried out in accordance with the requirements of the Ontario *Environmental Assessment Act*. The first step is the preparation of a Terms of Reference (ToR) which will set out the framework and work plan for addressing *Environmental Assessment Act* requirements when preparing the EA, including an outline of the studies and consultation activities that will be carried out. Important elements of this work will be to evaluate the alternative route, assess potential effects and determine measures to reduce or mitigate these effects.

The anticipated completion date for the ToR is July 2018, at which point it will be submitted to the Minister of the Environment and Climate Change for review and approval. If approved by the Minister, the EA will proceed as outlined in the ToR.

Consultation

Indigenous communities, government agencies, municipal officials, members of the public and other interested persons are encouraged to actively participate in the planning process, including in the development of the ToR. Consultation and engagement opportunities will be organized throughout the planning process and communicated via community newspapers advertisements, mailings and on the project website. Members of Hydro One's project team are always available to discuss the project with interested parties.

We will be hosting another round of Community Information Centres as outlined below to provide a project update and continue discussions about delivering tangible benefits to communities in the project area.

Please join us:

Monday, June 11, 2018

Red Rock
12 P.M. – 2 P.M.
Red Rock Public Library
42 Salls Street

Nipigon
5 P.M. – 7:30 P.M.
Royal Canadian Legion
Branch 32
102 5th Street

Dorlon
5 P.M. – 7:30 P.M.
Dorlon Community Centre
175 Dorlon Loop Road

Tuesday, June 12

Thunder Bay
5 P.M. – 7:30 P.M.
Current River Community
Centre
450 Dewe Ave, Thunder Bay

Terrace Bay
5 P.M. – 7:30 P.M.
Terrace Bay Cultural
Centre
13 Selkirk Avenue

Wednesday, June 13

Schreiber
5 P.M. – 7:30 P.M.
Schreiber Municipal Gym
204 Alberta Street

Marathon
2 P.M. – 7 P.M.
Marathon Centre Mall
2 Hemlo Drive

Thursday, June 14

White River
5 P.M. – 7:30 P.M.
Royal Canadian Legion
Branch 169
108 Winnipeg Street

Wawa
5 P.M. – 7:30 P.M.
Royal Canadian Legion
Branch 429
51 Broadway Avenue

Information gathered at these Community Information Centres will be used both to complete the ToR and to gather information toward completion of the EA.

For further information about this project, please contact:

Bruce Hopper, Environmental Planner
Hydro One Networks Inc.
T: 1-877-345-6799 F: 416-345-6984
E: Community.Relations@HydroOne.com

Website : www.HydroOne.com/LakeSuperiorLink



All personal information in a submission - such as name, address, telephone number and property location - is collected, maintained, and disclosed by the Ministry of the Environment and Climate Change for the purpose of transparency and consultation. The information is collected under the authority of the *Environmental Assessment Act*, or is collected and maintained for the purpose of creating a record that is available to the general public, as described in s. 37 of the *Freedom of Information and Protection of Privacy Act*. Personal information you submit will become part of a public record that is available to the general public unless you request that your personal information remain confidential. For more information, please contact the Ministry of the Environment and Climate Change's Freedom of Information and Privacy Coordinator at 416-327-1434.

UNDERTAKING – JT 2.2

Undertaking

Hydro One to provide a summary of their comments regarding the proposed environmental assessment schedule, if MOECC agrees to disclose.

Response

Meetings to date have taken place between August 23, 2017 and March 26, 2018 and included MOECC and Hydro One staff. Some of these meetings also included representatives from Ministry of Energy (MoE) and Ministry of Natural Resources and Forestry (MNR). A chronology of key meetings, verbal discussions, and correspondence is included below. It should be noted that MOECC has not reviewed or endorsed Hydro One's Draft Meeting Minutes but has reviewed and input into the following summary:

Date	Summary of Meeting or Correspondence
August 23, 2017	<p>Teleconference with MOECC/Hydro One/SNC Lavalin: (Attachment 1 – Agenda and Hydro One draft meeting minutes)</p> <ul style="list-style-type: none"> Hydro One's draft meeting minutes not circulated to MOECC. MOECC advised Hydro One that any discussions would be considered part of public record relating to the active NextBridge EA submission; at that time Hydro One's consideration of filing a Leave to Construct application was confidential. Therefore, Hydro One chose not to provide meeting minutes to MOECC for review and endorsement. MOECC was clear they could not share any details of the NextBridge EA submission that were not currently in the public domain. Hydro One was advised by MOECC that, in cases where a third party proponent carries out the project post-EA, there is no issue with use of the original party's approved EA, so long as the third party is carrying out the undertaking as per that approved EA Hydro One indicated changes to the route in the NextBridge EA were proposed Straight reliance on the NextBridge EA as an option was dismissed on this basis MOECC advised Hydro One that the nature of changes that Hydro One proposed to the NextBridge undertaking would determine whether an amending procedure was possible should Hydro One become the proponent MOECC recommended Hydro One evaluate any amending procedures in the NextBridge EA, as the nature of amending procedures referenced

Date	Summary of Meeting or Correspondence
	<p>could also affect the ability to amend an EA. MOECC also advised that final amending procedure could change as part of a Minister's decision.</p> <ul style="list-style-type: none"> Hydro One agreed to provide a two page overview describing its proposal, especially aspects differing from the most current publicly available NextBridge EA document MOECC agreed to a subsequent meeting in early September
September 6, 2017	<p>Teleconference with MOECC/MoE/Hydro One/SNC Lavalin (Attachment 2)</p> <ul style="list-style-type: none"> Hydro One's draft meeting minutes not circulated to MOECC. MOECC advised Hydro One that any discussions would be considered part of public record relating to the active NextBridge EA submission. Therefore, Hydro One chose not to provide meeting minutes to MOECC for review and endorsement. MOECC re-iterated that they could not speak to the NextBridge East-West tie file specifically as the EA was currently before the Minister for a decision General discussions took place regarding the nature of what would likely be considered "significant" scope changes MOECC indicated that generally a new undertaking by a new proponent would require a Terms of Reference, however, there could be flexibility in the form of a Ministerial exemption or other solution MOECC indicated that more information would be required in order to provide additional guidance to Hydro One regarding EAA requirements\
October 31, 2017	<p>Correspondence from Hydro One to MOECC – (Attachment 3)</p> <ul style="list-style-type: none"> Hydro One provided more detail to MOECC regarding its proposed project At that time Hydro One was considering two route changes, both to follow the existing Hydro One corridor; one through Pukaskawa Provincial Park and the second through the Dorion area; (currently only one deviation proposed) Hydro One referenced the two previous meetings and indicated that they would "appreciate the opportunity to discuss and establish a process for such an EA amendment with MOECC staff at their earliest convenience".
November 14, 2017	<p>Correspondence from MOECC to Hydro One – (Attachment 4)</p> <ul style="list-style-type: none"> MOECC acknowledged the October 31, 2017 Hydro One correspondence MOECC indicated that, based on the information to date, it was unlikely that an amendment provision in the proposed NextBridge EA would accommodate Hydro One's proposed changes to the project, as it would be considered a new undertaking for purposes of the EAA Hydro One was encouraged to work with NextBridge to seek alternative

Date	Summary of Meeting or Correspondence
	approaches
November 23 and 27, 2017	<p>Verbal conversations between Hydro One and MOECC</p> <ul style="list-style-type: none"> Hydro One and MOECC have not agreed on specifics of these verbal conversations
January 10, 2018	<p>Email from Hydro One to MOECC – Attachment 5</p> <ul style="list-style-type: none"> MOECC was advised that consultation had begun with MNRF regarding the LSL project (note MNRF deck generally the same as that included as Attachment 7)
January 11, 2018	<p>Email from MOECC to Hydro One – (Attachment 6)</p> <ul style="list-style-type: none"> MOECC responded to Hydro One’s January 10, 2018 email requesting scheduling a dedicated meeting to discuss Hydro One proposal and suggested MoE and MNRF staff also be invited as part of the pre-submission consultation process
February 2, 2018	<p>In person meeting with Hydro One, MOECC, MoE, MNRF</p> <ul style="list-style-type: none"> Meeting purpose was for Hydro One to provide Presentation regarding LSL project – Attachment 7 MNRF expressed disappointment that the route through Dorion was no longer being considered by Hydro One, given the significant reduction in environmental impacts MoE re-iterated that the OEB designation process left the door open for other transmitters Options were discussed including: NextBridge could agree to amend their EA in partnership with Hydro One to change the preferred undertaking to go through the park; Hydro One could complete the required individual EA; some type of Ministerial exemption or declaration order (with Cabinet concurrence) could be sought by Hydro One
February 16, 2018 (two e-mails)	<p>Emails from Hydro One to MOECC – (Attachment 8)</p> <ul style="list-style-type: none"> Hydro One notified MOECC of filing of its Section 92 application for the LSL project and that public drop-in sessions were planned for March 2018 Hydro One requested further discussions regarding likely processes associated with EAA obligations
February 22, 2018	<p>Email from Hydro One to MOECC – (Attachment 9)</p> <ul style="list-style-type: none"> Hydro One notified MOECC that they were moving forward with additional consultation and technical studies to contribute to fulfilling EAA obligations for the LSL project Hydro One requested the consultation contact list that was prepared by NextBridge as part of the EA submission in order to engage the same stakeholders that had been consulted throughout the development phase

Date	Summary of Meeting or Correspondence
	of the project
March 8, 9, 2018	<p>Emails (Attachment 10)</p> <p>From Hydro One to MOECC:</p> <ul style="list-style-type: none"> Hydro One notified MOECC of dates of drop-in information sessions for LSL Hydro One notified MOECC that the Minister of Energy had delegated the Duty to Consult on the LSL project to Hydro One <p>Email from MOECC to Hydro One:</p> <ul style="list-style-type: none"> MOECC acknowledged receipt of the March 8 email and offered to set up time to discuss the following week. Also mentioned that the Ministry of Energy would join this meeting when scheduled.
March 16, 2018	<p>Correspondence from MOECC to Hydro One – (Attachment 11)</p> <ul style="list-style-type: none"> MOECC requested Hydro One to clarify to all those who received a March 14, 2018 letter to Common Voice Northwest regarding “finalizing” a regulatory measure indicating that MOECC is not currently working on a regulatory measure to allow use of the currently unapproved Nextbridge EA
March 26, 2018	<p>In person meeting between MOECC, MoE, and Hydro One</p> <ul style="list-style-type: none"> Agenda provided by Hydro One – (Attachment 12) Minutes not yet finalized (Hydro One Draft minutes provided Attachment 13) MOECC revised the Hydro One proposed minutes and MoE concurred with the revision to the Hydro One proposed minutes (received by e-mail on April 10, as referenced below) verify that: <ul style="list-style-type: none"> Seeking an exemption/declaration is an option available to any proponent; Hydro One concurs with this MOECC indicated that they are not prepared to discuss an approach that involves Hydro One using the NextBridge EA to seek an exemption because it is currently in the comment period for the Amended EA and does not currently have any legal standing as no Minister’s decision has been made MOECC noted that on other projects declaration orders have been used and noted that it is open to Hydro One to pursue these regulatory options; examples of other projects were discussed
April 10, 2018	<p>Correspondence from MOECC to Hydro One – (Attachment 14)</p> <ul style="list-style-type: none"> MOECC provided comments on the meeting minutes from March 26, 2018 MOECC reiterated that, based on information provided to date, the LSL project is considered a new undertaking

Date	Summary of Meeting or Correspondence
	<ul style="list-style-type: none"> MOECC re-iterated that if Hydro One chooses to pursue an alternative regulatory mechanism instead of an Individual EA, they should refer to the Ministry website for additional information
April 19, 2018	<p>Correspondence from Hydro One to MOECC and to Common Voice Northwest (copied to MOECC and other parties) – (Attachment 15)</p> <ul style="list-style-type: none"> Hydro One clarified language in its March 14, 2018 letter Hydro One indicated that the statement regarding “finalizing” a regulatory measure was intended to reference meetings and discussion that have occurred between hydro One and MOECC staff regarding options available to meet EAA obligations for the LSL project and was not to suggest that such a measure was approved or in place
April 20, 2018	<p>Correspondence from MOECC to Hydro One (copied to other parties who were included in the Common Voice Northwest letter) – (Attachment 16)</p> <ul style="list-style-type: none"> MOECC confirms that they are not working on a regulatory measure with Hydro One MOECC indicates that the LSL project is considered a new undertaking for the purposes of the EAA and to initiate the individual EA process a Notice of Commencement for the Terms of Reference is required
April 25, 2018	<p>Correspondence from Hydro One to MOECC (copied to other parties who were included in the Common Voice Northwest letter) – (Attachment 17)</p> <ul style="list-style-type: none"> Hydro One describes more specifically discussions with MOECC regarding the process for seeking a Declaration Order and provides Hydro One’s rationale for a declaration order
May 2, 2018	<p>Submitted Notice of Commencement (NOC) for a TOR for an Individual EA to MOECC (Attachment 18)</p>
May 10, 2018	<p>Received initial comments on NOC from MOECC (Attachment 19)</p> <ul style="list-style-type: none"> Hydro One adds in the NOC that it will concurrently initiate the ToR and the EA
May 17, 2018	<p>Received final comment on NOC from MOECC (attachment 20)</p> <ul style="list-style-type: none"> MOECC indicated that Hydro One’s proposal to concurrently initiate the ToR and EA would be presupposing the outcome of the Minister’s decision on the Terms of Reference. In addition, it may cause confusion for the public, Indigenous communities and agencies during the required ToR and EA consultation milestones

ATTACHMENT 19

From: [Wright, Adam \(MOECC\)](#)
To: [HOPPER Bruce](#)
Cc: [Evers, Andrew \(MOECC\)](#); [STAITE Patricia](#)
Subject: RE: Hydro One -Lake Superior Link Project -Draft Notice of Commencement of Terms of Reference
Date: Thursday, May 10, 2018 1:39:57 PM
Attachments: [LSL-Draft-NoCToR 2018 05 02 AE.docx](#)

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Hello Bruce,

Please see the attached document with MOECC's suggested revisions to the Notice of Commencement for a Terms of Reference for Hydro One's proposed Lake Superior Link project.

If you have any questions or would like to discuss further please do let me know.

Cheers,

Adam

From: Wright, Adam (MOECC)
Sent: May 4, 2018 8:47 AM
To: Bruce.Hopper@HydroOne.com
Cc: Evers, Andrew (MOECC); patricia.staite@HydroOne.com
Subject: RE: Hydro One -Lake Superior Link Project -Draft Notice of Commencement of Terms of Reference

Hello Bruce,

Thank you for your email, I have received the Notice of Commencement for a Terms of Reference for Hydro One's proposed Lake Superior Link project and will review and provide comments by early next week.

Until that time, if you have any questions please do let me know.

Cheers,

Adam

From: Bruce.Hopper@HydroOne.com [Bruce.Hopper@HydroOne.com]
Sent: May 2, 2018 6:22 PM
To: Wright, Adam (MOECC)
Cc: Evers, Andrew (MOECC); patricia.staite@HydroOne.com
Subject: Hydro One -Lake Superior Link Project -Draft Notice of Commencement of Terms of Reference

Hi Adam,

Please find attached a draft Notice of Commencement (NoC) of Terms of Reference for Hydro One's Lake Superior Link project. We would like to request an expeditious review of this draft notice by the Ministry of Environment and Climate Change (MOECC). We will be happy to consider any comments the MOECC may have. Please note that the dates, times and venues of the Community Information Centres may change before finalizing this notice as we are currently securing venues.

Please feel free to contact me with any questions.

Sincerely,

Bruce Hopper
Environmental Planner
Environmental Services
Hydro One Networks Inc.
416-779-0257
bruce.hopper@hydroone.com<<mailto:bruce.hopper@hydroone.com>>

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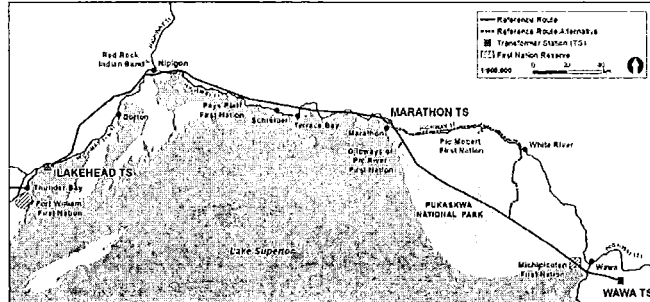
NOTICE OF COMMENCEMENT OF TERMS OF REFERENCE

Lake Superior Link Project

Hydro One Networks Inc.

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In March 2018, Hydro One hosted public information drop-ins along the project route to provide initial opportunities for stakeholders to learn more about the project, meet the project team and provide feedback. Hydro One is aware of the extensive consultation already completed on the new line-to-date, and will make a best effort to streamline consultation wherever possible. This includes continued consideration of a regulatory measure to meet EA obligations avoiding duplication of study and consultation already completed. Concurrently, the individual EA process will commence.



Comment [1]: As this is a new undertaking under the Act (EAA) MOECC suggests removing this text as there should be no link to the East West Tie project

The planning process

This EA will be carried out in accordance with the requirements of the Ontario *Environmental Assessment Act*. The first step is the preparation of a Terms of Reference (ToR) which will set out the framework and work plan for addressing *Environmental Assessment Act* requirements when preparing the EA, including an outline of the studies and consultation activities that will be carried out. Important elements of this work will be to evaluate the alternative route, assess potential effects and determine measures to reduce or mitigate these effects.

The anticipated completion date for the ToR is July 2018, at which point it will be submitted to the Minister of the Environment and Climate Change (Minister) for review and decision approval. If approved by the Minister, the EA will proceed as outlined in the ToR.

Consultation

Indigenous communities, government agencies, municipal officials, members of the public and other interested persons are encouraged to actively participate in the planning process, including in the development of the ToR. Consultation and engagement opportunities will be organized throughout the planning process and communicated via community newspapers advertisements, mailings and on the project website. Members of Hydro One's project team are always available to discuss the project with interested parties.

We will be hosting another round of Community Information Centres as outlined below to provide a project update and continue discussions about delivering tangible benefits to communities in the project area

Please join us:

Monday, June 11, 2018	Tuesday, June 12	Wednesday, June 13	Thursday, June 14
Red Rock 12 P.M. – 2 P.M. Red Rock Public Library 42 Salls Street	Thunder Bay 5 P.M. – 7:30 P.M. Current River Community Centre 450 Dewe Ave, Thunder Bay	Schreiber 5 P.M. – 7:30 P.M. Schreiber Municipal Gym 204 Alberta Street	White River 5 P.M. – 7:30 P.M. Royal Canadian Legion Branch 169 108 Winnipeg Street
Nipigon 5 P.M. – 7:30 P.M. Royal Canadian Legion Branch 32 102 5th Street	Terrace Bay 5 P.M. – 7:30 P.M. Terrace Bay Cultural Centre 13 Selkirk Avenue	Marathon 2 P.M. – 7 P.M. Marathon Centre Mall 2 Hemlo Drive	Wawa 5 P.M. – 7:30 P.M. Royal Canadian Legion Branch 429 51 Broadway Avenue
Dorion 5 P.M. – 7:30 P.M. Dorion Community Centre 175 Dorion Loop Road			

Information gathered at these Community Information Centres will be used both to complete the ToR and to gather information toward completion of the EA.

For further information about this project, please contact:

Bruce Hopper, Environmental Planner
Hydro One Networks Inc.
T: 1-877-345-6799 F: 416-345-6984
E: Community.Relations@HydroOne.com
Website: www.HydroOne.com/LakeSuperiorLink



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Comment [2]: Does Hydro One intend to submit a draft ToR? If not, the MOECC recommends this.

If Hydro One does intend to submit a draft ToR this should be clarified in the notice. Also, MOECC suggests not including a date for a draft ToR as timelines may shift due to concerns raised by project stakeholders, etc. In lieu of this Hydro One could provide a more broad timeline (e.g. summer of 2018)

ATTACHMENT 20

From: [Wright, Adam \(MOECC\)](#)
To: [HOPPER Bruce](#)
Cc: [Evers, Andrew \(MOECC\)](#); [HAULENA Adam](#); [STAITE Patricia](#)
Subject: RE: Hydro One -Lake Superior Link Project -Draft Notice of Commencement of Terms of Reference
Date: Thursday, May 17, 2018 4:09:04 PM
Attachments: [LSL-Draft-NoCToR 2018 05 14 EAPB.docx](#)

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Hello Bruce,

Thank you for the revised draft version of the Notice of Commencement (NoC) for the proposed Lake Superior Link project. As indicated in your previous email and in the draft NoC, Hydro One is planning to concurrently undertake the Terms of Reference and the Environmental Assessment for the proposed Lake Superior Link project. It is the Ministry's position that the NoC for the terms of reference should not reference the commencement of the environmental assessment.

As you know, the Environmental Assessment Act provides in ss. 6.1(1) that an environmental assessment for an undertaking must be done in accordance of an approved terms of reference. To begin your environmental assessment before you have obtained an approved terms of reference is presupposing the outcome of the Minister's decision on the terms of reference and is completed with a risk that any work that you have undertaken as part of your environmental assessment may need to be redone or additional work may need to be completed. It may also cause confusion for the public, Indigenous communities, and agencies during the required consultation milestones.

Section 4 of the *Codes of Practice: Environment Assessment Process, submission and evaluation* notes that the environmental assessment must be prepared in accordance with the approved terms of reference and as such once a proponent receives approval for a terms of reference, it can then start preparing the environmental assessment. Below I have provided specific wording taken from our Codes of Practice which provides guidance on this matter.

Section 4 - Environmental Assessment Process (excerpt from 'Codes of Practice: Environment Assessment Process, submission and evaluation')

The first step in the application for approval to proceed with an undertaking is receiving approval from the Minister for a terms of reference. The approved terms of reference sets out the proponent's work plan for addressing the legislated requirements of the *Environmental Assessment Act* when preparing the environmental assessment. Once the proponent receives approval of the terms of reference, it can start preparing the environmental assessment. The environmental assessment must be prepared in accordance with the approved terms of reference (subsection 6.1(1) of the *Environmental Assessment Act*). As the contents of each terms of reference differ, the environmental assessment that is subsequently prepared will also differ for each proposal.

We request that you remove the reference to concurrently starting the terms of reference and

environmental assessment.

If you wish to discuss further to obtain further guidance please let me know.

Regards,

Adam

-----Original Message-----

From: Bruce.Hopper@HydroOne.com [mailto:Bruce.Hopper@HydroOne.com]

Sent: May-14-18 2:40 PM

To: Wright, Adam (MOECC)

Cc: Evers, Andrew (MOECC); Adam.Haulena@HydroOne.com; patricia.staite@HydroOne.com

Subject: RE: Hydro One -Lake Superior Link Project -Draft Notice of Commencement of Terms of Reference

Hi Adam,

We have reviewed the MOECC's comments of the draft Notice of Commencement. Attached is our latest version.

We have added some brief details around the reference route and reference route alternative, as the MOECC suggested. We will be providing a draft of the ToR and I've adjusted the language around that. The dates of the CICs have been altered to reflect current status.

We've kept the sentence acknowledging the preexisting consultation on the reference route alternative. We are concerned it would be disingenuous to the public to not acknowledge the extensive consultation that has already taken place. There is a concern that there may be the perception that what was raised during that consultation was being disregarded. That's not the case.

Feel free to provide any further comments or give me a call to discuss. We are aiming to have this translated and to the newspapers end of this week for publishing the week of May 28th in preparation for the CIC's the week of June 11.

Thank you,

Bruce Hopper
Environmental Planner
Environmental Services
Hydro One Networks Inc.
416-779-0257
bruce.hopper@hydroone.com

-----Original Message-----

From: Wright, Adam (MOECC) [mailto:Adam.Wright@ontario.ca]
Sent: Thursday, May 10, 2018 1:40 PM
To: HOPPER Bruce
Cc: Evers, Andrew (MOECC); STAITE Patricia
Subject: RE: Hydro One -Lake Superior Link Project -Draft Notice of Commencement of Terms of Reference

*** Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

Hello Bruce,

Please see the attached document with MOECC's suggested revisions to the Notice of Commencement for a Terms of Reference for Hydro One's proposed Lake Superior Link project.

If you have any questions or would like to discuss further please do let me know.

Cheers,

Adam

From: Wright, Adam (MOECC)
Sent: May 4, 2018 8:47 AM
To: Bruce.Hopper@HydroOne.com
Cc: Evers, Andrew (MOECC); patricia.staite@HydroOne.com
Subject: RE: Hydro One -Lake Superior Link Project -Draft Notice of Commencement of Terms of Reference

Hello Bruce,

Thank you for your email, I have received the Notice of Commencement for a Terms of Reference for Hydro One's proposed Lake Superior Link project and will review and provide comments by early next week.

Until that time, if you have any questions please do let me know.

Cheers,

Adam

From: Bruce.Hopper@HydroOne.com [Bruce.Hopper@HydroOne.com]
Sent: May 2, 2018 6:22 PM
To: Wright, Adam (MOECC)

Cc: Evers, Andrew (MOECC); patricia.staite@HydroOne.com

Subject: Hydro One -Lake Superior Link Project -Draft Notice of Commencement of Terms of Reference

Hi Adam,

Please find attached a draft Notice of Commencement (NoC) of Terms of Reference for Hydro One's Lake Superior Link project. We would like to request an expeditious review of this draft notice by the Ministry of Environment and Climate Change (MOECC). We will be happy to consider any comments the MOECC may have. Please note that the dates, times and venues of the Community Information Centres may change before finalizing this notice as we are currently securing venues.

Please feel free to contact me with any questions.

Sincerely,

Bruce Hopper

Environmental Planner

Environmental Services

Hydro One Networks Inc.

416-779-0257

bruce.hopper@hydroone.com<mailto:bruce.hopper@hydroone.com>

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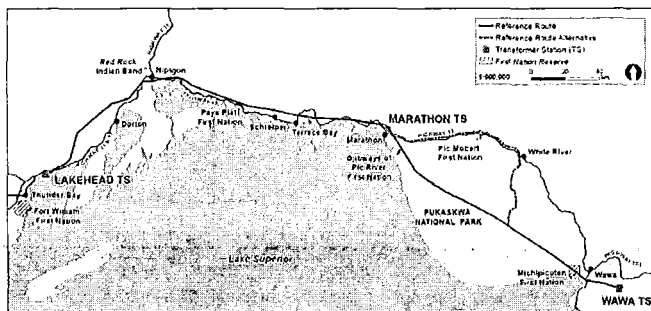
NOTICE OF COMMENCEMENT OF TERMS OF REFERENCE

Lake Superior Link Project

Hydro One Networks Inc.

Hydro One Networks Inc. (Hydro One) is initiating an Environmental Assessment (EA) under the *Environmental Assessment Act* for the proposed Lake Superior Link project. The Independent Electricity System Operator's (IESO) *Updated Assessment of the Need for the East-West Tie Expansion, 2017* states that a new transmission line "...continues to be the recommended alternative to maintaining a reliable and cost-effective supply of electricity in Northwestern Ontario for the long term." The EA will consider two route alternatives for a new 400 km, double-circuit 230 kilovolt transmission line between Lakehead Transformer Station (TS) near Thunder Bay and Wawa TS near Wawa, as shown on the map. The reference route generally parallels Hydro One's existing East-West Tie transmission corridor with the exception of a new section of corridor near Dorion and a section through Pukaskwa National Park where existing infrastructure would be modified. The reference route alternative generally parallels Hydro One's existing East-West Tie transmission corridor with the exception of a new corridor section near Dorion and a section that traverses around Pukaskwa National Park.

In March 2018, Hydro One hosted public information drop-ins along the project route to provide initial opportunities for stakeholders to learn more about the Lake Superior Link project, meet the project team and provide feedback. Hydro One is aware of the extensive consultation already completed on the reference route alternative and will make best efforts to streamline consultation and studies whenever possible. Hydro One is initiating the Terms of Reference (ToR) and EA concurrently.



The planning process

This EA will be carried out in accordance with the requirements of the Ontario *Environmental Assessment Act*. The first step is the preparation of a ToR which will set out the framework and work plan for addressing *Environmental Assessment Act* requirements when preparing the EA, including an outline of the studies and consultation activities that will be undertaken. Important elements of this work will be to evaluate the reference route and reference route alternative, assess potential effects and determine measures to reduce or mitigate these effects.

A draft ToR will be made available for review and comment during early summer 2018. Hydro One anticipates that the ToR will be completed mid-summer 2018, at which point it will be submitted to the Minister of the Environment and Climate Change (Minister) for review and decision. If approved by the Minister, the EA will proceed as outlined in the ToR.

Consultation

Indigenous communities, government agencies, municipal officials, members of the public and other interested persons are encouraged to actively participate in the planning process. Consultation and engagement opportunities will be organized throughout the planning process and communicated via community newspapers advertisements, mailings and on the project website. Members of Hydro One's project team are always available to discuss the project with interested parties.

We will be hosting another round of Community Information Centres as outlined below to provide a project update and continue discussions about delivering tangible benefits to communities in the project area.

Please join us:

Monday, June 11, 2018	Tuesday, June 12	Wednesday, June 13	Thursday, June 14
Thunder Bay 5 p.m. – 7:30 p.m. Valhalla Inn – Viking Room 1 Valhalla Inn Road	Red Rock 12 p.m. – 2 p.m. Red Rock Public Library 42 Sals Street	Schreiber 5 p.m. – 7:30 p.m. Schreiber Municipal Gym 204 Alberta Street	White River 5 p.m. – 7:30 p.m. White River Community Centre 6 Winnipeg Street
Nipigon 5 p.m. – 7:30 p.m. Royal Canadian Legion Branch 32 102 5th Street	Dorion 5 p.m. – 7:30 p.m. Dorion Community Centre 175 Dorion Loop Road	Marathon 2 p.m. – 7 p.m. Marathon Centre Mall 2 Hemlo Drive	Wawa 5 p.m. – 7:30 p.m. Royal Canadian Legion Branch 429 51 Broadway Avenue
	Terrence Bay 5 p.m. – 7:30 p.m. Terrence Bay Cultural Centre 13 Selkirk Avenue		

Information gathered at these Community Information Centres will be used both to complete the ToR and to gather information toward completion of the EA.

For further information about this project, please contact:

Bruce Hopper, Environmental Planner
 Hydro One Networks Inc.
 T: 1-877-345-6799 F: 416-345-6984
 E: CommunityRelations@HydroOne.com
 Website: www.HydroOne.com/LakeSuperiorLink



Comment [1]:

Remove from Notice – please see below.

Codes of Practice: Environment Assessment Process, submission and evaluation

Section 4 - Environmental Assessment Process

The first step in the application for approval to proceed with an undertaking is receiving approval from the Minister for a terms of reference.

The approved terms of reference sets out the proponent's work plan for addressing the legislated requirements of the *Environmental Assessment Act* when preparing the environmental assessment.

Once the proponent receives approval of the terms of reference, it can start preparing the environmental assessment. The environmental assessment must be prepared in accordance with the approved terms of reference (subsection 6.1(1) of the *Environmental Assessment Act*).

As the contents of each terms of reference differ, the environmental assessment that is subsequently prepared will also differ for each proposal.

"6.1 (1) The proponent shall prepare an environmental assessment for an undertaking in accordance with the approved terms of reference. 1996, c. 27, s. 3."

TAB 22

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 *OEB 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 *OEB Act* for an Order granting approval of the forms of the agreement offered or to be offered to affected landowners;

AND IN THE MATTER OF a motion by NextBridge Infrastructure for an order dismissing Hydro One Networks Inc.'s application for leave to construct.

EVIDENCE OF THE INTERVENOR
MINISTRY OF THE ENVIRONMENT AND CLIMATE CHANGE ("MOECC")

MOECC takes no position on this motion or on Hydro One's application.

MOECC has intervened in this motion to provide assistance to the Board on two issues which the Board raised in the notice of hearing for the motion:

- **Issue 1f:** What is the status of discussions between Hydro One and the Ministry of the Environment and Climate Change regarding any exemption to *Environmental Assessment Act* ("EAA") requirements?
- **Issue 2g:** Can NextBridge's environmental assessment work on the East-West Tie line project be used by Hydro One for the purposes of complying with EAA requirements?

MOECC's evidence regarding these two issues has been prepared by Annamaria Cross and Andrew Evers, with the assistance of relevant MOECC staff. Ms. Cross and Mr. Evers will both be available to answer questions at the technical conference on May 16-17.

Ms. Cross has been Manager of MOECC's Environmental Assessment Services Section of the Environmental Assessment Permissions Branch since November 2012. She manages a team that works on environmental assessment projects including class

environmental assessments and individual environmental assessments. As manager, one of her duties is to hold pre-submission meetings with proponents. The purpose of these meetings is to gain an understanding of the proposed project so that she and her team can advise potential proponents of *EAA* requirements.

Mr. Evers is a Supervisor with the Environmental Assessment Services Section, Environmental Assessment and Permissions Branch. Mr. Evers joined the MOECC in March 2014. He manages a team that leads the review of individual environmental assessments and provides regulatory guidance to proponents based on the requirements of the *EAA* and its regulations. He is currently the Supervisor for the staff person assigned to NextBridge's proposed East-West Tie project (since September 2017) and Hydro One's proposed Lake Superior Link project (since discussions began in October 2017).

ISSUE 1F

What is the status of discussions between Hydro One and MOECC regarding any exemption to *EAA* requirements?

On November 14, 2017, MOECC advised Hydro One that the proposed Lake Superior Link project is likely a new undertaking for the purpose of the *EAA*. This is because of the extent of the difference in route alignment between NextBridge's preferred route for the East-West Tie line and the route alignment proposed by Hydro One. As such, the *EAA* requires Hydro One to conduct an individual environmental assessment for the Lake Superior Link.

Hydro One also has the option of pursuing an alternative to an individual environmental assessment, either a declaration order or an exempting regulation. The power to issue a declaration order lies with the Minister of Environment and Climate Change, with the approval of the Lieutenant Governor in Council ("LGIC"). The power to issue an exempting regulation lies with the LGIC.

To initiate the individual environmental assessment process for the Lake Superior Link, Hydro One is required to submit a Notice of Commencement of Terms of Reference to the Director of the Environmental Assessment and Permissions Branch. Hydro One submitted a draft Notice of Commencement of Terms of Reference for the Lake Superior Link on May 2, 2018.

MOECC has referred Hydro One to information relating to declaration orders in the event that Hydro One were to choose to pursue an alternative regulatory mechanism, instead of an individual environmental assessment. Hydro One has had discussions with MOECC regarding the possibility of Hydro One pursuing a declaration order, but, to date, Hydro One has not made a request for a declaration order.

Copies of the following MOECC documents relating to environmental assessments are attached:

Attachment number	Document
1.	Environmental Assessment Process Timelines
2.	<i>Code of Practice: Preparing and Reviewing Environmental Assessments in Ontario</i> , January 2014
3.	<i>Code of Practice: Preparing and Reviewing Terms of Reference for Environmental Assessments in Ontario</i> , January 2014

We have included below, as an appendix, a summary of selected key correspondence and discussions between Hydro One and MOECC regarding the Lake Superior Link. We have also attached copies of key correspondence and meeting minutes.

ISSUE 2G

Can NextBridge's environmental assessment work on the East-West Tie line project be used by Hydro One for the purposes of complying with *Environmental Assessment Act* requirements?

As a preliminary point, we note that we are not offering any opinion whether intellectual property issues might prevent Hydro One from making use of the environmental assessment work conducted by NextBridge. Intellectual property issues are beyond our remit, and we will restrict our evidence to compliance with the *EAA*.

As noted above, because of the extent of the difference in route alignment between NextBridge's preferred route for the East-West Tie line and the route alignment proposed by Hydro One, Hydro One's proposed Lake Superior Link project is a new undertaking for the purpose of the *EAA*. As such, the *EAA* requires Hydro One to conduct an individual environmental assessment for the Lake Superior Link. As an alternative, Hydro One can pursue an alternative regulatory measure, either a declaration order or an exempting regulation.

Alternative regulatory measures

Section 3.2 of the *EAA* allows the Minister of the Environment and Climate Change, with the approval of the LGIC, to issue a declaration order exempting a proponent or undertaking or class of proponents or undertakings from all or certain requirements of the *EAA*. Section 3.2 provides that the power to issue a declaration order may be exercised "if the Minister considers that it is in the public interest to do so having regard to the purpose of this Act and weighing it against the injury, damage or interference that might be caused to any person or property by the application of this Act to the undertaking or

class.” A request for a declaration order can be made to the Director of the Environmental Assessment and Permissions Branch.

Paragraph 39(f) of the *EAA* also allows the LGIC to make a regulation “exempting any person, class of persons, undertaking or class of undertakings from this Act or the regulations or a section or portion of a section thereof and imposing conditions with respect to the exemption”.

Both declaration orders and exempting regulations can impose conditions on the exemption. Conditions can vary from simple conditions to an entirely new process.

Proposed declaration orders and exempting regulations need to be posted for comment on the Environmental Registry. Depending on the circumstances, further public and Indigenous consultation may be conducted before a decision is made to issue a declaration order or proceed with an exempting regulation.

At this time, it is premature to assess whether there are grounds to support the development of a declaration order or an exempting regulation for the Lake Superior Link project.

Status of NextBridge’s environmental assessment

NextBridge’s environmental assessment report for the East-West Tie project has not yet been reviewed or assessed by MOECC. As such, it is difficult to assess whether and to what extent NextBridge’s environmental assessment work could be used by Hydro One for the purposes of complying with *EAA* requirements, either as part of an individual environmental assessment for Hydro One’s proposed Lake Superior Link, or as part of the basis for an alternative regulatory measure.

On August 28, 2014, the Minister of Environment and Climate Change approved NextBridge’s terms of reference for the preparation of an environmental assessment for the East-West Tie line.

On February 16, 2018, NextBridge submitted an amended environmental assessment report for the East-West Tie project to MOECC. As part of the submission, there was a 30-day comment period. This comment period concluded on March 29, 2018.

MOECC staff are currently reviewing the environmental assessment report for NextBridge’s East-West Tie project. Once the Ministry has reviewed the environmental assessment, the next step in the process is to publish an MOECC review report. The publication will be followed by a five week public comment period. MOECC anticipates that it will publish the review report in the summer of 2018.

Once the MOECC review and consultation is completed, MOECC staff prepare a decision package for the Minister of the Environment and Climate Change. It is anticipated that a

decision package for NextBridge's East-West Tie project would be prepared for the Minister in late fall 2018. At that point, the Minister makes a decision on the environmental assessment and, with the approval of the Lieutenant Governor in Council, the Minister may give approval to NextBridge to proceed with the undertaking, give approval subject to conditions, or refuse to give approval.

APPENDIX

Summary of selected key correspondence and discussions between Hydro One and MOECC regarding the Lake Superior Link

Attachment number	Date	Document/ Event	Summary
4.	October 31, 2017	Letter from Hydro One to MOECC	Hydro One writes to MOECC to advise of its intention to build and operate the East-West Tie Transmission Line, but with an alignment different from NextBridge's proposal. Hydro One indicated that it is of the view that preparing a new environmental assessment is not necessary because of the similarity to NextBridge's proposal. Hydro One seeks input from MOECC regarding whether Hydro One could "adopt" NextBridge's environmental assessment.
5.	November 14, 2017	Letter from MOECC to Hydro One	MOECC indicates that it is unlikely that Hydro One would be able to use NextBridge's environment assessment and that Hydro One's proposed project would likely be considered a new undertaking for the purpose of the EAA.
No attachment	February 2, 2018	Meeting of Hydro One, Energy, MNRF, and MOECC staff	Hydro One outlines the proposed project, indicating that it would consist of a new 398 kilometre, 230 kilovolt double-circuit transmission line that would parallel the existing Hydro One tie between Lakehead Transmission Station and the Wawa Transmission Station, going through Puskwaka Park.
6.	February 16, 2018	Letter from Hydro One to MOECC	Hydro One provides project-related details regarding the proposed project, outlines the benefits, and indicates that Hydro One is planning to host a series of public information drop-in sessions in March 2018 in the project area.
7.	March 14, 2018	Letter from Hydro One	Hydro One indicates that "Hydro One is currently working with the Ministries of

Attachment number	Date	Document/ Event	Summary
		to Common Voice Northwest and copied to other stakeholders	Energy and Environment and Climate Change to finalize a regulatory measure allowing the use of relevant portions of the completed Environmental Assessment work".
8.	March 16, 2018	Letter from MOECC to Hydro One	MOECC requests that Hydro One send a letter of clarification to the recipients of Hydro One's letter of March 14, 2018, indicating that MOECC is not currently working with Hydro One to finalize a regulatory measure to allow the use of the current unapproved NextBridge environmental assessment.
9.	March 26, 2018	Meeting of Hydro One, Energy, and MOECC staff	<p>MOECC advises that based on the information provided to date, the Lake Superior Link Project would be considered a new undertaking and asks if Hydro One intends to submit a Notice of Commencement for a Terms of Reference. Hydro One notes that it does not intend to complete the individual environmental assessment process, and would be looking for a regulatory mechanism, including use of NextBridge's environmental assessment, to supplement environmental assessment requirements.</p> <p>MOECC notes that the NextBridge EA is currently in the issues-resolution phase and, as such, no decision has been made. Consequently, MOECC cannot comment if a regulatory mechanism could be pursued until a decision is made on the current amended environmental assessment for the NextBridge project.</p> <p>The declaration order process is discussed at a high level, including examples of recent projects that have gone through the process</p>

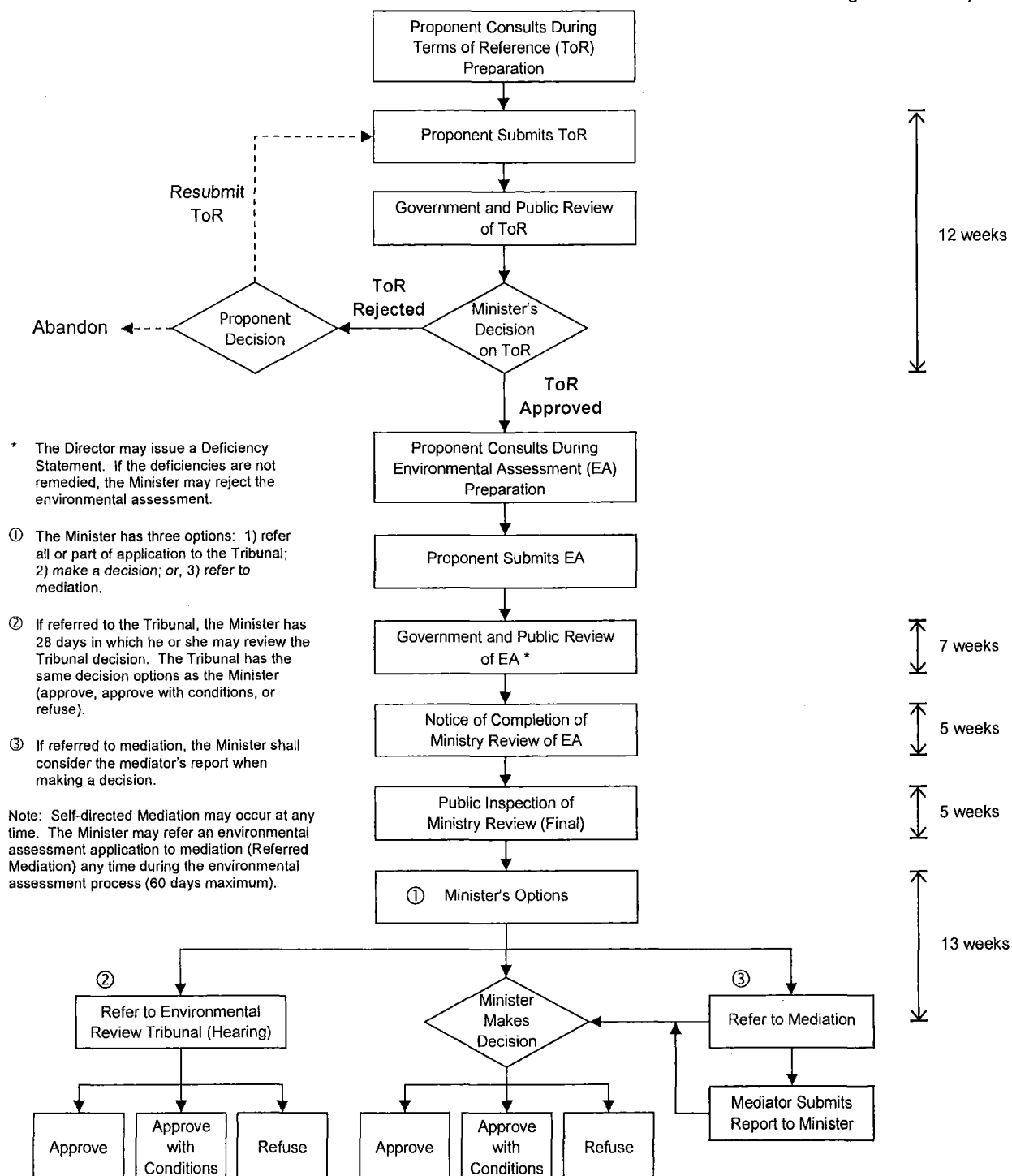
Attachment number	Date	Document/ Event	Summary
			on the basis that emergency circumstances required a declaration order.
10.	April 10, 2018	Letter from MOECC to Hydro One	MOECC provides revisions to the March 26, 2018 meeting minutes prepared by Hydro One and re-iterates that, based on information provided to date by Hydro One, Hydro One would not be able to use NextBridge's environment assessment for its project and that the project would be considered a new undertaking for the purpose of the <i>EAA</i> . MOECC provides details regarding the process to initiate terms of reference for an environmental assessment of the undertaking, and also refers Hydro One to information relating to declaration orders in the event that Hydro One were to choose to pursue an alternative regulatory mechanism, instead of an individual environmental assessment.
11.	April 19, 2018	Letter from Hydro One to Common Voice Northwest, copied to other stakeholders	Hydro One sends a letter clarifying its March 14, 2018 letter.
12.	April 20, 2018	Letter from MOECC to Hydro One, copied to Common Voice Northwest and other stakeholders	MOECC confirms that it is not working with Hydro One to finalize a regulatory measure allowing the use of relevant portions of the environmental assessment work undertaken by NextBridge and emphasizes that Hydro One's proposed Lake Superior Link project is considered a new undertaking for the purpose of the <i>EAA</i> . As such, to initiate the individual environmental assessment process, Hydro One is required to submit a Notice of Commencement for Terms of Reference to the Director of the

Attachment number	Date	Document/ Event	Summary
			Environmental Assessment and Permissions Branch.
13.	April 25, 2018	Letter from Hydro One to MOECC	<p>Hydro One indicates that it agrees that it is not in a position to finalize a regulatory mechanism for the project, but emphasizes that it has had discussions with MOECC on the option of a declaration order.</p> <p>Hydro One indicates its view that that the project is a strong candidate for a declaration order given the cost savings for the project, the potential environmental effects are expected to be minimal, and that the NextBridge EA would address the majority of the potential effects along the proposed line outside of the park.</p>
14.	May 2, 2018	Email from Hydro One to MOECC	Hydro One sends email attaching a draft Notice of Commencement of Terms of Reference for Hydro One's Lake Superior Link project.

Code of Practice: Environmental Assessments

Appendix A Environmental Assessment Process Timelines

Prescribed Deadlines (Ontario Regulation 616/98)



1 manager of the Ministry's environmental assessment service
2 section of the environmental assessment permissions branch,
3 and has been since November of 2012. And Andrew Evers, who
4 is a supervisor with the same environmental assessment
5 services section of the environmental assessment and
6 permissions branch, where he has been since March 2013.

7 MS. LEA: Thank you very much for coming here today.
8 Mr. Rubenstein, I think you are up first.

9 **MINISTRY OF THE ENVIRONMENT AND CLIMATE CHANGE -**

10 **PANEL 1**

11 **Anna Maria Cross**

12 **Andrew Evers**

13 **QUESTIONS BY MR. RUBENSTEIN:**

14 MR. RUBENSTEIN: Thank you very much, panel. I have a
15 couple of questions for you.

16 If we could turn to your evidence, attachment number
17 1, this is the environmental assessment process timeline.
18 Do you see that?

19 I was wondering if you could show me on this table
20 where Hydro One's project is currently. What box would
21 they be in?

22 MR. EVERS: So we are in between the government and
23 public review of Hydro One's project. They have just
24 submitted a notice of commencement for terms of reference.

25 MR. RUBENSTEIN: So this is the first box?

26 MR. EVERS: Yes, a draft notice of commencement for
27 the terms of reference. So they haven't quite initiated
28 the process yet.

1 MR. RUBENSTEIN: So this is -- we're not even in the
2 box as yet?

3 MS. CROSS: No.

4 MR. RUBENSTEIN: Am I correct that they provide you
5 with a draft notice, which you approve or don't approve?

6 MR. EVERS: We would review, provide comments and send
7 back to the proponent, and those comments they would
8 implement before issuing the notice of commencement.

9 MR. RUBENSTEIN: All right. Now, with respect to
10 NextBridge's project, where would they be on this?

11 MR. EVERS: NextBridge is between the government and
12 public review of the EA, and notice of completion of the
13 Ministry review of the EA.

14 MR. RUBENSTEIN: So does that...

15 MR. EVERS: So between the seven weeks and the five
16 week period.

17 MR. RUBENSTEIN: So do I take that as they have --
18 they have yet to receive their notice of completion of
19 Ministry review of EA.

20 MR. EVERS: That's correct, so we are currently
21 working on the ministerial review for the NextBridge
22 project.

23 MR. RUBENSTEIN: All right. I was wondering if you
24 have Hydro One's evidence in front of you, and if I could
25 ask you to turn to page 23 of their evidence.

26 Before it comes up, let me just sort of step back. As
27 I understand, there are essentially two routes for Hydro
28 One. One this they can go through the normal environmental

1 assessment process, and that's the table we looked at. Or
2 the second is they may seek an exemption order which, as I
3 understand it, is an order from the Lieutenant Governor-In-
4 Council -- Cabinet, essentially -- exempting them from the
5 environmental assessment process if they believe the
6 project is in the public interest. Do I have that correct?

7 MR. EVERS: Yes. So the two processes are the
8 individual environmental assessment process, or they could
9 seek a declaration order, which is correct. The
10 declaration order would exempt all or some of the
11 requirements under the Environmental Assessment Act, but
12 may also impose additional conditions that they would have
13 to follow.

14 MR. RUBENSTEIN: If we take a look at Hydro One's
15 evidence here, reading about halfway down there first
16 paragraph under section G, they say:

17 "If no exemptions such as a declaration order is
18 obtained despite the significant cost savings to
19 ratepayers and the improved environmental
20 footprint, Hydro One has the option of
21 undertaking the individual EA. Based on a review
22 of the existing term of reference, the scope
23 would be applicable to the LSL proposed route.
24 However, approval from MOECC to use the existing
25 terms of reference would be required."

26 And I understand the existing terms of reference to be
27 the NextBridge terms of reference. Is that your
28 understanding as well?

1 MR. EVERS: That is our understanding.

2 MR. RUBENSTEIN: I know you can't speak to the
3 Specifics, since obviously nothing is before you yet. But
4 just conceptually, has such a thing ever happened where one
5 proponent uses another proponent's approved terms of
6 reference?

7 MR. EVERS: Not that I'm aware of, no.

8 MR. RUBENSTEIN: Let me ask you about exemption
9 orders, or declaration orders that exempt from you the
10 environmental assessment process.

11 Has an exemption -- has a declaration order granting
12 exemption, in whole or in part, ever been sought for an
13 electricity transmission project that you're aware of?

14 MR. EVERS: Not that I'm aware of, no.

15 MR. RUBENSTEIN: Let me ask you. Over the -- you may
16 have to undertake to provide this information if you don't
17 know. But over the last ten years, how many exemption
18 orders have been sought?

19 MS. CROSS: I can tell you in the last five there has
20 only been two that have been sought and received.

21 MR. RUBENSTEIN: And how many have been granted?

22 MS. CROSS: Those two were granted.

23 MR. RUBENSTEIN: So all those who have sought have
24 been granted?

25 MS. CROSS: Yes, they were emergency situations, one
26 dealing with sewage treatment and the other one dealing
27 with the drinking-water well.

28 MR. RUBENSTEIN: And so there have been no non-

1 emergency declarations sought?

2 MS. CROSS: In the last five years.

3 MR. RUBENSTEIN: Are you able to provide that
4 information for, say, the last ten years?

5 MS. CRNOJACKI: That's an undertaking? Is that an
6 undertaking?

7 MS. LEA: We're finding out.

8 MR. ADAMSON: Yeah, I'm not certain if we have it
9 readily available, but certainly we will do our best to
10 provide that information.

11 MR. RUBENSTEIN: So just to clarify the information,
12 how many have been sought, how many have been granted, and
13 if they have been granted that are beyond -- well, if they
14 have been granted, which ones are they?

15 MS. CROSS: This information is all on our website, in
16 terms of those that have been granted, so that is publicly
17 available information. It may take us some time to pull
18 together what has been sought in the last ten years.

19 MR. RUBENSTEIN: Okay, and if maybe -- they are on the
20 website, but if you can --

21 MS. CROSS: Yes.

22 MR. RUBENSTEIN: -- at least tell us as well which
23 ones -- and I know this probably doesn't have a precise
24 definition, but when -- that you use the term "emergency"
25 for the last two. I don't know if that's a technical term
26 or not, but how many would broadly be in the same category
27 if they had been granted if they're -- all right.

28 MS. CRNOJACKI: That's an Undertaking JT1.30.

1 UNDERTAKING NO. JT1.30: TO ADVISE HOW MANY
2 DECLARATIONS OR EXEMPTION ORDERS HAVE BEEN SOUGHT, HOW
3 MANY HAVE BEEN GRANTED; AND IF THEY HAVE BEEN GRANTED,
4 WHICH ONES ARE THEY.

5 MR. RUBENSTEIN: Those are my questions. Thank you
6 very much.

7 MS. LEA: Thank you, Mr. Rubenstein. Ms. Strachan?

8 **QUESTIONS BY MS. STRACHAN:**

9 MS. STRACHAN: Good afternoon, panel. Once again, I'm
10 Megan Strachan, and I am counsel for the Métis Nation of
11 Ontario, or the MNO.

12 So I also have some questions related to how a
13 declaration order or an exemption might work if they were
14 used in this situation.

15 And so could a declaration order allow Hydro One to
16 use NextBridge's environmental assessment work instead of
17 completing its own work?

18 MR. EVERS: At this point we can't comment, because we
19 are still reviewing the NextBridge environmental
20 assessment, so the Minister hasn't made a decision on that
21 document, so we can't speculate if it would be permissible.

22 MS. STRACHAN: Sure. I mean, if we sort of assume
23 that NextBridge's EA is complete and we also assume that
24 the MOECC is, you know, issuing some sort of regulatory
25 exemption or declaration order to Hydro One, is it possible
26 that that would allow Hydro One to use NextBridge's
27 environmental assessment work? I just, I don't know how
28 declaration orders work, so I'm just kind of trying to,

1 like, play it forward in my head to see how this could
2 actually shake out.

3 MR. EVERS: It could be a possibility, but it's not
4 our decision to make, so declaration orders are a decision
5 from the Minister and with Cabinet concurrence, so it
6 wouldn't be our decision to make.

7 MS. CROSS: Maybe I can just add that the decision
8 before the Minister and then Cabinet is around a specific
9 preferred undertaking. Hydro One has told us that they
10 plan to have a different project that goes through the
11 park. The environmental impacts of that have not yet been
12 studied.

13 MS. STRACHAN: So regardless, these environmental
14 impacts would have to be studied, but it's possible that a
15 declaration order could be issued around the sections of
16 the line that are not in the park?

17 MR. EVERS: It's a possibility.

18 MS. STRACHAN: Okay.

19 MS. CROSS: It's a Cabinet decision.

20 MR. EVERS: It is a Cabinet decision, though, yeah.

21 MS. STRACHAN: So on that same note, again,
22 recognizing that this won't be the MOECC's decision,
23 ultimately, but just trying to understand, part of
24 NextBridge's environmental assessment is public, there is a
25 publicly available document, but underlying that publicly
26 available document are all kinds of confidential
27 traditional land-use studies and the data that underlies
28 those studies, and if there was a declaration order issued

1 that allowed Hydro One to use NextBridge's environmental
2 assessment, do you know if it's possible that that
3 declaration order would just apply to publicly available
4 information, or is it possible that somehow through a
5 declaration order NextBridge could be forced to disclose
6 confidential traditional land-use studies?

7 MR. EVERS: Not quite sure, but in this particular
8 situation, if the Indigenous communities or Métis
9 communities required the proponent to undertake traditional
10 knowledge studies, we require proponents to integrate
11 traditional knowledge studies in their environmental
12 assessment, but the discussions on how those studies are
13 undertaken or collected by the proponent are between the
14 proponent and the Indigenous communities or the Métis
15 communities, so I can't presuppose what would be in a
16 declaration order, but there would likely be some
17 conditions around consultation, Indigenous consultation,
18 Métis consultation, in it.

19 MS. STRACHAN: And I recognize you're speculating, but
20 do you assume that those conditions would require Hydro One
21 to go out and conduct new consultation not to appropriate
22 the confidential results of NextBridge's consultation
23 efforts?

24 MR. EVERS: NextBridge -- we would require -- so Hydro
25 One would not be able to use NextBridge's consultation
26 record.

27 MS. STRACHAN: Thank you.

28 MR. EVERS: Yeah.

1 MS. CROSS: Sorry, can I just add on that? In terms
2 of a declaration order, that would put requirements on the
3 proponent. In this case it would be Hydro One. It
4 wouldn't put requirements on the First Nations to disclose
5 certain information that they had put forward to another
6 proponent, so it's only requirements on Hydro One, and the
7 decision in term of making the declaration order,
8 consultation would be required on that as well, so there
9 would be an opportunity for communities to provide their
10 input in terms of that declaration order, should it be
11 sought and should it be considered by the government.

12 MS. STRACHAN: Thank you, that's very helpful.

13 I have a few more questions now related to the duty to
14 consult. And again, recognizing that you may or may not be
15 able to speak to these.

16 So I understand that on March the 2nd, 2018, through a
17 letter, Ontario delegated certain procedural aspects of
18 consultation on the Lake Superior Link to Hydro One.

19 Are you familiar with that letter?

20 MS. CROSS: Yes.

21 MR. EVERS: Yes.

22 MS. STRACHAN: And in that letter there was a list of
23 18 Indigenous communities, and are you aware of Ontario at
24 that time providing any information on the depth of
25 consultation that Ontario thought was required for any of
26 those communities?

27 MR. EVERS: Sorry, can you repeat the question to
28 provide some clarity?

1 MS. STRACHAN: Sure, so in that letter there's 18
2 communities listed in alphabetical order, I think.

3 MR. EVERS: Yes.

4 MS. STRACHAN: And I read that letter and I just see a
5 list of communities. There is no indication from Ontario
6 as to the strength of any of those communities' rights or
7 claims or sort of the level of consultation along the
8 spectrum that Ontario would expect Hydro One to undertake,
9 and I'm just wondering, are you aware of any information
10 that's been provided to Hydro One around what the depth of
11 consultation is that should be undertaken with those
12 communities?

13 MR. EVERS: Not at this point, no.

14 MS. STRACHAN: And I further understand -- and this is
15 referenced in that March 2nd letter -- that the Crown has
16 an MOU with Hydro One, regarding Hydro One's roles and
17 responsibilities in relation to discharging procedural
18 aspects of consultation in relation to the Lake Superior
19 Link project; is that correct?

20 MS. CROSS: So that is something that the Ministry of
21 Energy actually has with Hydro One. We are not party to
22 that agreement. We refer in that letter, Ministry of
23 Energy added in that letter that what's outlined in our
24 guidance material in terms of requirements around
25 consultation during the environmental assessment process is
26 what should be followed for the environmental assessment
27 process.

28 MS. STRACHAN: Thank you.

1 And are you familiar -- and this was filed at
2 attachment 12 of Hydro One's additional evidence -- are you
3 familiar with a letter that was written to Kate Kempton,
4 who is counsel to the BLP First Nations, dated April 12th,
5 2018? Have you had a chance to read that letter?

6 MR. EVERS: Just looking for it now.

7 MS. STRACHAN: Yeah, no worries. My question pertains
8 specifically to the second page.

9 On page 2 of that letter, Hydro One states that it
10 will be engaging with Métis communities that are, quote,
11 "less directly affected" by the Lake Superior link project.

12 And so when I read that statement, I read it as saying
13 that Hydro One has made an assessment about Métis rights,
14 and how they might be affected by the Lake Superior link.

15 And would you agree that that statement signals that
16 Hydro One has made a determination about potential impacts
17 to Métis communities from the project?

18 MS. CROSS: I don't think we can speak to what Hydro
19 One was intending in terms of that letter.

20 MS. STRACHAN: Recognizing that you are not the
21 guiding mind at Hydro One, just on the face of the language
22 in that letter where it says that it will be engaging with
23 communities that are less directly affected, would you
24 agree that the language of "less directly affected" signals
25 that Hydro One has made some kind of a determination about
26 how Métis communities will be affected?

27 MS. CROSS: I can't speculate. I can tell you in
28 terms of the environmental assessment process, the 18

1 communities that were named in that delegation letter all
2 received the same treatment. They all received the same
3 notification and opportunities to provide input into the
4 consultation process.

5 MS. STRACHAN: They received the same opportunities
6 from the MOECC, not from Hydro One?

7 MS. CROSS: Our expectation would be that the
8 proponent would send the same notices and same
9 communications to all communities, and provide
10 opportunities for input to all communities.

11 MS. STRACHAN: And is it your understanding that that
12 is what Hydro One has done to this point?

13 MS. CROSS: I can't speculate as to what Hydro One has
14 done. I'm not aware of all the meetings that they have had
15 and conversations that they have had with communities on
16 this project.

17 MS. STRACHAN: So a lot of that information has been
18 filed by various parties in evidence here. And in the
19 MNO's written evidence, they have filed the first
20 communication that they received from Hydro One on this
21 project, which was actually dated April 30th, 2018, which
22 was two weeks after this letter was sent where Hydro One,
23 in my opinion, does appear to draw some kind of conclusion
24 about impacts to Métis rights from the project.

25 And so is that consistent with what you've just
26 stated, in terms of your expectation that proponents will
27 engage with Indigenous communities equally?

28 MS. CROSS: Yes, it is our expectation that they would

1 treat all communities the same in terms of consultation
2 during the environmental assessment process.

3 MS. STRACHAN: Okay. I guess what I'm asking is more
4 specifically -- given the timeline that has been set out in
5 Hydro One's evidence and the evidence of some of the
6 intervenors that we've heard today, it appears that Hydro
7 One began its engagement with First Nations on February the
8 16th, 2018, and then had subsequent meetings with those
9 First Nations, including sending this letter where it talks
10 about Métis rights as being less directly affected. And
11 this letter was sent two weeks before Hydro One had made
12 any contact with the Métis Nation at all.

13 So I am just wondering if that timeline is consistent
14 with your expectation that Hydro One treat all Indigenous
15 communities in the same way.

16 MS. CROSS: At this point, Hydro One has not finalized
17 its notice of commencement to begin the terms of reference.
18 So at this point, they are not in the EA process.

19 We would obviously, as part of the EA process, want to
20 ensure that all communities have had an opportunity to
21 participate in the process, and we would see that through
22 the record of consultation that's submitted as part of the
23 terms of reference.

24 MS. STRACHAN: Just give me a moment here. I am going
25 to see if I have any further questions.

26 I do have one final question, and I recognize that you
27 may not be able to speak to this. But you are the only
28 representatives of the Crown that we have before us, so you

1 are the only ones that I can really direct my questions to.

2 And I'm just wondering do you know what Ontario -- or
3 I guess would be the Ministry of Energy, but you may know
4 from our own experience with the MOECC.

5 Do you know what happens if Hydro One does not carry
6 out the obligations that were delegated to it in the MOU
7 with the Ministry of Energy?

8 We don't have a copy of that MOU; I don't think it is
9 in evidence here. So I'm wondering if you are aware of
10 what steps Ontario might take if that MOU is breached.

11 MR. EVERS: I'm not quite sure about that answer, but
12 certainly if there is some inadequacies with consultation,
13 the Ministry would do some of their own consultation,
14 especially when the final terms of reference is submitted
15 or the final environmental assessment is submitted.

16 So during that process, it is with us, so we would
17 reach out to the communities and do some of our own
18 consultation on the project, if we feel that some of the
19 procedural aspects of consultation haven't been met.

20 MS. STRACHAN: And so you would expect that likely the
21 Ministry of Energy would have a similar practice?

22 MS. CROSS: The Ministry of Energy is not a regulatory
23 Ministry. So we actually have a decision that would be
24 before us should Hydro One continue with the individual EA
25 or seek a declaration order. So I can't speak to Ministry
26 of Energy and what they might do.

27 MS. STRACHAN: Thank you. Those are all my questions.

28 MS. LEA: Thank you very much. Mr. Esquega, are you

1 still on the line?

2 MS. MacDONALD: This is Molly McDonald. I will be
3 asking questions on behalf of BZA.

4 MS. LEA: Please go ahead, Ms. McDonald.

5 **QUESTIONS BY MS. MACDONALD:**

6 MS. MacDONALD: I guess, first of all I'd like to
7 follow-up on Ms. Strachan's last question. I am wondering
8 if MOECC has a copy of the MOU between the Minister of
9 Energy and Hydro One?

10 MR. EVERS: We likely do, yes:

11 MS. MacDONALD: Could we get an undertaking to have
12 that provided?

13 MR. ADAMSON: I don't know if there is any
14 confidentiality that attaches to it. But assuming that
15 there is not, yes.

16 MS. CRNOJACKI: This is undertaking JT1.31, NextBridge
17 to provide --

18 MS. LEA: MOECC.

19 MS. CRNOJACKI: I'm sorry, MOECC to provide a copy of
20 understanding with the Ministry of Energy; is that correct?

21 MR. ADAMSON: Assuming there is not any
22 confidentiality that attaches to it, yes.

23 MS. CRNOJACKI: Assuming there is no confidentiality
24 restraint.

25 **UNDERTAKING NO. JT1.31: ASSUMING NO CONFIDENTIALITY**
26 **RESTRAINT, MOECC TO PROVIDE A COPY OF THE MOU BETWEEN**
27 **THE MINISTRY OF ENERGY AND HYDRO ONE**

28 MS. MacDONALD: I'll move on. My next questions are a

1 little bit more high-level. But I just to confirm -- and
2 we've sort of gone through these already through the
3 questioning, but I just want to confirm that DZA is a band
4 that requires consultation with respect to the Lake
5 Superior project, correct?

6 MS. CROSS: That's correct.

7 MS. MacDONALD: And I'm just wondering if anyone -- if
8 any of the panelists from MOECC are familiar with the
9 location of our client's community, or its location with
10 respect to the proposed route.

11 MR. EVERS: The location of BZA? Approximately 160
12 kilometres southwest of Thunder Bay.

13 MS. MacDONALD: Okay, that's not where we would place
14 it, but we can deal with that, I guess, later in the
15 questioning.

16 MR. ADAMSON: I think the witness may have misspoke.
17 I think he said southwest; I think he meant northwest.

18 MR. EVERS: Northwest, yes.

19 MS. MacDONALD: And do you have any concept of where
20 that is in relation to Nipigon, which would be, by our
21 estimate, the closest municipality along the proposed
22 route?

23 MR. EVERS: Lake Nipigon? It's the community, I
24 believe, if I don't misspeak again, that's southwest of
25 Lake Nipigon.

26 MS. MacDONALD: Okay. The municipality of Nipigon,
27 like the City of Nipigon? Not the lake.

28 MR. EVERS: Oh, okay. No.

1 MS. MacDONALD: Okay. Is it fair for you to say,
2 though, that the community itself is still relatively close
3 or very close to the project for Nipigon?

4 MS. CROSS: The community has been put on the list of
5 communities to be consulted with, given its proximity to
6 the project, so, yes, I think that's a fair statement.

7 MS. MACDONALD: Okay, thank you.

8 And this I believe was also addressed by Ms. Strachan,
9 but Hydro One has been delegated the procedural aspects of
10 consultation with respect to the affected First
11 Nation/Métis communities; that's correct?

12 MS. CROSS: Yes.

13 MR. EVERS: Yep.

14 MS. MACDONALD: Okay, so on pages 2 and 3 of the
15 Ministry of Environment's evidence, you discussed Hydro
16 One's options either have to complete its own EA or again
17 to the option of seeking the declaration order to avoid
18 having to go through the process, so we have touched on it,
19 but I just want to confirm again that those are sort of the
20 two possible options for Hydro One; correct?

21 MR. EVERS: That's correct.

22 MS. CROSS: Yes, they are required to complete an
23 individual EA. That's the requirement under the Act, but
24 they can choose to pursue some sort of exemption, but
25 ultimately that will be a decision of our Minister and
26 Cabinet.

27 MS. MACDONALD: Right. Okay. So hypothetically, if
28 Hydro One does seek a declaration order and does propose to

1 go down that avenue instead of the seeking to undertake the
2 environmental assessment, they would still have the
3 obligation or the MOECC would still have to undertake for
4 consultation with the affected First Nation communities; is
5 that correct?

6 MR. EVERS: Are you looking for the process for the
7 declaration order in general?

8 MS. MACDONALD: I suppose so. I just want to confirm
9 that if a declaration order, if that's how Hydro One, I
10 guess, gets through the MOECC's process, that even through
11 the declaration order there still is a requirement for
12 consultation with affected First Nations and Métis
13 communities.

14 MR. EVERS: Yes, so with the request for a declaration
15 order they would likely submit any consultation that
16 occurred. We would do our own consultation with affected
17 Indigenous communities, and then once a draft declaration
18 order was completed it would be posted on the Environmental
19 Registry of Ontario, likely for a 45- or more-day period
20 for comment, and Indigenous communities would also have
21 that opportunity to comment during that period as well.

22 MS. MACDONALD: Oh, okay. Thank you.

23 So consultation with BZA would still be required
24 through -- you know, if a declaration order were sought?
25 Correct?

26 MR. EVERS: That's right.

27 MS. MACDONALD: Okay. Thank you.

28 I just want to confirm -- I don't know if you can

1 answer this, but has Hydro One made a request for a
2 declaration order since the evidence has been filed?

3 MR. EVERS: No, they have not.

4 MS. MACDONALD: Okay, and those are all our questions.
5 Thank you.

6 MS. LEA: Thank you very much.

7 OEB Staff.

8 **QUESTIONS BY MR. MURRAY:**

9 MR. MURRAY: Good afternoon, panel, my name is Lawren
10 Murray. I am counsel to OEB Staff. I have a few questions
11 for you here today.

12 I'd like to start our discussion by talking about a
13 declaratory order. Now, I understand a declaratory order,
14 broadly speaking, can be granted if it's in the public
15 interest.

16 Are there any more specific criteria that apply to
17 such an order and when it would be considered or grafted?

18 MR. EVERS: There are generally four criteria, so it
19 can meet any one of those four, but the first is an
20 emergency situation, if it is in the public interest, if
21 the potential effects are minimal, or if the potential
22 effects can be easily mitigated.

23 MR. MURRAY: Now, putting aside the emergency, number
24 one, are there any more sub-criteria for numbers two
25 through four, or is it just those criteria?

26 MR. EVERS: We would -- with the request, if they
27 submitted the information, whatever information they
28 submitted with the declaration order we would review as

1 part of that review, and if there's additional information
2 that's required, we request that from the proponent to
3 supplement that review.

4 MR. MURRAY: And assuming this request was made, can
5 you give me a sense of how long it usually takes to kind of
6 -- from requesting a declaratory order to getting it, how
7 long would it take?

8 MS. CROSS: It varies. Emergency situations,
9 obviously those are prioritized, and we work quickly to try
10 to review the information and make a recommendation to the
11 Minister, and then ultimately Cabinet would need to also
12 approve.

13 In terms of the other reasons, you know, it could take
14 anywhere from six to nine months. It depends on what kind
15 of information is before us. We need to have grounds to
16 bring forward the declaration order for the Minister's
17 consideration, so it really is project-dependent.

18 Consultation, as Andrew mentioned earlier,
19 consultation with the public on the environmental registry,
20 as well as direct consultation with potentially-impacted
21 Aboriginal communities. That also takes time, so it really
22 would depend on the project and the level of interest and
23 those who might want to participate in the process.

24 MR. MURRAY: Thank you.

25 And I understand most people have been talking about
26 declaratory order, but I understood from your evidence that
27 there is a second mechanism that might be very similar
28 called an exempting regulation. I was wondering if you

1 could talk about that.

2 MR. EVERS: Exemption regulation is very similar. It
3 is a regulation that would, again, exempt them from certain
4 portions of the act or all requirements from the
5 environmental assessment.

6 MR. MURRAY: And so I guess my questions are sort of
7 similar to what I just asked you: Is there any specific
8 criteria for an exempting regulation, or would it be the
9 same sort of as a declaratory order?

10 MR. EVERS: It would likely be the same, yeah.

11 MR. MURRAY: And in terms of how long the process
12 would take, are we looking at the same sort of time frame,
13 six to nine months, though it may depend upon...

14 MS. CROSS: Yes, consultation would be required as
15 well, and we would need to assess the supporting
16 information that's provided by the applicant requesting the
17 exemption.

18 MR. MURRAY: And I understand a question to Mr.
19 Rubenstein earlier, you indicated there had been two
20 declaratory orders in the last five years. Have there been
21 any exempting regulations during that period?

22 MS. CROSS: No.

23 MR. MURRAY: No? And over the last ten years have
24 there been any?

25 MS. CROSS: I can't speak to the last ten years. We'd
26 have to look into that.

27 MR. MURRAY: Perhaps if you could provide an
28 undertaking to advise if there have been.

1 MR. ADAMSON: We can provide that undertaking, yes.

2 MS. CRNOJACKI: That will be JT1.32, for MOECC to
3 provide information on any exemptions, orders, regulations
4 granted within the last ten years.

5 UNDERTAKING NO. JT1.32: FOR MOECC TO PROVIDE
6 INFORMATION ON ANY EXEMPTIONS, ORDERS, REGULATIONS
7 GRANTED WITHIN THE LAST TEN YEARS; TO LOOK INTO ANY
8 REGULATIONS THAT HAVE BEEN REQUESTED BY PROPONENTS

9 MR. RUBENSTEIN: If I can just add, with respect to
10 that undertaking, I was wondering if Mr. Murray agrees, if
11 you can not just provide if any regulations, I guess, have
12 been passed exempting, but if any have been requested by
13 proponents.

14 MR. ADAMSON: I'm guessing that may be impossible to
15 get that information together. I don't even know if it
16 exists, but we'll certainly undertake to look into it.

17 MR. MURRAY: Thank you.

18 And am I understanding from in your evidence is that,
19 be it the declaratory order and exempting regulation, in
20 either case, Hydro One can't really apply for it until the
21 NextBridge EA is complete? Is that a correct
22 understanding?

23 MR. EVERS: No, they can apply or request a
24 declaration order or an exemption regulation, but from our
25 understanding in the meetings that we've participated in
26 with Hydro One is that their request would be on the basis
27 of using NextBridge's EA.

28 MR. MURRAY: And so assuming that's the case, you

1 wouldn't -- the Ministry wouldn't likely be in a position
2 to kind of consider that declaratory order exempting
3 regulation until the NextBridge EA is completed.

4 MR. EVERS: That's correct. We'd have to wait for a
5 decision on the Minister's -- or a Minister's decision on
6 the undertaking.

7 MR. MURRAY: So, now, taking a step back and going
8 back to the normal EA process, assuming Hydro One was to
9 file their notice of commencement of the terms of reference
10 tomorrow, can you give me a -- I realize it will vary
11 depending on the nature of the project. Can you give me
12 some sort of idea of how long it would take for that to
13 wind its way to a decision, ultimately?

14 MR. EVERS: So a large part of the environmental
15 assessment process is proponent-driven, so the pre-
16 submission consultation that would be undertaken by the
17 proponent with the public or Indigenous communities up
18 until doing field studies, putting together the
19 documentation, that's all led by the proponent, so we can't
20 comment on how quickly Hydro One would be able to complete
21 that information.

22 However, once we do have a deadlines regulation that
23 outlines or prescribes the deadlines for a Minister's
24 decision on a terms of reference and an environmental
25 assessment, so for terms of reference, once the final
26 environmental assessment -- or final terms of reference are
27 submitted, the Minister would make a decision after 12
28 weeks, on an environment assessment, once the final

1 environmental assessment is submitted is generally 30
2 weeks.

3 However, if a Minister's decision is made after those
4 deadlines, his decision is still valid, or his or her
5 decision is still valid, so in that context you're looking
6 for about 40 to 42 weeks with us, and then whatever time it
7 would take for them to do their field studies and put
8 together their documentation and submit it to the Ministry.

9 **MS. CROSS:** The advice we generally give proponents is
10 to estimate anywhere from three to five years to complete
11 the entire environmental assessment process from terms of
12 reference to a decision on the environmental assessment.

13 **MR. MURRAY:** But you would agree that in some
14 circumstances -- I believe one recent case, the Bruce to
15 Milton, it was done in 18 months. Is that...

16 **MR. EVERS:** Two years and four months.

17 **MR. MURRAY:** Two years, and that's not very good.

18 **Now, Hydro One says it needs its EA approval by June**
19 **2019. Is such an estimate outside of the range of what's**
20 **even realistic or possible, in your view?**

21 **MS. CROSS:** In our experience, it is not something
22 we've ever seen a proponent do.

23 It would assume there are no outstanding issues, that
24 all baseline study have completed. It is not something
25 we've seen done in that sort of a timeframe.

26 **MR. MURRAY:** I'd like to now turn to page 4 of your
27 evidence -- actually, no, just before we leave that. I
28 think one issue here that might be different from other

1 situations is it appears that a lot of studies have been
2 done over a very similar area.

3 So to the extent that Hydro One could use that
4 information, that may change the timelines potentially?

5 MR. EVERS: I suppose it really depends on the
6 decision, the Minister's decision on the environmental
7 assessment, if they would be able to us that information.
8 So, I can't speculate.

9 MR. MURRAY: If I could ask you to turn to page 4 of
10 the evidence that you've filed. I'm just going to read
11 briefly from the second sentence, under the heading halfway
12 down the page where the Ministry writes:

13 "It is difficult to assess whether and to what
14 extent NextBridge's environmental assessment work
15 could be used by Hydro One for the purpose of
16 complying with EAA requirements."

17 And I this I this is following up on what we just
18 discussed a minute ago.

19 Now, I'd like to take a step back and putting aside
20 the issue of ownership and who owns the studies, does the
21 MOECC have a policy that precludes one applicant from using
22 the studies completed by another applicant as part of an EA
23 application?

24 MS. CROSS: We've not seen this before. So in terms
25 of a policy, there is nothing in writing that allows it or
26 prohibits it. It would, I guess, depend on a number of
27 factors and on a case by case basis.

28 MR. MURRAY: Perhaps I can give you an example. Let's

1 suppose that one applicant completed an air quality study
2 over a certain area, and then a second applicant completed
3 a supplemental study for the air quality which wasn't
4 studied as part of the first study.

5 Could that kind of supplemental study, in addition to
6 the original study, satisfy the MOECC's requirement with
7 respect to an air quality study?

8 MR. EVERS: Again, I don't think we've ever seen that
9 happen, or we're not aware of that happening, so...

10 MR. MURRAY: I guess what we'd say is -- you are not
11 saying it's a non-starter. It would depend on a situation,
12 but it's something you'd consider at the time.

13 MR. EVERS: It would be likely something that we could
14 consider, yes.

15 MR. MURRAY: Now, I'd like to turn and talk a little
16 bit about the NextBridge EA.

17 In August 2014, the MOECC approved NextBridge's terms
18 of reference for the EA. In your evidence, the next date I
19 see referenced is February 16th, 2018, when they filed
20 their amended EA.

21 Can you tell me a little bit about what happened
22 between August 2014 and February 2018, in terms of the EA
23 work that was done on the NextBridge?

24 MR. EVERS: Well, a large part of that would have been
25 NextBridge completing field studies and preparing their
26 documentation. After the terms of reference was approved
27 in August 2014, that's what they would have done. And then
28 NextBridge did submit a draft environmental assessment to

1 the Ministry for review. I believe that was in December
2 2016, and then -- which the Ministry and others commented
3 on it, and provided comments to NextBridge.

4 In July of 2017, NextBridge did submit a final
5 environmental assessment. Through the review, we've
6 identified some concerns and based on that, NextBridge
7 submitted an amended environmental assessment in February
8 of 2018.

9 MR. MURRAY: And my understanding is when that was
10 submitted then, there was a period of -- was it either 30
11 or 45 days for comments, public comments on the resubmitted
12 EA. Do I have that right?

13 MR. EVERS: Yes. So on the amended environmental
14 assessment, the comment period was February 16th to March
15 29th, 2018.

16 MR. MURRAY: Did anyone provide comments on the
17 amended EA?

18 MR. EVERS: They did.

19 MR. MURRAY: Did anyone oppose the construction of the
20 EWT line in their comments?

21 MR. EVERS: Not that I'm aware of, no.

22 MR. MURRAY: If I could ask to -- once again on page
23 4, I'm now looking at the last sentence on page 4 of the
24 evidence, where it's written:

25 "Once the MOECC review and consultation is
26 complete, MOECC staff prepare a decision package
27 for the Minister of the Environment and Climate
28 Change. It is anticipated that a decision

1 package for NextBridge's East-West Tie project
2 will be prepared for the Minister in late fall
3 2018."

4 So when I see the words late fall, I interpret that to
5 mean November, or perhaps early December. Is that -- am I
6 reading that right? Is that sort of the time period we're
7 looking at?

8 MR. EVERS: Yes, likely November, December, yes.

9 MR. MURRAY: And then at this point, a package goes to
10 the Minister, a decision package?

11 MR. EVERS: Well, that's -- so the Minister's decision
12 we're anticipating for late fall 2018. But yes, before
13 that, a decision package would be provided to the Minister.

14 MR. MURRAY: Then once the Minister has the decision
15 package, how long does it take for the Minister to make a
16 decision, typically?

17 MR. EVERS: Yes, it's -- I can't make -- a can't make
18 a statement about that.

19 MR. MURRAY: I saw a reference to 13 weeks in like
20 kind of the flow chart of the various things. Is that sort
21 of a deadline in terms of the Minister --

22 MR. EVERS: It's a timeline that's prescribed in the
23 deadlines regulation. So once the comment period on the
24 Minister review closes, so that five-week period, there is
25 a 13-week period where we do issues resolution. So if
26 there's comments received on the Minister review, we
27 provide those to the proponent for review and responses.
28 And often we'll send those back to the commenters to review

1 as well.

2 And in that 13-week period, we also draft the decision
3 package. That's got -- that gets provided to the Minister.
4 So 13 weeks, yes, but again, if the Minister makes a
5 decision after that 13 weeks, it doesn't make that decision
6 invalid.

7 MR. MURRAY: I guess what I'm saying is -- that 13-
8 week kind of deadline period, does that kick in -- are we
9 talking about mid November, early December. Is it 13 weeks
10 from there?

11 MR. EVERS: The 13 weeks would be at the end of the
12 Minister review period. So if we published a Minister
13 review in the summer, there would be a five week timeline
14 for receiving comments. And after that five week timeline,
15 the 13 weeks would kick in. So that late fall is the end
16 of the 13-week timeline.

17 MR. MURRAY: The 13-week timeline. And you said you
18 couldn't speculate as to how long the Minister would take.
19 Can you give me a range, in terms of -- are these things
20 usually -- is it a week, is it two weeks? Is it a month?

21 MR. EVERS: Well, it's the Minister's decision and
22 Cabinet concurrence, so it also has to go to Cabinet for a
23 decision. So it depends on the project.

24 MS. CROSS: And the Cabinet schedule.

25 MR. MURRAY: But we wouldn't be looking at a day or
26 two. It could potentially be a month or two?

27 MS. CROSS: Yes.

28 MR. MURRAY: Could it be longer? Could it be six

1 months?

2 MR. EVERS: We've had that happen, yes.

3 MR. MURRAY: I see reference in some of the documents
4 to the Minister being asked to refer an environmental
5 assessment application to the environmental review
6 tribunal. Can you explain to me how that process works?

7 MR. EVERS: Sure. So the Minister review document
8 that is published by the Ministry outlines a process for
9 interested persons, so the Indigenous communities or the
10 public. If there is an outstanding concern that they feel
11 hasn't been addressed, they can submit a request for a
12 mediation or part or all of the environmental assessment to
13 be referred to the Environmental Review Tribunal. Once we
14 receive those requests we would do a review, but the
15 Minister ultimately makes the decision whether to refer to
16 mediation or refer to the Environmental Review Tribunal.

17 MR. MURRAY: And can you give me a sense of if that
18 request was made in the circumstance how long -- what sort
19 of impact that would have on the time lines in terms of
20 making a final decision on the EA?

21 MR. EVERS: Based on my experience, we haven't -- we
22 haven't had to review -- or send a project to mediation or
23 the Environmental Review Tribunal, based on my experience,
24 so I can't really -- I can't really comment.

25 MR. MURRAY: So I guess you answered my next question.
26 My next question was how often does this happen. So in
27 your experience this doesn't happen.

28 MR. EVERS: No.

1 MR. MURRAY: Are you aware of any parties who said
2 that they will take NextBridge either to the ERT or
3 indicate that they seek some sort of judicial intervention
4 in this matter?

5 MR. EVERS: No, no, not that I'm aware of so far.

6 MR. MURRAY: And one final question. Can NextBridge
7 kind of begin their clearing of their land without the
8 approval for the EA, or does the EA have to be granted
9 before that can be done?

10 MR. EVERS: The EA has to be granted.

11 MS. CROSS: And they would need to obtain --

12 MR. EVERS: Whatever permits.

13 MS. CROSS: -- permits from other regulators,
14 including the Ministry of Natural Resources and Forestry.

15 MR. EVERS: So the EA process is generally the first
16 process that proponents will complete, and then there is,
17 depending on the project, subsequent permits and approvals
18 that need to be obtained.

19 MR. MURRAY: One other question I have is -- I don't
20 know if you are aware, but one question the Board asked be
21 addressed in this motion is the scenario where NextBridge
22 would build the line up until both ends of the park and
23 then Hydro One would reinforce the line through the park.

24 To the extent that that scenario was to move forward,
25 can you give me a sense, in terms of, would that require a
26 whole new EA, would that be an amendment to the EA? In
27 either -- in whichever scenario it ends up being, can you
28 give me a sense of how long that would take?

1 MR. EVERS: It's complicated; it is a complex
2 question. I think at this point we'd have to get a clear
3 sense of what the undertaking would be, because I think
4 there would be additional components on that project that
5 we would need to understand and potentially additional
6 environmental assessment requirements, so we'd have to get
7 a clear description of what that undertaking would be so
8 that we could take it back and see what the EA requirements
9 would be for that undertaking, and also taking a look at
10 the terms of reference itself, because proponents are
11 required to complete their environmental assessment in
12 accordance with the terms of reference. So we'd have to
13 take a look in that undertaking, the description of that
14 undertaking, to make sure that we -- it would meet the
15 requirements of the terms of reference as well.

16 MR. MURRAY: Now, correct me if I'm wrong, but my
17 understanding is the Lake Superior Link, there's two major
18 differences in terms of the route of the Lake Superior Link
19 versus the East-West Tie.

20 One is, I think there is a detour around Dorion, and
21 the second is going through the park.

22 MR. EVERS: That's right.

23 MR. MURRAY: And my understanding is both combined in
24 the MOECC's view requires a new EA.

25 MR. EVERS: Yeah, that's the guidance we've given so
26 far.

27 MR. MURRAY: But to the extent it was, for example,
28 just going through the park but no -- the same route around

1 Dorion, would that still generate the same new EA, or might
2 that be an amendment or shorter process?

3 MR. EVERS: They wanted to --

4 MR. MURRAY: Well, I guess what I'm trying to get at
5 is, to the extent it was just going through the -- like,
6 there's two major routes, and obviously -- two major
7 deviations, and that obviously creates a new EA. I'm
8 trying to figure out whether or not one of those by itself
9 would have created a new EA such that going through the
10 park with NextBridge kind of leading both sides of the park
11 will still create the need for a full EA to be done?

12 MR. EVERS: Yeah, likely. Yeah.

13 MS. CROSS: Yeah.

14 MR. MURRAY: Okay. Thank you. Those are all my
15 questions. And I believe that means we're done? Sorry.

16 **QUESTIONS BY MR. STEVENS:**

17 MR. STEVENS: Sorry, if I may -- I'm David Stevens on
18 behalf of NextBridge. I just want too to understand one
19 item that we were talking about. It just has to do with
20 the late fall 2018 date that we were discussing, and I just
21 want to make sure that I understand which stage of the
22 process we're at --

23 MR. EVERS: Mm-hmm.

24 MR. STEVENS: -- when we get to late fall. And for me
25 it would be helpful if we could do that with reference to
26 the Appendix A flow chart that you attached in your
27 evidence. I believe it's attachment 1.

28 MR. EVERS: Sure.

1 MR. STEVENS: Am I correct in understanding that
2 what's expected late fall 2018 is the end point of the 13
3 weeks' bar that's shown at the bottom of the right side?

4 MR. EVERS: That's correct.

5 MR. STEVENS: Thank you.

6 MR. MURRAY: I believe that's all for today, and so we
7 will reconvene -- sorry?

8 **QUESTIONS BY MR. WARREN:**

9 MR. WARREN: I have one question. Sorry, I'm
10 instructed, Witness, that there is, in fact, in the Lake
11 Superior Link application only one deviation, no deviation
12 around Dorion. It's the same route. There's only one
13 deviation around the park -- through the park, sorry. Do
14 you have any reason to quarrel with that?

15 MR. EVERS: The only deviation is the Hydro One's
16 proposal goes through the park.

17 MR. WARREN: Yes.

18 MR. EVERS: Yes, as far as we know, yeah.

19 MR. WARREN: Thank you.

20 MR. MURRAY: Any more questions? Okay. With that, I
21 think the technical conference for today is concluded. We
22 will reconvene tomorrow at 9:00 a.m.

23 --- Whereupon the conference adjourned at 4:24 p.m.

24

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27

28

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Via email (boardsec@oeb.ca and registrar@oeb.ca) and delivery (two hard copies to the Board)

May 25, 2018

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Dear Ms. Walli

**RE: Board File No. EB-2017-0364
NextBridge Infrastructure motion to dismiss application
Responses to undertakings given by the intervenor Ministry of the
Environment and Climate Change**

This letter and the enclosed attachments are MOECC's responses to the undertakings given at the technical conference on May 16 and 17.

JT 1.30: How many declaration orders have been sought in last ten years? How many have been granted? What are the ones that have been granted?

Ten Declaration Orders have been sought in the last ten years. Eight of the ten were granted; the other two were withdrawn by the applicant.

The following materials relating to the eight declaration orders that were granted are enclosed:

1. MNR-74 **Forest Management for Whitefeather Forest Declaration**
 - A. Project information summary (2 pages)
 - B. Declaration Order (42 pages)
 - C. Environmental Registry Proposal Notice, dated June 24, 2008 (5 pages)
 - D. Environmental Registry Decision Notice, dated June 10, 2009 (4 pages)
2. MCU-09 **Canadore College Building - Parry Sound**
 - A. Project information summary (2 pages)
 - B. Declaration Order (4 pages)
 - C. Environmental Registry Proposal Notice, dated October 22, 2009 (4 pages)
 - D. Environmental Registry Decision Notice, dated December 23, 2009 (2 pages)
3. Caledonia - **Acquisition of the property at 445 Argyle Street South, Township of Oneida**
 - A. Project information summary (2 pages)
 - B. Declaration Order (2 pages)
 - C. Environmental Registry Information Notice, dated January 19, 2010 (2 pages)
4. **Port of Prescott Expansion, Rehabilitation and Future Development Area**
 - A. Project information summary (2 pages)
 - B. Order in Council (1 page)
 - C. Declaration Order (4 pages)
 - D. Environmental Registry Proposal Notice, dated June 2, 2010 (3 pages)
 - E. Environmental Registry Decision Notice, dated November 24, 2010 (2 pages)
5. **University of Waterloo Stratford Campus**
 - A. Project information summary (2 pages)
 - B. Order in Council (1 page)
 - C. Declaration Order (3 pages)
 - D. Environmental Registry Proposal Notice, dated July 29, 2010 (4 pages)
 - E. Environmental Registry Decision Notice, dated July 29, 2010 (2 pages)
6. Environmental Assessment **Requirements for Forest Management on Crown Lands in Ontario (MNR-75)**
 - A. Project information summary (3 pages)
 - B. Declaration Order (55 pages)
 - C. Environmental Registry Proposal Notice, dated October 4, 2013 (5 pages)
 - D. Environmental Registry Decision Notice, dated October 23, 2015 (4 pages)
7. **York-Durham sewage system modifications**
 - A. Project information summary (3 pages)
 - B. Order in Council (2 pages)
 - C. Declaration Order (4 pages)
 - D. Appendix to Declaration Order (34 pages)
 - E. Environmental Registry Exception Notice, dated March 12, 2018 (3 pages)

8. **Sunderland emergency well**

- A. Project information summary (2 pages)
- B. Order in Council (2 pages)
- C. Declaration Order (4 pages)
- D. Environmental Registry Exception Notice, dated May 7, 2018 (3 pages)

JT 1.31: Provide a copy of the MOU between Hydro One and the Ministry of Energy (assuming not confidential)

MOECC has reviewed its files and does not have a copy of the MOU. MOECC has requested a copy from the Ministry of Energy but has so far not been provided with a copy.

JT 1.32: How many exemption regulations have been issued in last ten years? How many were sought (assuming it is possible to determine how many have been sought)?

Within the last ten years, three regulations have been issued under the *Environmental Assessment Act* that were, at least in part, exemption regulations. Two of the regulations were pure exemption regulations, while the third was in part an exemption regulation and in part a designation regulation. The three regulations are as follows:

- 1. O. Reg. 230/12, *Exemption – Ontario Northland Transportation Commission*
- 2. O. Reg. 497/09, *Exemption – Ipperwash Provincial Park*
- 3. O. Reg. 231/08, *Transit Projects and Metrolinx Undertakings*

MOECC has no reliable way of determining how many exemption regulations have been sought, but not issued, over the last ten years. MOECC has been able to locate one such request.

Yours very truly,



Nicholas Adamson

cc: Zora Crnojacki, Case Manager (via email to zora.crnojacki@oeb.ca)
Lawren Murray, OEB Counsel (via email to lawren.murray@oeb.ca)
All parties listed in Schedule B of Procedural Order No. 1, issued April 27, 2018 (via email)

TAB 23

1 MR. BUONAGURO: That's exactly what I was asking for.
2 Thank you very much. And those are my questions.

3 MR. LAVAE: That will be JT2.26.

4 UNDERTAKING NO. JT2.26: HYDRO ONE TO SEE IF THERE WAS
5 A LETTER WRITTEN BY HYDRO ONE NETWORKS TO BLP AT THE
6 END OF THE DESIGNATION PROCEEDING, EXPLAINING WHAT
7 THEIR FUTURE RELATIONSHIP WOULD BE

8 MS. LEA: Thank you. Thank you, Mr. Buonaguro. I
9 Think, Mr. Adamson, you are up next.

10 QUESTIONS BY MR. ADAMSON:

11 MR. ADAMSON: I have a few questions, I think likely
12 for Ms. Croll. But if anybody else wants to chime in,
13 whether or not you can see me around the column.

14 Ms. Croll, this morning you mentioned that you had
15 been reviewing what I believe is the page on the Ontario
16 government's website that lists all the declaration orders
17 that have been issued.

18 MS. CROLL: Yes.

19 MR. ADAMSON: You are familiar with that page?

20 MS. CROLL: I'm familiar with the page.

21 MR. ADAMSON: And you had mentioned that you had found
22 one recent declaration order that you said had been issued
23 roughly one month after it was requested.

24 Do you recall what that order was, what the project
25 Was?

26 MS. CROLL: I believe it was the York Region sewer
27 project.

28 MR. ADAMSON: Okay. So it was the York-Durham sewage

1 system modification project?

2 MS. CROLL: That's correct.

3 MR. ADAMSON: Did you have an opportunity to sort of
4 drill down on the links in that page to see some of the
5 background about that declaration order?

6 MS. CROLL: No, I didn't review the full project. I
7 do know that that was one of the examples that MOECC staff
8 gave us to look at, in terms of the type of documentation
9 that may be required to submit a declaration order.

10 MR. ADAMSON: Okay, so you're not -- maybe this much
11 you can confirm. What the document on the website says is
12 that the request was submitted January 30th, 2018, and the
13 decision -- the order was issued March 7th, 2018; does that
14 sound about right?

15 MS. CROLL: I don't have it in front of me. I
16 couldn't say.

17 MR. ADAMSON: Okay, but you aren't aware of the
18 background of this, where there was actually an ongoing
19 environmental assessment and this declaration order was
20 with respect to just one part of that ongoing environmental
21 assessment?

22 MS. CROLL: So to be clear, I'm not suggesting that
23 our project could be approved in the same type of
24 timeframe. I'm merely making the observation that in the
25 declaration order website, there are a number of examples
26 of ranges of approvals, some of which are less than the
27 range that MOECC staff suggested yesterday.

28 MR. ADAMSON: Okay. You weren't aware that the

1 environmental assessment, of which this project that got a
2 declaration order was one part, the terms of reference for
3 it were submitted back in 2019?

4 MS. CROLL: I haven't yet reviewed the details of that
5 project.

6 MR. ADAMSON: You also weren't aware that the terms of
7 reference were approved in 2010?

8 MS. CROLL: Again, I haven't reviewed the details of
9 that project.

10 MR. ADAMSON: So you weren't aware that the
11 environmental assessment itself had actually been submitted
12 and reviewed by the -- submitted in 2014?

13 MS. CROLL: My answer would be the same. I don't have
14 the details of that approval in front of me at the moment.

15 MR. ADAMSON: Okay. So you'd agree, though, that in a
16 scenario where there had been an environmental assessment
17 approval process ongoing for, say, nine years, starting
18 back in 2019 as background for a declaration order being
19 issued for a part of that project, that's very different --
20 that puts a bit of a different spin on the one-month
21 turnaround on getting that declaration order, doesn't it?

22 MS. CROLL: I would suggest that this project has also
23 had extensive environmental assessment activities for, as
24 we've heard, approximately five years.

25 MR. ADAMSON: By a different proponent?

26 MS. CROLL: I think that what we're suggesting is that
27 we would -- it's our position that we could use that
28 information in the publicly available EA to help us

1 complete our own individual EA, or to seek some sort of
2 declaration order for an exemption to a certain portion of
3 that.

4 I would suggest that although perhaps not in the
5 electricity sector, there are other examples of projects
6 being undertaken by third parties and -- sorry, EAs being
7 undertaken by third parties and projects carried out by
8 another party.

9 MR. ADAMSON: Let's just come back to the basic point,
10 though.

11 You are certainly not suggesting that a declaration
12 order would be forthcoming in one month on this project?

13 MS. CROLL: No, I'm not, thank you.

14 MS. COOPER: I would like to clarify, Mr. Adamson,
15 that what Ms. Croll said at the beginning was that she
16 brought up that because the Ministry had referred her to
17 that particular declaration order to access that on the
18 website.

19 MR. ADAMSON: You were referred to that very
20 particular declaration order? Is that your evidence? Or
21 were you referred to the website?

22 MS. CROLL: We were referred verbally to that
23 particular order.

24 MR. ADAMSON: Okay.

25 MS. CROLL: I would have to check my notes to see if
26 there was anything in writing with regard to that.

27 MR. ADAMSON: I believe what you said in your evidence
28 was an example of the kind of information that would be

1 required to get a declaration order, right.

2 MS. CROLL: We were also referred to that as a recent
3 example of a declaration order that had been issued.

4 MR. ADAMSON: But you were also referred to it as an
5 example of the kind of information that would be required
6 to provide the basis for a declaration order, right?

7 I think that's what you said in your evidence just
8 earlier.

9 MS. CROLL: So in part, yes, to the type of process
10 that would be followed in a declaration order, yes.

11 MR. ADAMSON: Okay. And have you looked at the kind
12 of information that is public available that was provided
13 by York Region in order to get that declaration order?

14 MS. CROLL: No, I personally haven't reviewed all the
15 information. I know some of our staff have been reviewing
16 that, and also other declaration orders.

17 MR. ADAMSON: Do you have any sense of how extensive
18 the information was that York Region provided in order to
19 get that declaration order?

20 MS. CROLL: As I said, I haven't personally reviewed
21 all the information.

22 MR. ADAMSON: Okay. I want to ask you some questions
23 about the evidence you gave this morning about the timing
24 of submission of a request for declaration order.

25 You indicated -- and correct me if I'm
26 mischaracterizing your evidence, but I think you said that
27 you had changed your view as a result of the evidence you
28 heard from the Ministry of the Environment yesterday about

1 when Hydro One could submit for a declaration order, and
2 that what you heard yesterday was that Hydro One could
3 submit it before the NextBridge environmental assessment
4 receives approval, and that that was new information for
5 you.

6 MS. CROLL: That's correct.

7 MR. ADAMSON: So you would agree that what the
8 Ministry of the Environment had previously advised Hydro
9 One that in order to get a declaration order, there has to
10 be some basis submitted to show that the proposal satisfies
11 the statutory requirements, right?

12 MS. CROLL: There are four criteria that are relevant,
13 in my understanding, to whether or not a do would be
14 considered, yes.

15 MR. ADAMSON: And it was made clear to you that Hydro
16 One can't sort of show up and say we satisfied the
17 criteria. There actually has to be some evidence submitted
18 to demonstrate that, right?

19 MS. CROLL: Yes, that's right.

20 MR. ADAMSON: And you agree that Hydro One's position
21 has been that it would rely on NextBridge's environmental
22 assessment work as part of that basis?

23 MS. CROLL: Are you referring to a declaration order?

24 MR. ADAMSON: Yes, we're talking just about a
25 declaration order right now.

26 MS. CROLL: Right. So part of the basis for our
27 position that we could not submit a request for a
28 declaration order was because we were verbally told in a

1 meeting with MOECC that they wouldn't accept a request for
2 a declaration order until the NextBridge EA was finalized,
3 but I believe the testimony yesterday was different than
4 that, if I'm not mistaken.

5 MR. ADAMSON: Okay, let me -- I don't think that
6 answers my question, though.

7 The reason MOECC was telling you that was because
8 Hydro One had said we want to rely on the work NextBridge
9 has done for its environmental assessment as part of the
10 basis for getting a declaration order.

11 MS. CROLL: It's possible, but we were also -- it is
12 my understanding that declaration orders could also be
13 issued with conditions, for example, conditional on an
14 approval, perhaps, of NextBridge's EA.

15 MR. ADAMSON: All right, so it's your position that
16 Hydro One had not said our intention is to rely on
17 NextBridge's environmental assessment work as part of the
18 basis for getting a declaration order; that was not a
19 position that Hydro One took with the Ministry of the
20 Environment.

21 MS. CROLL: We stated that we would intend to rely on
22 NextBridge's information for either a declaration order or
23 an individual EA.

24 MR. ADAMSON: Okay. So as I understand it, because of
25 that position the Ministry of the Environment -- and
26 correct me if I'm wrong, but the Ministry of the
27 Environment and Climate Change's consistent position has
28 been that reliance on NextBridge's environmental assessment

1 would be premature until that environmental assessment is
2 actually approved. That's what the Ministry of the
3 Environment has been telling Hydro One, right?

4 MS. CROLL: I believe their specific instruction was
5 that they would not accept a request for a declaration
6 order until it was approved. I suppose you could imply
7 that that was the reason for that statement.

8 MR. ADAMSON: All right. Well, have you had an
9 opportunity to read the transcript of what Mr. Evers said
10 in his testimony yesterday?

11 MS. CROLL: I haven't had a chance to reread it since
12 yesterday.

13 MR. ADAMSON: I'm going to suggest to you, and I'll
14 read it to you in a moment, but I'm going to suggest to you
15 that what he said yesterday is in no way different from
16 what the Ministry of the Environment and Climate Change has
17 consistently been communicated, so let me just -- and for
18 the benefit of those people that have the transcript, we
19 are starting at page 181, line 18, and this is where Mr.
20 Murray was asking questions on behalf of OEB Staff -- OEB
21 Staff of Mr. Evers, starting at line 18:

22 "And am I understanding from in your evidence is
23 that be it the declaratory order, an exempting
24 regulation, in either case Hydro One can't really
25 apply for it until the NextBridge EA is complete.
26 Is that a correct understanding?"

27 And then Mr. Evers answers:

28 "No, they can he apply a requested declaration

1 order or an exemption regulation, but from our
2 understanding in the meetings that we
3 participated in with Hydro One is that their
4 request would be on the basis of using
5 NextBridge's EA."

6 Mr. Murray asks a follow-up question:

7 "And so assuming that's the case, you wouldn't --
8 the ministry wouldn't likely be in a position to
9 kind of consider the declaratory order exempting
10 regulation until the NextBridge EA is completed.

11 "That's correct. We'd have to wait for a
12 decision on the minister's or minister's decision
13 on the undertaking."

14 Does that differ from your understanding of what the
15 Ministry of Environment and Climate Change had been --
16 previously been saying?

17 MS. CROLL: I think the difference is that they were
18 more specific yesterday, in that you could submit a
19 declaration order based on -- you could submit one before
20 NextBridge's EA was final, but the inference is it wouldn't
21 have possibly merit until that EA was final.

22 Now, again, I'm not presupposing what MOECC might do,
23 but the statement yesterday suggested that you could still
24 at least submit a declaration order and potentially there
25 could be some conditions placed on finalization of an EA.

26 I'm not suggesting we're planning to do that. I'm
27 just suggesting it seemed to be more available as an option
28 compared to previous conversations we've had with MOECC.

1 MR. ADAMSON: Okay, so maybe -- let's make sure we
2 both understand Mr. Evers's evidence yesterday the same way,
3 reading from the transcript here. As I read what he's
4 saying there, he's saying, "Yeah, Hydro One can submit it
5 before the NextBridge environmental assessment is approved,
6 but because Hydro One wants to rely on NextBridge's
7 environmental assessment, it's not going to be of any
8 assistance until that is approved." That's what he's
9 saying, right?

10 MS. CROLL: Yes.

11 MR. ADAMSON: And am I right that that is what MOECC
12 had been saying previously?

13 MS. CROLL: From my previous answer, what they said
14 was they wouldn't accept a request for a declaration order
15 until the NextBridge EA was final. They were not explicit
16 in the reasoning for that.

17 MR. ADAMSON: Okay. So I guess the bottom line here,
18 though, is, as long as we're all understanding what Mr.
19 Evers said yesterday the same way, this is unlikely to have
20 any impact on timing of a declaration order, is it, because
21 either way Hydro One can't use NextBridge's environmental
22 assessment work until it's actually approved, whether the
23 application for the declaration order is submitted before
24 or after, if the basis for that application is NextBridge's
25 environmental assessment work, it's -- it can't be used
26 until it's approved. Either way. Do you disagree with
27 that?

28 MS. CROLL: I agree it can't be used until it's

1 approved. What my suggestion was is that perhaps there's
2 an option for a conditional type of measure, conditional
3 upon that approval. I'm not suggesting that's what would
4 happen; I'm just suggesting that based on the information
5 yesterday it appeared to be a possibility.

6 If I'm mistaken, I'm sure MOECC will let me know.

7 MR. ADAMSON: Okay, well, I think MOECC's evidence is
8 clear from the transcript.

9 Okay, just a couple more questions.

10 You were asked some questions this morning about the
11 -- Hydro One's sort of projected timetables for either
12 completing an individual assessment or obtaining a
13 declaration order, and the dates July 2019 and June 2019
14 were discussed; do you recall that?

15 MS. CROLL: Yes, I do.

16 MR. ADAMSON: And there was some discussion of whether
17 those timelines had been -- and I believe undertakings were
18 given about whether those timelines had been discussed with
19 the Ministry of Environment and Climate Change.

20 I'm not too concerned about that, but the one thing I
21 just want to make sure we're clear on is that in
22 discussions at least that you've participated in with the
23 Ministry of Environment and Climate Change, the Ministry of
24 Environment and Climate Change's position about timing or
25 likely timetable to completing an individual environmental
26 assessment has remained consistent, hasn't it, that it's --
27 typically it's three to five years.

28 MS. CROLL: That discussion that we had with MOECC did

1 not include a timeline of three to five years, because this
2 is not a typical project. We did discuss the possibility
3 of an expedited EA, given the amount of work that's been
4 done.

5 I would also suggest that we discussed other projects
6 completed by Hydro One, such as Bruce to Milton, where I
7 can tell you this was a 180-kilometre, 500 kV line, where
8 the timeline was much shorter than three to five years, and
9 in that case no previous study had been done.

10 So as an example, in that case, just for the EA
11 submission until Minister approval was actually less than
12 one year. That's the EA document submitted. So that is --

13 MR. ADAMSON: I heard -- sorry, the evidence I thought
14 we heard was it was two years and four months.

15 MS. CROLL: I was speaking about the EA submission
16 compared to the Minister approval, not the entire process,
17 so there was a terms of reference portion as well, which
18 began with a submission in August of 2007.

19 MR. ADAMSON: Okay.

20 MS. CROLL: So my suggestion is that it is not always
21 three to five years for an individual EA. That may be
22 typical, but often those projects stop and start, there are
23 other delays.

24 In the case of this project there is a five-year
25 history, and there is an exceptional amount of work already
26 completed. Even in our consideration of completing our own
27 terms of reference, without even considering the
28 possibility of using the existing terms of reference, which

1 actually includes a preferred route as our own reference
2 route and not that of NextBridge, we feel that we can
3 submit a terms of reference fairly quickly because there
4 has been such considerable consultation on the study area,
5 on the routes that are in question. There would be no
6 merit to repeating all of that consultation. So we feel
7 that there are numerous opportunities in this very unique
8 case to expedite such a process.

9 MR. ADAMSON: Do you recall what my question was?

10 MS. CROLL: You asked me about timelines of EAs and
11 you asked me if I agreed that a three- to five-year
12 schedule --

13 MR. ADAMSON: That's not what my question was.

14 MS. CROLL: Can you repeat the question?

15 MR. ADAMSON: My question was about not what was
16 discussed, but what the Ministry of the Environment and
17 Climate Change's position in those discussions was.

18 So what I asked you was has the Ministry of the
19 Environment and Climate Change in those discussions ever
20 said anything different from its typically three to five
21 years?

22 Let me put it another way that's clearer. The
23 Ministry of the Environment and Climate Change in those
24 discussions has never suggested that July 2019 is a
25 realistic deadline for completing an individual
26 environmental assessment of Hydro One's proposed project?

27 MS. CROLL: We didn't discuss the specifics of a
28 timeline for an individual EA. In fact, we've recently

1 submitted a proposed schedule for discussion.

2 However, I can tell that you in the discussions of an
3 option for an individual EA, we never discussed a three- to
4 five-year timeline. A three- to five-year timeline is for
5 a typical EA project beginning with no work done and no
6 consultation started.

7 So to my recollection, we never discussed a three to
8 five years timeline for this particular project.

9 MR. ADAMSON: I'm going to suggest to you that it was
10 put to you in meetings of the Ministry of the Environment
11 and Climate Change, putting aside this project, that that
12 information with that that is a typical timeline for a
13 typical EA was provided to Hydro One by the Ministry of the
14 Environment and Climate Change. Do you disagree with that.

15 MS. CROLL: Potentially on other projects it was
16 provided, but -- I could be mistaken, but I do not recall
17 any conversations with respect to this the specific project
18 of a three to five-year timeline for an individual EA.

19 MR. ADAMSON: I'm not saying this specific project,
20 but as sort of this is our typical experience, that
21 information being provided.

22 MS. CROLL: I don't recall having any discussions to
23 that nature. I'm not disputing that that is a typical
24 timeline.

25 MS. DOMOKOS: We do agree that the Ministry of the
26 Environment and Climate Change has never indicated to Hydro
27 One that July 2019 is a realistic timeline?

28 MS. CROLL: No, we didn't discuss specific schedule

1 details of an individual EA.

2 MR. ADAMSON: So the Ministry of the Environment and
3 Climate Change has never suggested that that's a realistic
4 timeline. You said it's never even been discussed.

5 MS. CROLL: That's correct. So to be clear, they've
6 never suggested it wasn't realistic. We just provided them
7 with our schedule recently.

8 MR. ADAMSON: And similarly, June 2019 has never been
9 discussed with the Ministry of the Environment and Climate
10 Change as a timeframe for a declaration order?

11 MS. CROLL: We talked about typical timing of
12 declaration orders and at a meeting, we suggested that six
13 months might be a reasonable timeline. It was difficult at
14 that point for ministry staff to presuppose how long the
15 minister might take to make that decision.

16 They did not suggest that it was unreasonable. But to
17 your point, they didn't agree that it was appropriate. It
18 as very difficult to determine.

19 MR. ADAMSON: So the consistent message -- and correct
20 me if I'm wrong -- has been what I took Mr. Evers to say
21 and Ms. Cross to say yesterday, that in a non-emergency
22 situation, if an adequate basis for issuing a declaration
23 order is provided to the ministry, a typical timeline would
24 be six to nine months. Does that sound right?

25 MS. CROLL: Yes. And we're suggesting six months.

26 MR. ADAMSON: Those are all my questions, thank you.

27 MS. LEA: Thank you, Mr. Adamson. Mr. Garner?

28 MR. GARNER: Thank you, Ms. Lea. It is getting late

TAB 24

UNDERTAKING – JT 2.19

Undertaking

Hydro One to provide a copy of a business case on the LSL project that they presented to the Management team.

Response

Please see:

- Attachment 1 - Business case prepared for the Lake Superior Link project.
- Attachment 2 - November 10, 2017 Briefing Note to Board of Directors
- Attachment 3 - December 8, 2017 Submission to Board of Directors
- Attachment 4 – February 13, 2018 Submission to Board of Director

Hydro One Limited/ Hydro One Inc.
Submission to the Board of Directors



Date: December 8, 2017

Re: East West Tie - Board Approval to Submit Leave to Construct

Attached please find the presentation of the East West Tie project. We are requesting Board approval on Leave to Construct.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Greg Kiraly".

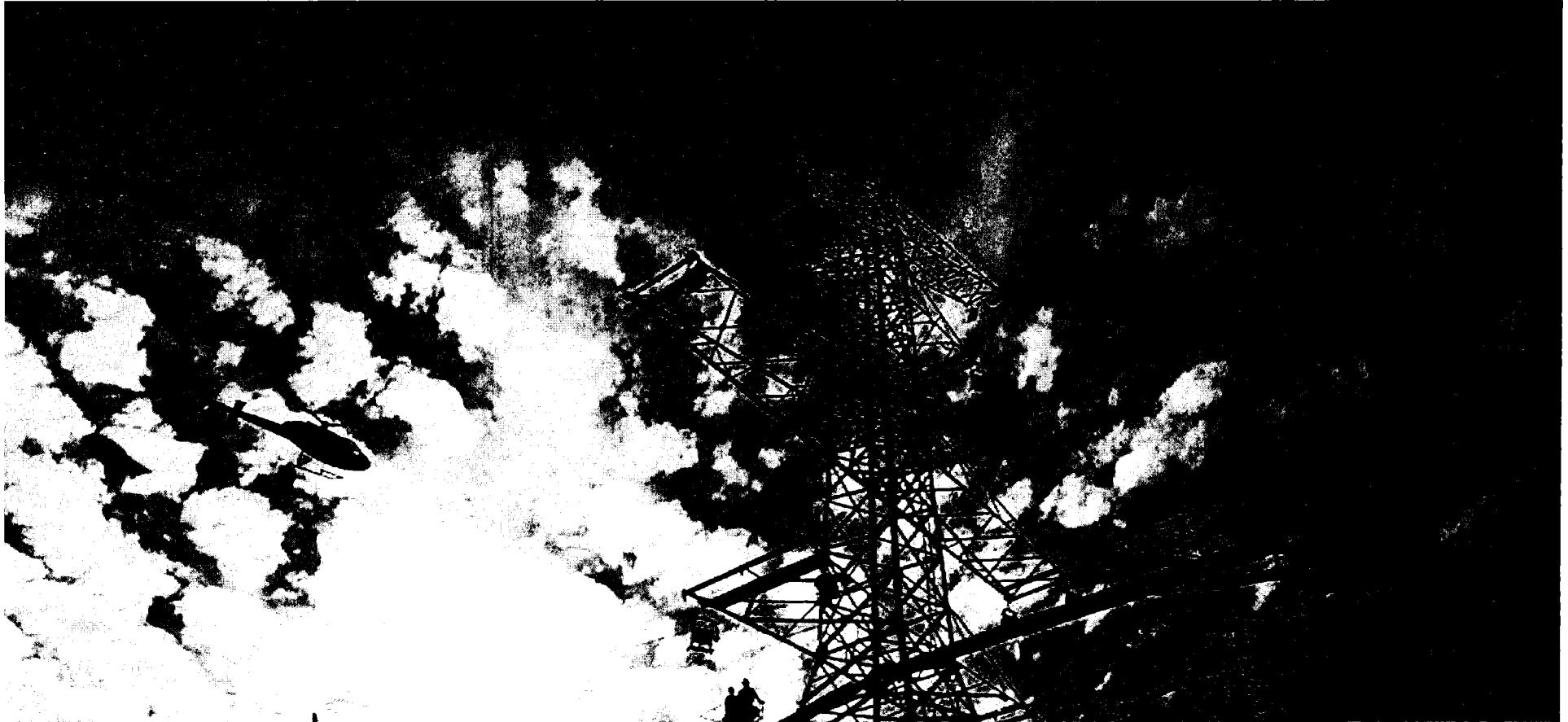
Gregory Kiraly
Chief Operating Officer

East West Tie – Approval of Strategic Content for Leave to Construct

Resolution of the Board of Directors:

After consideration, upon motion duly made, seconded, and unanimously carried, be it
RESOLVED:

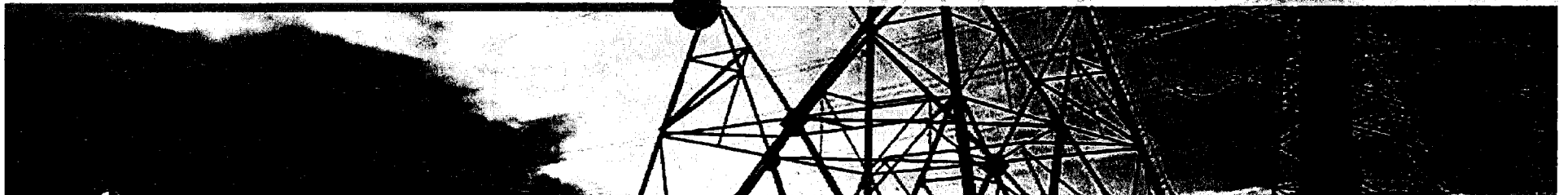
THAT the Board of Directors of Hydro One Limited approve the submission of a Leave to Construct to the Ontario Energy Board to build, operate, and own the new East West Tie transmission line based on the terms presented to the Board.



East West Tie – Board Approval to Submit Leave to Construct

hydroOne

December 8, 2017



Recommendation

Recommend Board of Directors Approval for Hydro One to submit a Leave to Construct (LTC) to the OEB to build, operate, and own the new East West Tie transmission line as follows based on the following key terms:

Key Item	Details
Capital Cost	Not to exceed \$636.1 million subject to exclusions and conditions mentioned herein, including with regards to environmental approval of its route, and with final project cost to be adjusted following LTC approval by OEB, subject to any change or conditions imposed by OEB
Operations, Maintenance & Administration	\$1.5 million/year indexed thereafter
Schedule	Target project completion date by December 2021 , based on October 2018 LTC approval
Ownership	Hydro One Networks Inc. to file the LTC as Owner and Operator, and to transfer its ownership interest and control to Special Purpose Entity prior to line being energized
Financing Strategy	Corporate Financing for transaction costs, other than First Nations equity, similar to other capital expenditures within the Hydro One Business Plan
First Nations Financial Participation	34% equity offering to six impacted First nations communities through Bamkushwada LP, to be subscribed at the end of construction

East-West Tie Project Background ¹

What is the East West Tie (EWT) Line Project?

- Construction of a new 400km double-circuit 230 kV transmission line
- The new line parallels Hydro One's existing tie between Lakehead and Wawa Transformer Stations
- The goal is to increase capacity and reliability of electrical transmission between Northeastern and Northwestern Ontario

What is the current status of the EWT project?

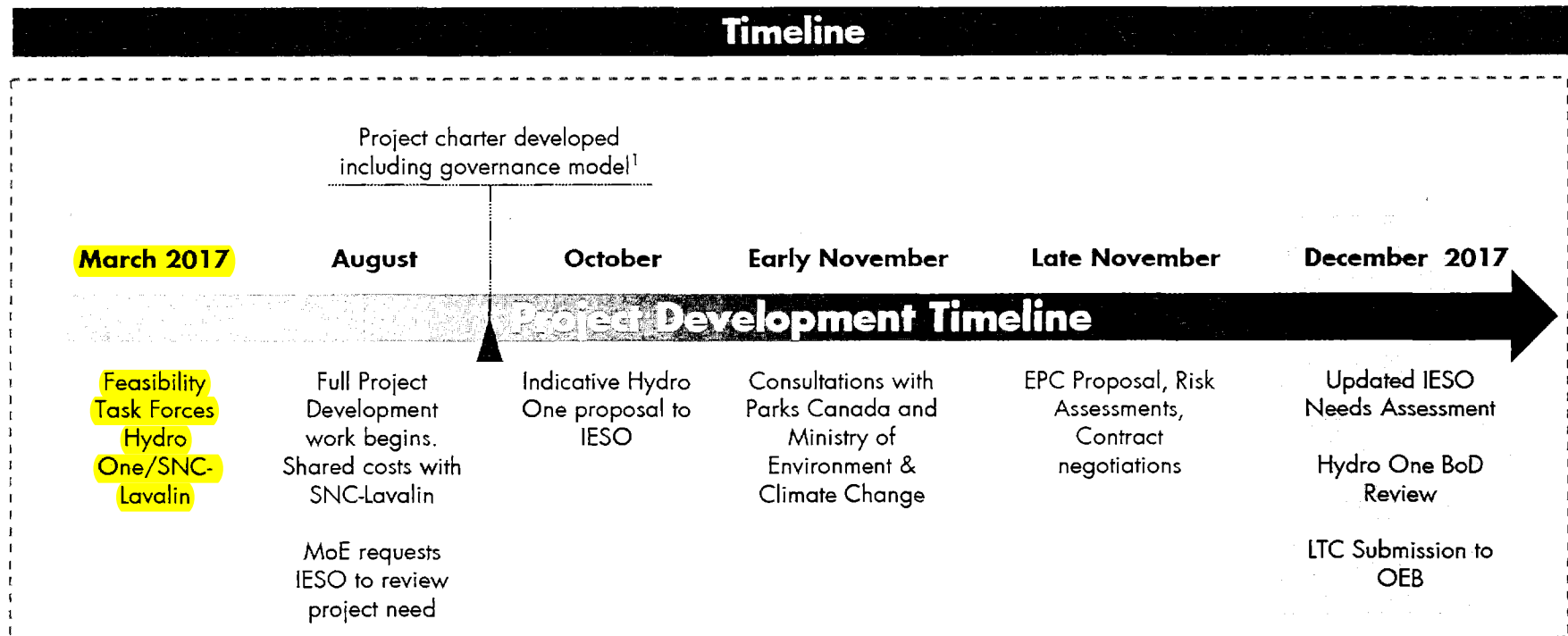
- NextBridge, selected by OEB in 2013 to carry the EWT development phase, filed its LTC Application to own and build the project in July 2017
 - Total estimated construction cost of the line was \$737 million, 80% higher than their 2013 forecast
- Independent Electricity System Operator (IESO) requested by Minister of Energy (MOE) to reconfirm need for the Project given high construction costs submitted by NextBridge
- IESO and OEB are both aware of Hydro One's renewed interest in the project and plan to submit competing LTC (MoE, Ministry of the Environment and Climate Change (MOECC) and NextBridge are also aware)
- Potential for other challengers interested to own and build EWT

What is Hydro One's involvement?

- In July 2017, Hydro One filed a LTC to upgrade its Transformer Stations to connect the new line aligned with NextBridge's LTC
- Hydro One is preparing a competitive LTC to own and build EWT transmission line, seeking Board approval prior to filing with OEB

1. Additional background information available in November 10, 2017 board briefing note

Project Development Timeline



1. See Appendix for project development governance

Executive Summary (1 of 2)

What have we done?

The company has analyzed new ways to approach this undertaking, and developed, together with a private-sector partner in SNC-Lavalin, an innovative solution with very substantial cost savings to customers when compared with the NextBridge submission.

Hydro One can bring together substantial value-add on all aspects of the East-West Tie: Construction, Operations, and compelling First Nations & Métis Benefits, including accretion to shareholders.

Benefits



Significant Savings for Customers: We are able to submit a LTC to the OEB with over **\$100 million of savings** in capital construction costs and over **\$5 million of annual OM&A savings** on an on-going basis.¹



Lower Environmental Impact: Our proposal has significantly lower environmental impacts primarily electing to **utilize our existing corridors**, widening where required to accommodate the new transmission line, and eliminating 184km of new corridor 60m wide as compared to NextBridge.



Cost Certainty: We are prepared to **offer cost certainty to customers with a guaranteed not-to-exceed price**; a first in Ontario.



Partnerships with First Nations: Hydro One is prepared to offer an attractive equity position consistent with the Bruce to Milton Limited Partnership (LP).

Partner



SNC-Lavalin: Construction and operation of transmission facilities is part of Hydro One's core business. To complement our existing resources and expertise for this project, we have teamed with SNC-Lavalin, a leading Canadian company with prior involvement in the EWT process, and large-scale transmission projects across the world.

1. See Appendix for cost comparison table

Executive Summary (2 of 2)

What do we need?

We are seeking the Board's approval to submit an LTC to the OEB including a not-to-exceed price based on information contained within this presentation.

- Typically, LTCs are filed with the OEB in advance, and approval of the business case by the Board or management follows. This project is unique, and not part of Hydro One's current or proposed investment plan because of the uncertainty around the outcome.
- Consistent with normal practice, if we receive the OEB's approval of Hydro One's LTC submission, the Hydro One Board will be presented with a business case for review and approval.

Project Requirements

One Year Extension: To be able to deliver on this important project, we require a one-year extension to YE 2021 as compared to NextBridge's proposal of YE2020.

Project Risks

Inability to Use NextBridge's EA Work: The largest risk to project success is an uncertainty around Hydro One's ability to utilize EA work completed by NextBridge and undertake an approved regulatory process to meet EA obligations associated with route modifications expected to lessen environmental impacts including route alterations to shorten route by 10%.

- Ability to utilize EA report/work done by NextBridge.
- This extension assumes that Environmental Assessment (EA) obligations can be met in 18 months.
- This requires use of NextBridge's EA and ability for Hydro One to undertake regulatory process to meet additional EA obligations associated with Hydro One route modifications.
- This is the largest risk to project success; both in terms of cost (not-to-exceed price) and schedule.
- Other significant risks include litigation process initiated by NextBridge; NextBridge's potential request to use Hydro One's corridor structures; and reputational risk with Hydro One's proposed route passing through resistant communities whereas NextBridge's does not.

Project Costs

Capital Construction Costs: Not-to-exceed \$636.1 million, with limited exclusions

- \$537.8 million turnkey EPC by SNC-Lavalin.
- \$98.3 million for Hydro One for financing, real estate, environment approval amendments, corporate functions (project oversight, communications, community relations, legal, regulatory, First Nations engagement) and associated contingency.
- Pricing exclusions to OEB will include: *force majeure* events, changes driven by government or regulatory policy, archaeological discovery, changes to import duties on finished goods, commodity pricing and foreign exchange risk beyond November 2018 (see appendix for further details).
- Multiple project level risk workshops held with participation from Hydro One and SNC-Lavalin used to define project risks and articulate project contingency.
- Continued open-book basis with SNC-Lavalin to define further savings until award of LTC. Flow to customers.
- Financial Protection: Constructor security including 50% Performance Bond and 50% Labour & Material Bond; Letter of Credit for 5% advanced payment; up to 10% liquidated damages; parental guarantee from SNC-Lavalin Group Inc.

Operations, Maintenance and Administration (OM&A) Costs: \$1.5 million per year¹

- Incremental costs to operate supported by detailed analyses from our Hydro One Systems Operations and Finance groups.
- Performed by Hydro One Networks, under agreements complying with the Affiliate Relationship Code.

1. Expressed in 2017 dollars, to increase with indexing for future years

Project Schedule & In-Service

Project Schedule and Key Milestones

Activity	Start	Finish
External Communications	February 2018	On-going through 2021
LTC Review and Decision	December 2017	October 2018
EA Studies, Review, Approval	February 2018	June 2019
Detailed Engineering	November 2017	October 2018
Procurement	January 2019	On-going through 2021
Construction	July 2019	November 2021
Project Substantial Completion		December 2021

Details

- Project schedule developed to date, outlining all major tasks, durations, and dependencies. Further detail to be built out in later stages of project.
- Minimal float available in EPC schedule, but comfortable to target Substantial Completion by Dec 31, 2021, with liquidated damages of up to \$53 million at 180 days late.
- Key dependencies to Project Substantial Completion by Dec 31, 2021:
 - Start of construction dependent on receiving approved EA by June 30th, 2019.
 - Receiving a continuous 2 week double circuit outage in August of 2020 and additional single circuit outages in summer of 2021 to complete the stringing activities.

Project Risks

Details

- Hydro One and SNC-Lavalin utilized consistent project risk assessment methodologies, including development of risk registry and probabilistic modeling to inform appropriate project contingencies. Project Risk Assessments were completed jointly for all project elements, regardless of accountability between the two companies.
- Hydro One has contingency at \$14 million, and
- SNC-Lavalin Contingency & Risk funded at approximately \$50 million.
- An allocation of risks matrix and summary of key risks are presented in appendix materials.
- The most critical project risk to cost, schedule, and reputation is whether or not Hydro One will be able to utilize the NextBridge EA work, as well as undertake an approved regulatory process to meet EA obligations associated with route modifications to lessen environmental impacts.

Key Project Risks

- Ability to utilize EA report/work done by NextBridge.
- This extension assumes that Environmental Assessment (EA) obligations can be met in 18 months.
- This requires use of NextBridge's EA and ability for Hydro One to undertake regulatory process to meet additional EA obligations associated with Hydro One route modifications.
- This is the largest risk to project success; both in terms of cost (not-to-exceed price) and schedule.
- Other significant risks include litigation process initiated by NextBridge; NextBridge's potential request to use Hydro One's corridor structures; and reputational risk with Hydro One's proposed route passing through resistant communities whereas NextBridge's does not.

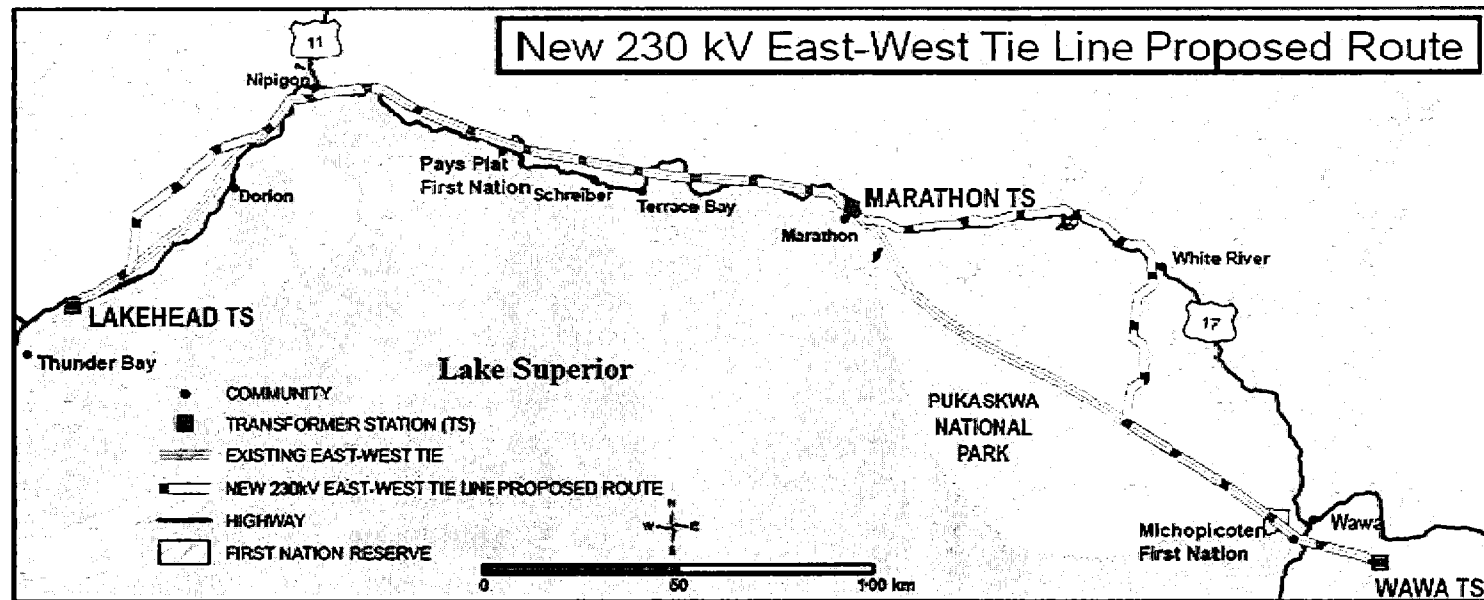
Environmental Approvals (1 of 3)

Details

- NextBridge has been working towards EA approvals for the transmission line since the 2013 designation for the development work. Their EA Report was submitted to the MOECC in July 2017. They are forecasting to spend \$42 million against OEB-approved budget of \$22 million.
- Despite being funded by rate payers, there is significant uncertainty of Hydro One's ability to utilize the EA work completed by NextBridge, and transfer of proponentcy is not envisioned in the legislation for individual EAs for transmission assets. Inability of Hydro One to be given permission to utilize the EA work would mean a 2.5 - 3 year delay, and cost in the order of \$30 million to duplicate studies, neither of which are in the interest of customers.
- Hydro One's schedule and cost assumptions are based on Hydro One being able to utilize the NextBridge EA work, as well as go through an approved regulatory process to meet EA obligations associated with route modifications expected to lessen environmental impacts.
- Hydro One has had on-going dialogue with the MOECC, but they have limited ability to provide advice and make decisions with the NextBridge EA before them for review.
- Hydro One's environmental impacts are substantially less than those of NextBridge by eliminating cutting new corridor approximately 184km long and 60m wide, much of which is through undisturbed lands (map on next slide).
- Hydro One plans to constructively state in the LTC submission a condition that the not-to-exceed price and the committed timeline is entirely dependent upon being able to utilize the EA work completed by NextBridge for approximately 80% of the line length AND our ability to undertake an approved regulatory process to meet EA obligations associated with alteration of the route to result in shorter line length and the fewer environmental impacts.
- November 27 letter from Parks Canada confirms no objection to our route through the National Park and modifications to our line from 2-circuit to 4-circuit, subject notably to Detailed impact EA approval.

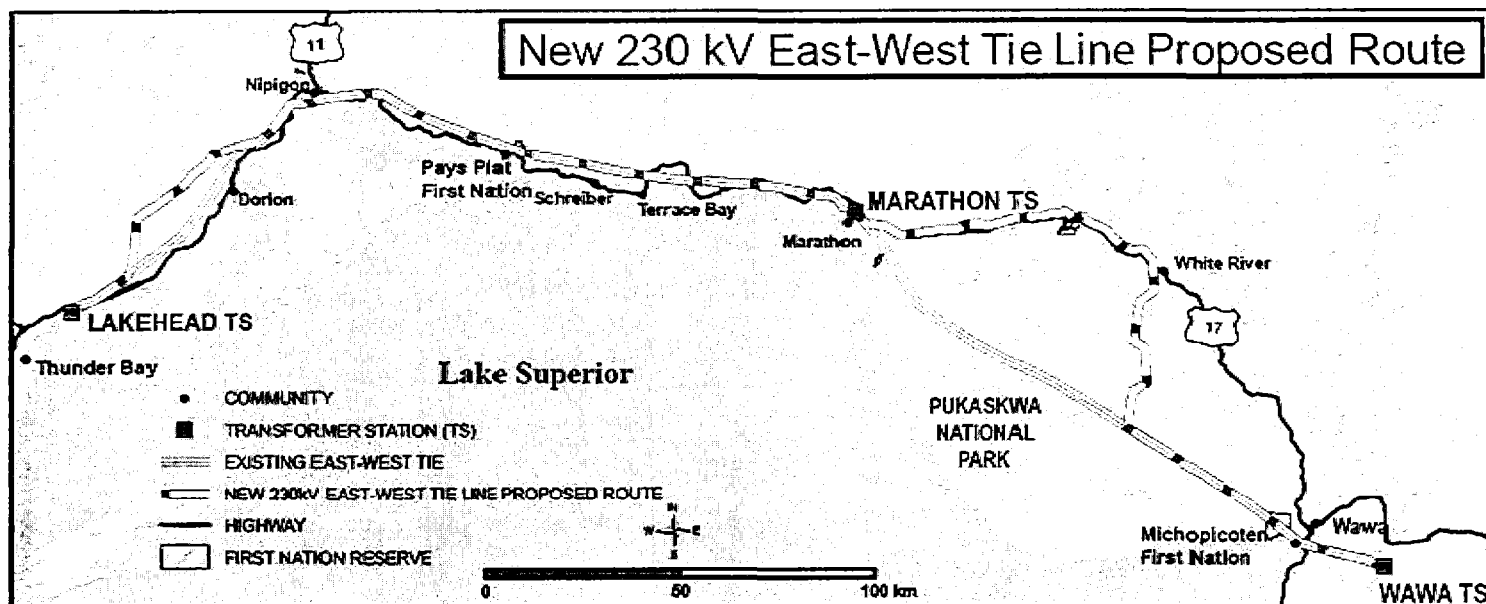
Environmental Approvals (2 of 3)

- One of Hydro One's competitive advantages is a 10% shorter route than NextBridge (approx. 42km less), that would follow the existing Hydro One corridor through Pukaskwa National Park. Existing corridor shown in red lines below, with NextBridge's proposed route in white and white-overlaid-on-red.
- Elsewhere along the route, existing corridors would be widened to accommodate the new towers, however through Pukaskwa National Park, existing 2-circuit towers would be converted to 4-circuit towers. Existing foundations would be re-used with new 4-circuit structures erected throughout the Park.



Environmental Approvals (3 of 3)

- Following public consultation and incorporation of feedback from communities as part of their EA work, NextBridge has planned a 53km bypass around the township of Dorion and Loon Lake west of Nipigon, shown in white on below map.
- Ministry of Natural Resources and Forestry (MNRF) has indicated that they feel NextBridge's EA placed too much weight on community feedback, and not enough weight on impact to the natural environment.
- Hydro One feels confident in the merits of an EA amendment basis of reduced environmental impacts, however it is understood that this will not be welcomed by residents around Loon Lake who were sensitive to additional corridor widening. Similar to the tower modifications being made through the Park, Hydro One's proposal makes provision for modification towers over a 5km section of line without any corridor widening to help mitigate concerns from residents.



Regulatory and Legal

Details

- With support of the Board's strategic elements outlined within this presentation, Hydro One plans to submit LTC to OEB in December, aligned with the IESO's updated Needs Assessment, received on December 1st.
- Will articulate the necessary condition for Hydro One to utilize the NextBridge EA and ability to undertake an approved regulatory process to meet EA obligations associated with route alterations with reduced environmental impacts.
- Exclusions to capital cost guarantee will be clearly articulated in Hydro One submission.
- Completion by Year End 2021 will be a project commitment.
- NextBridge's discontent with competition for the LTC will likely result in litigation of some form.
- Proactive measures taken by Hydro One earlier in 2017 to eliminate exchange of confidential and commercially sensitive information with NextBridge.
- November correspondence from NextBridge's counsel to OEB requesting limitations of Hydro One's requested intervener status. Hydro One Law Division engaged, and feels there is no basis for request.
- Notice from NextBridge received regarding perceived unfair competitive discussions with First Nations Communities and NextBridge contractors. Hydro One Law Division engaged, with no concern of wrongdoing.

Financing and Financial Impacts

Details

- Funding (Hydro One Equity + 60% of rate base or full debt component) through Hydro One Inc. corporate debt financing platforms
- Stand-alone project finance considered but no benefits and not effective in lowering costs and corporate guarantees required
- Transaction is not included in the Consolidated Business Plan, 2018 - 2023, however Treasury and Finance have identified the risks of increased debt financing for such projects and their impacts on credit metrics and ratings, along with potential remedies to address adverse outcomes
- Financial model details available in appendix, but in summary:
- [REDACTED]
- Assumes 66%-34% partnership with First Nations
- Based on \$636.1 million transaction costs, under our 60/40 debt/equity regulatory model
- \$381.7 million debt and \$254.4 million equity (\$167.9 million equity for Hydro One and \$86.5 million First Nations)

First Nations and Métis Considerations

Hydro One Plans to do the following regarding First Nations and Métis involvement:



Welcome Partnerships: Hydro One Networks Inc. will file the LTC with the OEB indicating that we welcome First Nations partnerships, but are precluded from discussing specifics of Transmission Line and benefits with FN communities due to their current exclusivity agreement with NextBridge.

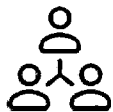


Special Purpose Entity: If awarded the LTC, Hydro One will establish a special purpose entity with majority equity interest of Hydro One and minority equity interest of the affected First Nations partners. Prior to the line being energized, the project assets will be transferred to this entity.



Equity Position: Hydro One is prepared to offer an attractive equity position to Bamkushwada LP, the partnership formed by six directly impacted communities¹, similar to that with the Bruce-to-Milton LP formed in 2012 with the Saugeen Ojibway Nation.

- 34% of equity ownership, transfer post construction
- Equity to be provided by communities; debt financing for the project (60% rate base) to be provided by Hydro One



Collaborative Approach: Based on existing discussions for our LTC for Transformer Station Upgrades, we are expecting collaborative approach for consultations and negotiations.



Employment Benefits: SNC-Lavalin aims to provide attractive employment benefits to First Nations and Métis contractors. A portion of budget has been allocated for premiums and set-asides for Indigenous Procurement activities.

1. Communities include: Pic Mobert FN, Biigtigong Nishnaabeg, Fort William FN, Michipicoten FN, Pays Plat FN, Red Rock Indian Band

Appendix

Appendix **A:** **Project Development Governance**

Appendix **B:** **Cost Comparison Table**

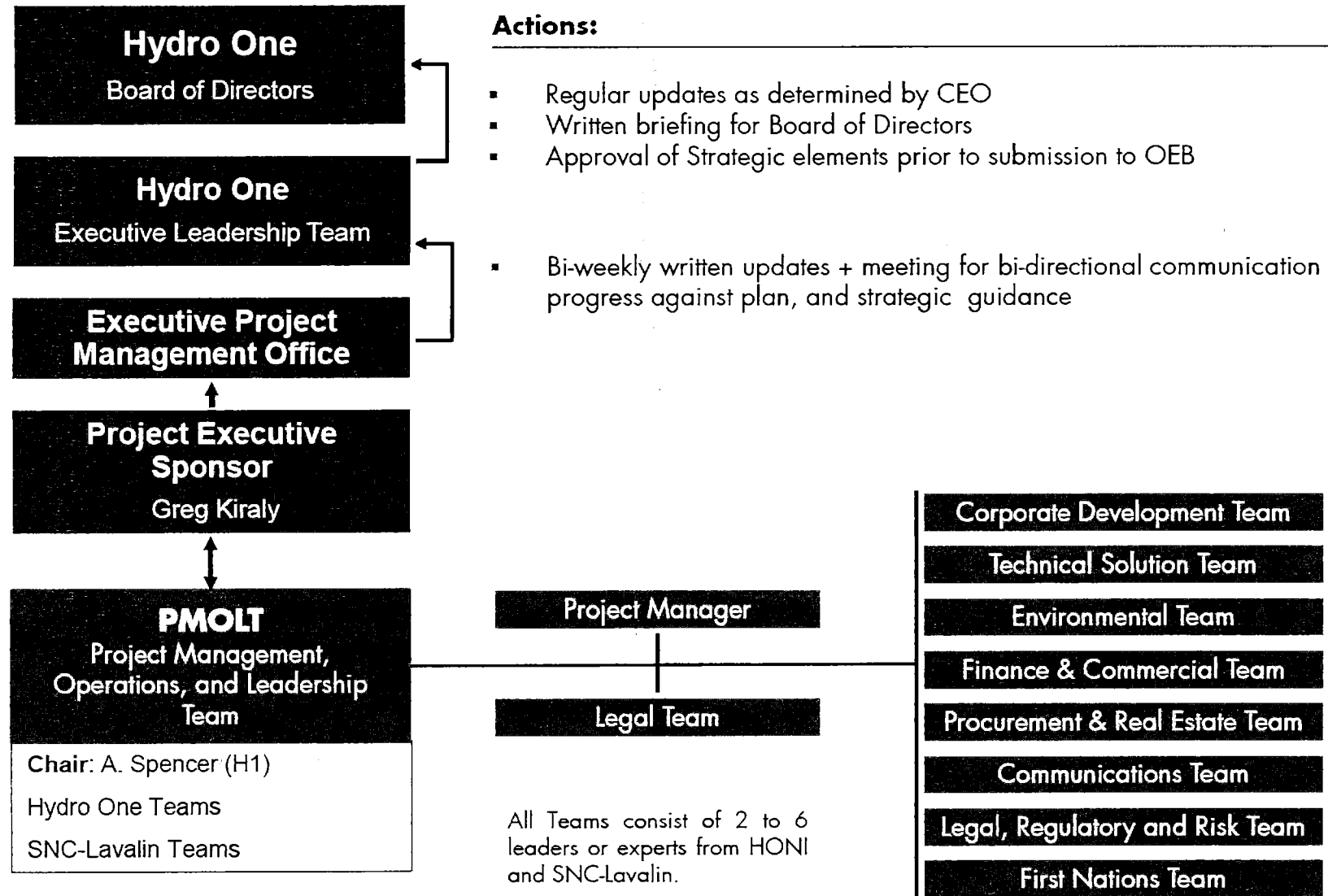
Appendix **C:** **Capital Construction Cost Breakdown**

Appendix **D:** **Financial Forecasts (2 pages)**

Appendix **E:** **Key Risks – Allocation of Risks**

Appendix **F:** **Project Risks and Mitigation (3 pages)**

Appendix A: Project Development Governance



Appendix B: Cost Comparison Table

Entity	NextBridge 2013	EWT LP 2013	NextBridge 2017	Hydro One 2017	Hydro One vs. NextBridge 2017
Development Cost (\$ million)	\$22.2	\$22.1	\$42 (forecast)	TBD	TBD
Construction Cost (\$ million)	\$409	\$490	\$737	\$636	(\$101)
Operations & Maintenance/year (\$ million)	\$4.4	\$7.1	\$7.1	\$1.5	(\$5.6 million / year) \$110 million capex equiv.
Completion Date	YE '17	YE '18	YE '20 (extended by IESO/OEB)	YE '21	1 Year Extension Equivalent \$211 million Hydro One advantage over NextBridge

- 6 qualified groupings in 2013 Designated Transmitter Process for East-West Line
 - UCT "NextBridge"** selected by OEB in 2013 for Development Phase with recovery of \$22.2 million Development Budget
 - Tied second place: **AltaLink** (then SNC-Lavalin owned) and **EWT LP (33.3% Hydro One, 33.3% Great Lakes Power Transmission and 33.3% First Nations through Bamkushwada LP)**

Appendix C: Capital Construction Cost Breakdown

Description of Cost	Hydro One (\$ million) (in-service 2021)	NextBridge (\$ million) (in-service 2020)
Project Management, Engineering, Design, and Procurement	\$19.9	\$26.0
Materials	\$57.8	\$95.8
Site Clearing, Preparation and Site Restoration	\$100.1	\$130.1
Construction	\$350.5	\$382.2
Other – Insurance and Bonding	\$9.5	-
EPC Cost Subtotal	\$537.8	\$634.1
Environmental and Regulatory Approvals	\$3.0	\$14.0
Land Rights	\$14.9	\$25.5
FN & Métis Participation	Included in EPC	\$7.5
FN & Métis Consultation	\$2.2	\$14.2
Other Consultation	-	\$2.7
Interest During Construction	\$45.8	\$33.2
Regulatory	-	\$5.8
Corporate Allocations: Legal, Regulatory, Finance, Communications, H1 Engineering & PM, etc.	\$18.5	-
Contingency & Management Reserve	\$14.0	-
Total Project Construction Cost	\$636.1	\$737.0

Appendix D: Financial Forecasts (1 of 2)



Line items	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
OPERATING REVENUES										
Revenues										
Revenue Requirement										
AFUDC										
Total revenue										
COSTS										
Costs										
OM&A										
Initial costs										
Depreciation										
Total costs										
Earnings before interest and income tax										
Interest expense										
Earnings before income tax										
Income Tax										
Net Income										
Less:										
Dividends paid to H1										
Dividends paid to Six Nations Devco										
Change in Retained Earnings										

Appendix D: Financial Forecasts (2 of 2)



Line items	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
RETURN ON RATE BASE										
Net income (before write-offs)	1	1	1	1	1	1	1	1	1	1
Depreciation (net of asset removal costs)	1	1	1	1	1	1	1	1	1	1
Change in working capital										
Less:										
Capital expenditures	1	1	1	1	1	1	1	1	1	1
Dividends paid to H1	1	1	1	1	1	1	1	1	1	1
Dividends paid to Six Nations Devco										
Net Cash Flow	1	1	1	1	1	1	1	1	1	1
RETURN ON RATE BASE										
Rate Base	1	1	1	1	1	1	1	1	1	1
Equity Portion (%)	1	1	1	1	1	1	1	1	1	1
Return on Rate Base	1	1	1	1	1	1	1	1	1	1
RETURN ON EQUITY										
Net Income	1	1	1	1	1	1	1	1	1	1
Deemed Equity (Return on Rate Base)	1	1	1	1	1	1	1	1	1	1
Return On Equity	1	1	1	1	1	1	1	1	1	1

Appendix E: Key Risks - Allocation of Risks

Key Risks	SNC-Lavalin	Hydro One	Ontario Energy Board (on filing of LTC)
Archeology		✓	✓
Geology/Site conditions		✓	
Force Majeure			✓
Regulatory or government-led Change			✓
Permanent Real Estate Rights		✓	
Temporary Real Estate Rights		✓	
Environmental Assessment		✓	✓ Regulatory means for EA approval
Parks Canada Approval		✓	✓ Regulatory means for EA approval
First Nations		✓	
Project Delay/Liquidated Damages	✓		
Security/Financial Guarantees	✓		
Design and Construction	✓		
"Not to exceed price" & schedule	✓ (Subject to exclusions as per above until contract start)	✓	
Legal risks		✓	
Foreign exchange on Materials*	✓ (until November 2018)		
Commodity Prices	✓ (until November 2018)		

Appendix F: Project Risks and Mitigation (1 of 3)

Risk	Additional Info	Likelihood of Risk	Project Impact	Mitigation	Party Carrying Risk
Inability to use EA work done by NextBridge	NextBridge has spent roughly 2.5 years on EA activities, and submitted to MOECC for review in July 2017. No clear ability to transfer proponentcy from NextBridge to Hydro One. No clear precedent for MOECC or OEB to follow.	Medium to High (50% - 75%)	Catastrophic. Would require Hydro One to start fresh on EA work, 2.5-3 year delay and approx. \$30 million of cost to be incurred without assurance of recovery, or alternatively not proceed with project. Reputational risks with stakeholders and communities.	Continue discussions with MOECC on benefits of Hydro One proposal and potential alternatives for consideration.	Hydro One. Only mitigated once received clarity from MOECC on mechanisms, which does not have defined timeline.
Inability to amend NextBridge EA to account for changes, including Pukaskwa National Park Route	Hydro One proposal is substantially less impactful to environment (i.e. reduced corridor clearing), but all changes to submitted EA by NextBridge require approval of changes by MOECC	Medium to High (50% - 75%)	Very High. Cost & Schedule: Would have to design & build to NextBridge EA, with longer route, more expensive tower design	Have received support in principle from Parks Canada. Continue discussions with MOECC on benefits of Hydro One proposal and potential alternatives for consideration.	Hydro One. Only mitigated once received clarity from MOECC on mechanisms, which does not have defined timeline.

Appendix F: Project Risks and Mitigation (2 of 3)

Risk	Additional Info	Likelihood of Risk	Impact	Mitigation	Party Carrying Risk
Inability to amend NextBridge EA to account for changes, including elimination of Loon Lake by-pass west of Nipigon	Hydro One proposal is substantially less impactful to environment (i.e. reduced corridor clearing), and addresses concerns raised by MNRF on NextBridge's EA, however is a change from the modified route committed to local communities concerned about nearby infrastructure expansion. All changes require MOECC approval.	High (75%)	<p>High.</p> <p>Cost & Schedule: Would have to design & build to NextBridge EA, with longer route, specifically clearing 53km of additional corridor.</p> <p>Reputational: Challenging conversations with local landowner associations.</p>	Plan to engage with MNRF and MOECC regarding lesser environmental impacts, as well as consult with communities regarding potential mitigating measures to eliminate corridor clearing around Look Lake. \$4 million within contingency.	Hydro One Only mitigated once received clarity from MOECC on mechanisms, which does not have defined timeline AND consultation with communities (Q2-Q3 2018)
EPC Partner unable to deliver against committed Construction Budget and Schedule	Project overruns and delays due to a number of modelled risks associated with land clearing and transmission line construction.	Low to Medium (25-50 %)	<p>Medium.</p> <p>Cost & Schedule: Would be subject to penalties and litigation for failing to fulfil contractual obligations.</p> <p>Reputational: Damage impacting relations with Hydro One and Canadian T&D sector</p>	<p>Substantial engineering work completed to clearly understand project risks.</p> <p>Probabilistic risk assessment utilized to define project contingency.</p>	SNC-Lavalin Hydro One risks guarded by EPC Contract financial security (bonding, liquidated damages up 180 days/\$53 million, parental guarantee)



Appendix F: Project Risks and Mitigation (3 of 3)

Risk	Additional Info	Likelihood of Risk	Impact	Mitigation	Party Carrying Risk
EPC Partner unable to deliver against committed Construction Budget and Schedule	Project overruns and delays due to a number of modelled risks associated with land clearing and transmission line construction.	Low to Medium (25-50 %)	Medium. Cost: Would not have ability to seek rate recovery on cost overruns, given not-to-exceed price.	Substantial work completed with SNC-Lavalin to understand project risks. Probabilistic assessment utilized to define project contingency. Instruments with EPC Contract to guard against cost and schedule overruns. Bonding for 100% of contract and Liquidated Damages of up to \$53 million.	Hydro One
Delays to construction start due to inability to obtain real estate rights	Hydro One accountable for obtaining real estate rights for widening of existing corridors. Standby charges of \$300 thousand/month once EPC contract is signed after LTC approval.	Medium (50%)	Medium Cost & Schedule: Standby charges of \$300 thousand/month once EPC contract is signed after LTC approval.	Begin community meetings and discussions early 2018. Modelled and allocated contingency.	Hydro One

Hydro One Limited/ Hydro One Inc.
Submission to the Board of Directors



Date: February 13, 2018

Re: East West Tie; approval to apply for Leave to Construct

We submit updated information regarding the proposed East West Tie project, and are seeking the Board's approval to apply to the OEB for Leave to Construct based on the updated strategic content.

Designing, building, and operating transmission infrastructure has been a core competency of Hydro One for many decades, with on-going delivery of approximately a one billion dollar annual capital portfolio. We are best positioned to do so for the East West Tie project in terms of both skill and experience.

We have been monitoring the project and proactively working on project development activities since early 2017, including innovative solutions with significant cost savings for Customers when compared with the NextBridge submission.

Management reflected upon the Board's comments at the December 8th, 2017 meeting, and has updated the proposed application. The Board discussed the risk profile of the investment, primarily the potential for unrecovered costs given the proposed price cap. The team has assessed a number of alternatives and completed a further review of the risks and uncertainties. On the balance of our review, we intend to proceed without the price-cap component.

The proposed Hydro One application to the OEB provides substantial benefits to customers as compared to the NextBridge LTC application in the form of both lower capital costs of over \$100 million, and substantially lower on-going annual operating costs equivalent to \$55 million of capital expenditure on a present value basis. Hydro One's submission also provides additional benefits in terms of reduced environmental impacts, and what we believe to be additional long-term benefits to First Nations partners.

Yours sincerely,

A handwritten signature in black ink that reads "Greg Kiraly". The signature is fluid and cursive, with the first letters of the first and last names being capitalized.

Greg Kiraly
Chief Operating Officer

East West Tie – Approval of Strategic Content for Leave to Construct

Resolution of the Board of Directors:

After consideration, upon motion duly made, seconded, and unanimously carried, be it
RESOLVED:

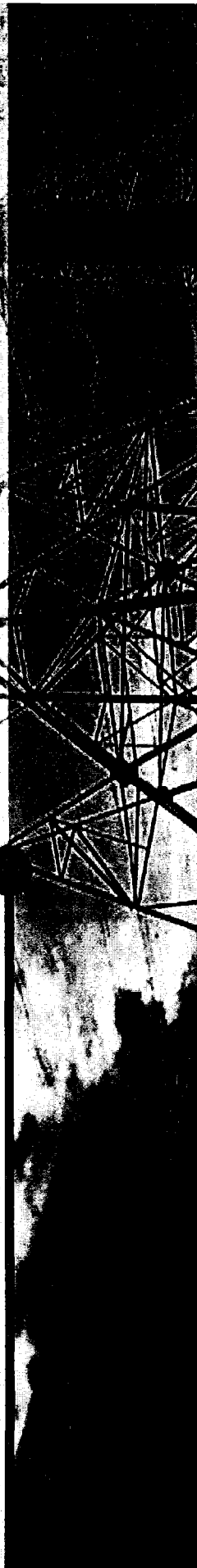
THAT the Board of Directors of Hydro One Limited approve the submission of a Leave to Construct to the Ontario Energy Board to build, operate, and own the new East West Tie transmission line based on the updated strategic content presented to the Board.



East-West Tie – Board Approval to Submit Leave to Construct

February 13, 2018

hydroOne



Background

- On December 8, 2017, the Board was requested to approve a Leave to Construct (LTC) application to the Ontario Energy Board (OEB) for Hydro One to build the East-West Tie (EWT) transmission line. Hydro One's proposed submission included a guaranteed not-to-exceed price.
- The Board was engaged and requested clarification on the following elements:
 - Financial risk exposure to Hydro One
 - Risk of Environmental Assessment (EA) approvals and impact on price and schedule
 - Uncertainty of First Nations partnerships
- Several alternatives were assessed by Hydro One and execution partner SNC-Lavalin while completing a further review of the risks and uncertainties.
- Canadian project experience on similar projects has previously been documented and is now presented within these updated materials.
- We remain confident in the proposed application and are seeking Board approval to submit our LTC to build the East-West Tie on a revised basis:
 - Updated pricing strategy to a targeted price (without cap), delivering \$150 million of cost savings to customers compared with NextBridge submission; Condition related to EA approval remains; and consideration to propose to the OEB a conditional LTC approval subject to agreeable First Nations partnerships approvals has been added, minimizing financial and reputational risks to Hydro One



Overview

Our Proposal

Building and operating transmission infrastructure is a core competency of Hydro One. We have been monitoring this project on an on-going basis, and since mid-2017 have been proactively working on project development activities. We have analyzed new ways to approach the EWT project and have developed an innovative solution with very substantial cost savings for Customers when compared with the NextBridge submission.



Significant Savings for Customers: We are able to submit a Leave to Construct to the OEB with over **\$100 million of savings** in capital construction costs plus a present value capital equivalent of **\$55 million of OM&A savings**.^(1,2)

Benefits



Lower Environmental Impact: Our proposal has significantly lower environmental impacts primarily electing to **utilize our existing corridors**, widening where required to accommodate the new transmission line, and eliminating over 130 km of new corridor 60 m wide as compared to NextBridge.

Execution Partner



SNC-LAVALIN

SNC-Lavalin: Construction and operation of transmission facilities is part of Hydro One's core business. To complement our existing resources and expertise for this project while also delivering on our own billion dollar annual transmission capital portfolio, we have teamed with SNC-Lavalin, a leading Canadian company with major operations in Ontario and prior involvement in the EWT process, and other large-scale transmission projects across the world. They will support project delivery, without an ownership stake.

(1) Our \$1.5 million annual O&M costs, represent \$2.9 million of annual savings versus NextBridge, which translates to an equivalent of \$55 million of capital cost on an PV basis over 30-year period. (2) Previous OM&A figures in December materials were a difference of \$5.6 million per year and \$110 million PV; NextBridge has recently updated their OMA cost estimate following review from the OEB, citing an administrative error.

Recommendation

Recommend Board of Directors approval for Hydro One to submit a Leave to Construct to the OEB to build, operate, and own the new East-West Tie transmission line based on the following key terms:

Key Item	Details
Capital Cost	Target price at \$636.1 million subject to 1) ability to obtain Environmental Assessment approvals against plan, and 2) establishment of First Nations Partnerships within a short period of time from conditional LTC approval. Final project cost to be adjusted following LTC approval by OEB, subject to any change or conditions imposed by OEB
Operations, Maintenance & Administration	\$1.5 million/year indexed thereafter
Schedule	Target completion date by December 2021 , based on October 2018 LTC approval
Ownership & Funding	Hydro One Networks Inc. to file the LTC as Owner and Operator, and to transfer its ownership interest and control to Special Purpose Entity prior to line being energized. Corporate Funding for transaction other than First Nations equity
First Nations Partnerships and Financial Participation	Propose to OEB a condition that First Nations partnerships to be established on mutually agreeable terms within a short period of time (in order of 45 days) from receipt of OEB conditional award. Proposed 34% equity offering, to be subscribed and funded at the end of construction by Bamkushwada LP, the partnership formed by the six impacted First Nations
Financial Projections	

Project Comparison – Hydro One and NextBridge

Comparator	Hydro One	NextBridge
EPC Cost Subtotal	\$537.8 M	\$634.1 M
Other Project Costs Subtotal (financing, real estate, environment approval amendments, corporate functions (project oversight, communications, community relations, legal, regulatory, First Nations engagement) and associated contingency.	\$98.3 M	\$102.9 M
Total Target Project Capital Cost ⁽¹⁾	\$636.1 million	\$737.0 million
Annual OM&A, 2017\$	\$1.5 million	\$4.4 million
Target Project Completion Date	December 2021	December 2020

- Hydro One is confident in ability to deliver project for over \$100 million less than NextBridge's submitted price primarily due to a more efficient route which is 10% shorter, traversing through the Pukaskwa National Park parallel to existing Hydro One infrastructure, as well as an optimized tower design to reduce material and construction costs. These two innovations account for approximately \$60 million and \$28 million respectively in capital costs.
- NextBridge has somewhat of an advantage as they are further along on underlying project work and is targeting an earlier delivery date of December 2020
- Hydro One views that NextBridge delivery by YE2020 is at-risk due to anticipated delays in regulatory approvals. Additional months for Hydro One's solution is not viewed as large value at \$150 million, and worth waiting for without any short-term or long-term impact on power system.

(1) Additional breakdown available in Appendix 1

Greg Kiraly, COO / February 5, 2018 8:40pm
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Project Costs

Capital Construction Costs: Targeted price of \$636.1 million, with limited exclusions

- \$537.8 million lump-sum turnkey Engineer Procure Construction (EPC) with SNC-Lavalin.
- \$98.3 million for Hydro One for financing, real estate, environment approval amendments, corporate functions (project oversight, communications, community relations, legal, regulatory, First Nations engagement) and associated contingency.
- Pricing exclusions to OEB will include: typical *force majeure* events (natural disaster, war, etc.) , changes driven by government or regulatory policy, archaeological discovery beyond EA studies, and changes to import duties on finished goods.
- NextBridge has additional pricing exclusions in their submission, which Hydro One plans to manage within our target price, with appropriate hedging as required for benefit of customers and shareholders.
- Multiple project level risk workshops held with participation from Hydro One and SNC-Lavalin used to define project risks and articulate project contingency. Contingency of \$68 million (10.7%) included within the \$636.1 million total.
- Continued open-book basis with SNC-Lavalin to define further savings until award of LTC. Flow to customers.
- Financial Protection: Constructor security including 50% Performance Bond and 50% Labour & Material Bond; Letter of Credit for 5% advanced payment; up to 10% liquidated damages; parental guarantee from SNC-Lavalin Group Inc.⁽¹⁾

Operations, Maintenance and Administration (OM&A) Costs: \$1.5 million per year²

- Incremental costs to operate supported by detailed analyses from our Hydro One Operations and Finance groups.
- To be performed by Hydro One Networks Inc., under agreements complying with the Affiliate Relationship Code.

(1) 50% + 50% bonding assurance represents maximum allowable bonding coverage, and 10% liquidated damages and parental guarantee is consistent with industry best practice. (2) Expressed in 2017 dollars, to increase with indexing for future years as per OEB-approved methodology.

Capital Cost Strategic Review

▪ **Recommend to proceed with LTC submission, without price cap**

- Hydro One is approaching this project as part of a competitive process, and knows that we need to balance risk while remaining fair to both our customers and shareholders alike. Upon our review, we are balancing risks in removing the price-cap, and strongly believe that even without the cap, the application is compelling with \$150 million of cost benefit to customers.
- The target price of \$636 million is based on a detailed bottom-up approach, making reasonable assumptions and contingency allocations for risk during project execution.

▪ **Cost benchmarking well-placed against similar 230KV transmission line projects**

- Similar projects have actual EPC costs ranging from \$1.27 million to \$1.37 million/km versus Hydro One estimate at \$1.34 million per km. NextBridge estimate \$1.41 million/km. Details in Appendix 2.
- After normalizing other projects, adjusting index for material and labour costs and for length of EWT route, the Hydro One EPC cost is well-placed and compares within a -6% to +5% range.

▪ **Reviewed referenced Canadian large-scale transmission projects**

- During the December 8th board meeting, a number of large-scale transmission projects were referenced to demonstrate the potential for cost increase from initial approved amounts. A total project cost and variance analysis of the referenced large scale transmission projects with cost variances has been completed and summarized below, with additional details in Appendix 3.
- Each project has a unique set of circumstances, including political impacts, with final variances to approved ranging from 12% to 39%, and average variance of 22%.

Capital Cost Strategic Review (con't)

- **Hydro One's EWT project team has been working in a collaborative and open book manner during project development phase, incorporating lessons learned by others:**

- Clear engineering and construction solution, built on a mature and stable project specification
- Up-front clarity and agreement on design standards, material standards, and maintenance standards to minimize extension of design cycle and re-work
- Clarity and commitment on contracting strategy with accountability and risk management clearly defined between SNC-Lavalin and Hydro One
- Utilization of construction contractors who are experienced with transmission line construction
- Hydro One's solution is a widening of the existing corridor, (exception of 53 km bypass affecting communities west of Nipigon) which is inherently less risky than creating new corridor as was the case in several of the comparator projects.

- **Some risk of cost recovery if LTC not approved, or actuals in excess of Target price**

- Board approval for full business case will be sought following notification by OEB of conditional LTC approval
- If LTC granted to Hydro One, recovery of additional costs in excess of our adjusted revised target price will be subject to OEB approval as is customary for other LTCs. If LTC is not granted to Hydro One, budget spent to support the LTC application will not be recovered through rates. Approximately \$13 million of at-risk costs for development work up to point of LTC Decision.
- Any cost overruns above that approved in the LTC are at risk. Consistent with all LTCs, the OEB requires notification of any expected cost overruns exceeding 10% of approved. Traditionally total project costs within 10% of approved have been allowed into rate base following a prudence review, however, given that the OEB will be assessing two applications and making decisions partially based on the cost of the project, any costs over that approved will likely be further scrutinized for recovery.

Environmental Assessment Approval

- It is customary to file a LTC application prior to obtaining an approved Environmental Assessment (EA) from the Ministry of Environment & Climate Change (MOECC). NextBridge filed its LTC application on July 31, 2017. Approval of the Individual EA is not anticipated until Fall-2018 or later given that NextBridge is currently amending its EA.
- Hydro One is working with the MOECC to assess its ability to utilize the EA work already completed by NextBridge for ~80% of the line length AND ability to undertake an approved regulatory "Process" to meet EA obligations for altered ~20% of length; to meet H1 proposed schedule, NextBridge EA approval likely required by end of Q3 2018 to allow confirmation of final NextBridge scope and determination of approved "Process" in collaboration with MOECC.
- Process would likely be a Ministerial exemption to typical EA requirements which would require a Regulation or Declaration Order combined with Cabinet Approval and additional study and consultation.
- Process could add increased EA approval risk if our project is not compelling to the Province; requires Ministry of Energy (MoE) support to MOECC; formal support not currently contemplated based on initial meetings with MoE representatives. Process currently has no established timelines, due to its unique nature.
- 2018 provincial election timing also contributes to uncertainty of approval process for both NextBridge and Hydro One.
- **Hydro One will articulate within the LTC application that schedule and indicative construction cost are conditional on the receipt of EA-related approvals**
 - Impacts on Hydro One's price and schedule arising from MOECC substantive conditions would also represent elements triggering requests by Hydro One to OEB to approve associated incremental costs
 - OEB denial to approve cost recovery due to factors driven by MOECC viewed as very low risk.
- OEB's normal practice is to include Conditions of Approval normally associated with the requirement of the Environmental Assessment approval.

First Nations Partnerships

- Hydro One's intentions on First Nations partnership will be included in our application for Leave to Construct
 - Regardless of any exclusivity agreements, Hydro One can begin the consultation process with First Nations as a constitutional duty
 - Our track record including Bruce to Milton (B2M) Partnership is strong, and we anticipate First Nations will be highly supportive
 - Impacted First Nations are familiar with Hydro One given the operations of our existing line
- Alleged exclusivity agreements entered into between NextBridge and affected communities can be perceived as anti-competitive and not in the best interest of stakeholders and customers.
- To fully mitigate any risk of an open commitment with First Nations, Hydro One will propose a conditional Leave to Construct, subject to reaching agreement with First Nations partners within a short and reasonable period of time, of approximately 45 days
 - Short time frame, to limit project delays for customers
 - First time Hydro One is requesting a condition associated with a partnership agreement, and also a new concept to the OEB
- Anticipated that First Nations partners will be able to fully-fund their equity portion, in the order of \$86 million



Appendices

Appendix 1: Capital Cost Breakdown

Appendix 2: Cost Benchmarks of Similar 230kV Transmission Line Projects

Appendix 3: Comparison of Referenced Large Scale Transmission Projects

Appendix 4: Project Financial Forecast

Appendix 1: Capital Cost Breakdown

- Hydro One is confident in ability to deliver project for over \$100 million less than NextBridge's submitted price due to: a **more efficient route which is 10% shorter**, traversing through the Pukaskwa National Park parallel to existing Hydro One infrastructure, as well as **an optimized tower design** to reduce material and construction costs.

Description of Cost	Hydro One (\$ million)	NextBridge (\$ million)
Project Management, Engineering, Design, and Procurement	\$19.9	\$26.0
Materials	\$57.8	\$95.8
Site Clearing, Preparation and Site Restoration	\$100.1	\$130.1
Construction	\$350.5	\$382.2
Other – Insurance and Bonding	\$9.5	embedded
EPC Cost Subtotal	\$537.8 million	\$634.1 million
Environmental and Regulatory Approvals	\$3.0	\$14.0
Land Rights	\$14.9	\$25.5
FN & Métis Participation	Included in EPC	\$7.5
FN & Métis Consultation	\$2.2	\$14.2
Other Consultation	-	\$2.7
Interest During Construction	\$45.8	\$33.2
Regulatory	-	\$5.8
Corporate Allocations: Legal, Regulatory, Finance, Communications, H1 Engineering & PM, etc.	\$18.5	embedded
Contingency & Management Reserve	\$14.0	embedded
Total Project Construction Cost	\$636.1 million	\$737.0 million

Appendix 2: Cost Benchmarks of Similar 230kV Transmission Line Projects

	EWT - Hydro One		EWT - NKE		Northern Ontario Study		T1267	SFP	GBW
KV, AC/DC	230kV	2019	230kV	2019	230kV	2011	230kV	240kV	240kV
Year of Execution	2019		2019		2011		2017	2013	2011
Client	Hydro One		NextBridge		Hydro One (Study to support budgetary pricing for LTEP)		Newfoundland Hydro	Altalink	Altalink
EPC Firm	SNC-Lavalin		Burns & McDonnell as Engineering Valard as Procure & Construct		SNC-Lavalin		SNC-Lavalin Engineer & Owners Engineer	SNC-Lavalin as EPC	SNC-Lavalin as EPC
Location	Northern Ontario		Northern Ontario		Northern Ontario		St John's, Nfld	Southern Alberta	Southern Alberta
Length (km)	400		450		300		188	123	240
Average span (m)	365						320	350	337
Number of circuits	Double		Double		Double		Single	Double	Double
Number of structures	1100						586	338	713
Conductor (# per phase)	1192 kcmil (1)		1192 kcmil (1)		795 kcmil		804 kcmil (1)	1033 kcmil(2)	1033 kcmil (2)
Construction Constraints	Heavy Wooded		Heavy Wooded		50% Wooded		Heavy Wooded	Prairie	Prairie
Cost Analysis		\$/km	\$/km	\$/km	\$/km	\$/km	\$/km	\$/km	\$/km
Materials	\$147,090		\$198,684		\$273,600		\$249,316	\$282,247	\$296,382
Access	\$257,665		\$290,580				\$264,711	\$172,357	\$238,280
Foundations	\$281,096		\$305,913				\$260,056	\$351,924	\$171,006
Lines	\$562,192		\$567,382				\$492,266	\$564,780	\$565,423
TOTAL COST / km		\$1,847m	\$1,417m	\$1,897m	\$1,897m	\$1,897m	\$1,277m	\$1,377m	\$1,277m
Applied Indexes / Factors				- Steel	- Steel, Aluminum - Provincial Labour - x1.5 Single to double	- Steel, Aluminum - Provincial Labour	- Steel, Aluminum - Provincial Labour	- Steel, Aluminum - Provincial Labour	- Steel, Aluminum - Provincial Labour
Total Variance to EWT -Hydro One solution @ 400km	+\$0		+\$25.9m (+4.8%)	+\$20.6m (+1.5%)	-\$31.2m (-5.8%)	+\$10.8m (+2.2%)	-\$29.3m (-5.2%)		

Appendix 3: Comparison of Referenced Large Scale Transmission Projects

Project Name	East West Tie (Hydro One)	East West Tie (NextBridge)	NTL Northwest BC Transmissi on Line (BC Hydro)	ILM Interior Lower Mainland Transmissi on (BC Hydro)	WATL Western Alberta Trans. Line (AltaLink)	EATL Eastern Alberta Trans. Line (ATCO)	Fort McMurray West Transmissi on (Alberta Powerline)	Bipole III (Manitoba Hydro) On-going
INITIAL COSTS (\$M)	\$636 Target	\$737 target	\$561	\$602	\$1,499	\$1,665	\$1,430	\$3,300
FINAL COSTS (\$M)			\$736	\$743	\$1,699	\$1,900	\$1,600	\$4,600+
Variance (\$M)			\$175	\$141	\$200	\$235	\$170	\$1,300
Variance (%)			31%	23%	13%	14%	12%	39%+

- Each project has its own set of circumstances and variance explanation, but on average they are a 22% variance between the Initial Cost and Final Cost. Changes include approved scope-change notices during project execution, as well as more impactful changes like re-routing due to political interference, changes to contracting strategy, and in-flight design changes.
- NTL and ILM Projects** had similar challenges that substantially drove project variances: 1) re-organization of BC Transmission Company back into BC Hydro during course of project, leading to changes in contracting strategy and design standards on an in-flight project.
- Final cost variances on the **WATL, EATL and Fort McMurray West** projects were largely a result of changes in project evolution between the initially approved project amount, including routing changes following Environmental Assessment approvals and out-of-scope change notices approved by the utility.
- The Manitoba Hydro Bipole III project** has been a project with extensive changes driven largely by political forces, and has been the subject of multiple critical reviews. Route was altered by the NDP government in power at the time, and resulted in a substantially longer route to the west of Lake Winnipeg as opposed the original approved route to the east.



Appendix 4: Project Financial Forecast (1 of 2)



Line items	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
OPERATING STATEMENT (\$M)										
Revenues										
Revenue Requirement										
AFUDC										
Total revenue										
Costs										
OM&A										
Initial costs										
Depreciation										
Total costs										
Earnings before interest and income tax										
Interest expense										
Earnings before income tax										
Income Tax										
Net Income										
Less:										
Dividends paid to H1										
Dividends paid to Six Nations Devco										
Change in Retained Earnings										



Appendix 4: Project Financial Forecast (2 of 2)



Line items	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
CASH FLOW FROM OPERATIONS (\$M)										
Net income (before write-offs)										
Depreciation (net of asset removal costs)										
Change in working capital										
Less:										
Capital expenditures										
Dividends paid to H1										
Dividends paid to Six Nations Devco										
Net Cash Flow										
RETURN ON RATE BASE (\$M)										
Rate Base										
Equity Portion (%)										
Return on Rate Base										
RETURN ON EQUITY (%)										
Net Income										
Deemed Equity (Return on Rate Base)										
Return On Equity										

TAB 25

PO Box 212, Hwy 627
Heron Bay, Ontario
PoT 1Ro

Monday November 27, 2017

Ms. Elise Croll
Director, Environmental Services
Hydro One Networks Inc.
483 Bay Street, North Tower, 12th Floor
Toronto, Ontario
M5G 2P5

RE: License of Occupation within Pukaskwa National Park

Dear Ms. Croll,

I am following up on two meetings that recently took place between Parks Canada, Hydro One, and SNC Lavalin. The first meeting took place on September 30, 2017 at Pukaskwa National Park. At this meeting Hydro One and SNC Lavalin presented a conceptual plan for Hydro One to upgrade towers using the existing right-of-way in Pukaskwa National Park for the purpose of accommodating an additional transmission line.

The second meeting took place via teleconference on November 20, 2017. At this meeting Parks Canada, Hydro One and SNC Lavalin discussed the tower upgrade proposal in additional detail, based on a Project Overview provided to Parks Canada on October 13, 2017.

Given the information that we have been provided to date, Parks Canada is not opposed to the project in principle. Parks Canada is prepared to continue to consider the Hydro One request in accordance with the License of Occupation, applicable laws and policies, and Indigenous consultation obligations. Among other potential next steps: mitigations will need to be discussed as more information is obtained throughout development of the project; a written plan for construction will need to be submitted as per Article 8.01 of the current License Agreement; and either a Basic or Detailed Impact Assessment, under section 67 of the Canadian Environmental Assessment Act (2012) will need to be completed.

Sincerely,



Annique Maheu
A/ Park Superintendent

UNDERTAKING – JT 2.7

Undertaking

- a) Hydro One to provide, under advisement, a summary of what was provided from Parks Canada in response to the communication Hydro One had with Parks Canada regarding the EA.
- b) Hydro One to provide a summary of discussions that will take place in the meeting with Parks Canada on May 17th.

Response

- a) The following is a summary of chronology of key Parks Canada correspondence, meetings, and submissions with applicable attachments where the correspondence has not already been put on the record.

Date	Correspondence/Meeting/Submission
September 13, 2017	<p>Teleconference between Hydro One, SNC-Lavalin and Parks Canada</p> <ul style="list-style-type: none"> Presented Hydro One's initial overview of project Discussed Parks Canada's rejection of NextBridge's proposal, which could not be contemplated because it would be considered to be new development under the <i>Canada National Parks Act</i> Determined that the key point going forward was to determine whether Hydro One's proposal was considered a new development Agreed to meet in late September to discuss further
September 29, 2017	<p>In person meeting at Pukaskwa National Park – Hydro One, SNC-Lavalin, Parks Canada</p> <ul style="list-style-type: none"> Conducted a detailed project discussion with Parks Canada to identify potential areas of concern and provide sufficient comfort to Parks Canada staff to enable Parks Canada to seek a timely legal opinion on the proposed upgrade to existing transmission facilities within Pukaskwa National Park Agreed formal project overview to be provided by Hydro One for evaluation by Parks Canada and preparation of a formal response
October 13, 2017	<p>Submission of Project Overview provided by Hydro One for evaluation by Parks Canada – Attachment 5 of the Hydro One Additional Evidence filed in the NextBridge Motion on May 7, 2018</p>

Date	Correspondence/Meeting/Submission
November 20, 2017	<p>Teleconference between Hydro One, SNC Lavalin, Parks Canada (finalized minutes of meeting available)</p> <ul style="list-style-type: none"> Discussed Project Overview and what type of assessment would be required under licence agreement to meet federal EA requirements; Parks Canada felt it might be a basic impact analysis not detail but would confirm once more detail received Parks Canada requested a detailed construction plan be submitted Discussed, community consultation, renewing licence agreement, access agreements, research permits, collaboration on studies, information sharing
November 27, 2017	<p>Parks Canada correspondence to Hydro One</p> <ul style="list-style-type: none"> Parks Canada verified in writing that that they did not object to the Project (as provided in Hydro One's prefiled evidence at Exhibit C, Tab 1, Schedule 2, Attachment 2)
January 19, 2018	<p>Hydro One submission of Environmental Evaluation Report to Parks Canada in support of the Licence renewal (Attachment 6 of the Hydro One Additional Evidence filed in the NextBridge Motion on May 7, 2018).</p>
February 12, 2018	<p>Hydro One submission of Construction Execution Plan to Parks Canada in accordance with Article 8.01 of the Licence (Attachment 7 of the Hydro One Additional Evidence filed in the NextBridge Motion on May 7, 2018).</p>
April 27, 2018	<p>Parks Canada provided Hydro One with a list of species at risk included in the Park's Multi-Species Action Plan to be incorporated into Hydro One's environmental studies. This is included as Attachment 1 of this undertaking.</p>
April 30, 2018	<p>Hydro One requested Park permission to share the Caribou study results with a member of the Michipicoten First Nation. This is included as Attachment 2 of this undertaking.</p>
May 1, 2018	<p>The Park agreed to share the Caribou study results with the Michipicoten First Nation. This is included as Attachment 3 of this undertaking.</p>
May 3, 2018	<p>Hydro One followed up with an email to the Park summarizing what was discussed in individual phone conversations with Parks staff on May 1, 2018. In those conversations it was agreed that Hydro One will provide to the Park,</p>

Date	Correspondence/Meeting/Submission
	for its review, an environmental impact assessment document that includes, among other things, the studies and consultation conducted in relation to the Lake Superior Link project. This document would fulfill the Canadian Environmental Assessment Act, 2012 requirements. This correspondence is included as Attachment 4 of this undertaking.
May 7, 2018	Hydro One provided a draft Table of Contents of the document that will be used to satisfy the Projects environmental requirements. This is included as Attachment 5 of this undertaking.
May 8, 2018	The Park acknowledged receipt of the Table of Contents and agreed to review and reply back in the next two weeks. This correspondence is included as Attachment 6 of this undertaking.
May 8, 2018	The Park provided to Hydro One specific measures to add to the work plans for the environmental studies to be conducted in the Park. The Park has asked Hydro One to conduct studies within the Park that are as intensive as those surveys proposed to be conducted outside the park. Environmental studies within the Park were originally proposed to be less intensive because there is no access construction or tree clearing proposed within the Park. This information is included as Attachment 7 of this undertaking.
May 8, 2018	The Park requested that the meeting scheduled May 9th, 2018 be postponed and Hydro One agreed to postpone the meeting; next meeting with the Park scheduled for May 17th, 2018. This correspondence is provided as Attachment 8 of this undertaking.
May 17, 2018	Teleconference with Parks Canada – minutes provided as Attachment 9 of this undertaking.

- 1
- 2 b) Please refer to Attachment 9 of JT 2.7a.)

Minutes of Meeting

Filed: 2018-05-25
EB-2017-0364
Exhibit: JT 2.7
Attachment 9
Page 1 of 3

Project Name:	Lake Superior Link			
Prepared by:	Adam Haulena		Meeting Date:	May 17, 2018
			Meeting Time:	1:15 pm – 1:45 pm
			Location: Conference Call	
Attendees:	Sharon Hayes (SH) Daniel Pouliot (DP) Bruce Hopper (BH) Patricia Staite (PS) Adam Haulena (AH) Doug Rivard (DR)	Parks Canada (PC) PC HONI HONI HONI HONI	James Harris (JH) Angela Brooks (AB)	SNC Lavalin (SNC) SNC

Minutes

Item #	Description	Action by	Date
	Work Programs – Pukaskwa National Park		
1	Project Overview (BH)		
1.1	SLI relayed information gained from helicopter survey. Lots of washouts along PNP access road and removed culverts. Access via land will be difficult in some areas. Helicopter access will be required for portions of the survey.	Info	
1.2	BH reviewed purpose of meeting. Biodiversity enhancement initiatives in the park in relation to existing corridor and proposed upgrades due to Lake Superior Link project	Info	
2	Workplan (BH)		
2.1	DP previously provided HONI with list of initiatives that PNP would like for the right of way area.	Info	
2.2	JH overviewed workplan changes. Major changes – applying full vegetation and wildlife assessment protocol to ROW and adjacent habitat. Rare vegetation communities. ROW vegetation inventory to determine SAR or general enhancement can occur. Bats – full survey protocol, hibernaculum, etc. Bird surveys throughout the ROW and park, eagle and osprey nesting survey. One osprey nest located in the towers during helicopter surveys.	Info	

Minutes of Meeting

Item #	Description	Action by	Date
2.3	DP states it is important to have baseline data to have to assess. Most important to be able to measure a change when working vegetation management plan for community assemblages. Concern over SAR that PNP is responsible for. Monarch butterflies were mentioned as important for SAR as well as associated milkweed. DP wonders the need to put specific species that PNP is responsible for. SNC stated all SAR would be assessed.	Info	
3	Permit for field work		
3.1	Permit for field work on May 28. SNC was not sure on status of permit at the time. DP confirms SNC has submitted a request. DP wondering if there was an added a request for structural inspections to permit? PNP requests pertinent level of detail on all submissions to minimize back and forth.	SNC	
4	Biodiversity enhancement initiatives		
4.1	DP says all biodiversity enhancement initiative concerns have been addressed outlined in the correspondence previously sent.	Info	
5	Notice Letter		
5.1	BH - HONI to be sending out First Nations letters for work in park for consultation, including Pic River FN to advise that environmental studies will begin on the project. BH to send SH the letter. Wants to clarify if the letter for review or just FYI. Ensure letter is clear that it is commencement of EA studies, not approving project in its entirety. PNP weren't able to allow EA to go through with Nextbridge, comments coming back asking why HONI is being allowed. BH says letters are going out tomorrow, if there are any issues please bring them forward before then.	BH/SH	May 18 th , 2018
6	Table of Contents		
6.1	DP's team sent comments. Received and would like another week to provide comments	DP	
6.2	Archaeology – DP not yet able to meet with Parks Canada staff archaeologists. Will look into it next week.	DP	
7	Construction Execution Plan		
7.1	HONI not received comments on the plan yet. Action item: Discuss review of construction-execution plan. February 2020 rough estimate for PNP construction start.	BH/DP/SH	

Minutes of Meeting

Item #	Description	Action by	Date
7.2	Background provided on OEB time estimates in regards to motion to dismiss HONI and Section 92 leave to construct application.	Info	
8	License of Occupation		
8.1	License of occupation renewal - Environmental evaluation document sent over for review. DP under impression they had sent over comments. SH discussed land rental with someone at HONI. New license of occupation should be sent over shortly to HONI.	DP/SH	

The above is considered to be a true and accurate record of discussions at the meeting. Please advise the writer of any discrepancy noted within 3 business days of issue so that any suggested corrections may be addressed prior to approval of minutes at the next scheduled meeting.

TAB 26

UNDERTAKING – JT 2.13

Undertaking

Hydro One to provide the time that it took to restore the tower near Wawa in 2011 storm on the transmission line from Ontario to Manitoba.

Response

Hydro One is not agreeing that the matter covered by this response is relevant to the issues in the NextBridge motion, given that technical issues about the restoration was not raised as a ground for the NextBridge motion.

On September 12, 2011 there was an unplanned outage on the existing Wawa to Marathon section of the East West tie (W21M & W22M circuits), in which a single tower failed. Rebuild of the double-circuit bypass around the affected tower and restoration of the line to full operation was completed within nine days.

At the time, system flows were very low across the East West tie (approximately 20MW East), and there was no adverse transmission system impact or load loss due to the unplanned outage. System conditions and impact to customers are monitored on a 24/7 operational basis, and associated planned and unplanned work is prioritized accordingly. Had the system conditions at the time been different, Hydro One could have responded accordingly and reduced the restoration time.

TAB 27



Connecting Today.
Powering Tomorrow.

System Impact Assessment Report

CONNECTION ASSESSMENT & APPROVAL PROCESS

Final SIA Report

CAA ID: 2017-628
Project: Lake Superior Link
Applicant: Hydro One Networks Inc.

Engineering Studies Department
Independent Electricity System Operator

Date: March 28, 2018

REPORT

Executive Summary

Project Description

The 230 kV East-West Tie (the “East-West Tie”) consists of the 230 kV transmission circuits from Wawa TS to Marathon TS to Lakehead TS (the “terminal transformer stations”). Hydro One Networks Inc. (the “connection applicant” and “transmitter”) is proposing to reinforce the East-West Tie by adding new 230 kV transmission circuits: M37L and M38L from Lakehead TS to Marathon TS, and W35M and W36M from Marathon TS to Wawa TS, under the name Lake Superior Link (the “project”), with the proposed in service date in December 2021. The project will be almost entirely configured as double-circuit lines located in parallel with the existing East-West Tie circuits except for a 35 km section between Wawa TS and Marathon TS where the existing double circuit towers of W21M and W22M will be replaced with quadruple circuit towers to accommodate the new W35M and W36M circuits.

To connect the project, the connection applicant is proposing modifications at its terminal transformer stations that are identical to those it proposed for CAA_ID 2016-568, namely:

- Reconfigure the 230 kV switchyards at the terminal transformer stations:
 - Wawa TS: from 5 breakers ring bus to 2 buses, 4 diameters, 11 breakers;
 - Marathon TS: from 4 breaker ring bus to 2 buses, 4 diameters, 14 breakers;
 - Lakehead TS: from 2 buses, 2 diameters, 6 breakers to 2 buses, 4 diameters, 11 breakers.
- Re-terminate the existing 230 kV transmission circuits M23L, M24L, W21M, W22M and W23K at their respective terminal transformer stations;
- Install two shunt reactors each rated 65 Mvar at 250 kV at Marathon TS;
- Install a shunt reactor rated 125 Mvar at 250 kV at Lakehead TS;
- Install a shunt capacitor bank rated 125 Mvar at 250 kV at Lakehead TS;
- Update the Northwest Special Protection Scheme #2 (NW SPS 2) Special Protection System (SPS) to include the new contingency conditions arising from the reconfiguration of the 230 kV switchyards at the terminal transformer stations, as detailed in section 4.8 of this report; and
- Change the existing protections, control and telecommunication facilities for the reconfiguration of the switchyard at the terminal transformer stations and install new protection, control and telecommunication facilities for the project.

The connection applicant is targeting an increase to the westward transfer capability of the East-West Tie to 450 MW following the incorporation of the project.

Notification of Conditional Approval

The project will have no material adverse impact on the reliability of the integrated power system. It is therefore recommended that the IESO issue a *Notification of Conditional Approval for Connection* of the project subject to the requirements listed in this report.

Findings

The SIA identified the following:

1. The project will have no material adverse impact on the reliability of the integrated power system. The proposed modifications are expected to be adequate for the targeted westward transfer level of 450 MW across the East-West Tie;
2. The modifications proposed by the connection applicant for the terminal transformer stations are acceptable to the IESO;
3. The proposed reactive control devices are appropriate to control voltages within applicable ranges under all foreseeable conditions. Since the voltages near the project are strongly dependent on the flows across the East-West Tie that vary significantly throughout the day, these reactive control devices will likely be switched multiple times a day;
4. The existing parallel 115 kV circuits A5A, A1B and T1M between Alexander SS and Marathon TS are adequate to support a westward transfer capability across the East-West Tie of 450 MW, while respecting normal contingencies;
5. Under the North American Electric Reliability Corporation's (NERC) definition of the Bulk Electric System (BES), all the 230 kV transmission equipment installed for this project will be categorized as BES elements;
6. At the westward transfer levels of about 450 MW studied in this report, the project's equipment will not fall within the Northeast Power Coordinating Council (NPCC) definition of the Bulk Power System (BPS). As stated in the final SIA report under CAA ID 2016-568, it is expected that, once the new SVC is installed at Marathon TS, the East-West Tie transfer capability can be increased to 650 MW westward. At this increased transfer level, Marathon TS, together with all of the 230 kV circuits that terminate at that station (existing: M23L, M24L, W21M and W22M, and new: M37L, M38L, W35M and W36M) are expected to fall within the NPCC's BPS definition. Additional tests will be required to determine the future status of the terminal transformer stations, once the model for the Marathon SVC becomes available;
7. Extreme contingencies that result in the loss of the four 230 kV circuits of the East-West Tie such as failure of a quadruple circuit tower can result in separation between the Northwest transmission zone and the rest of the IESO-controlled grid. Following such events, timely system restoration is critical to avoid the risk of supply shortages to the customers in the zone; and
8. Outages to the existing East-West Tie circuits will be required to install the project, especially the 35 km section between Wawa TS and Marathon TS where the existing double circuit towers of W21M and W22M will be replaced with quadruple circuit towers to accommodate the new W35M and W36M circuits. An outage plan that contains the details of this replacement has not been presented to the IESO at the time of this report.

Connection Requirements

1. To avoid any possible conflict between the operation of the updated NW SPS 2 and the local voltage based capacitor and reactor switching schemes, the connection applicant must initiate in a timely manner a review of the voltage settings of all the local schemes by the IESO, participate as the equipment owner in the review and implement the new settings, once agreed upon, in a timely manner.
Note: the connection applicant initiated this process with the IESO in February, 2018.
2. After finalizing the engineering design, the connection applicant shall submit a restoration plan acceptable to the IESO that documents the restoration options for the East-West Tie corridor and

describes how the circuits will be restored following extreme contingencies such as the loss of towers.

3. At least twenty four months before the commencement of system-impactive project related outages, the connection applicant shall submit an outage plan acceptable to the IESO for the installation of the 35 km section between Wawa TS and Marathon TS where the existing double circuit towers of W21M and W22M will be replaced with quadruple circuit towers.
4. The connection applicant shall satisfy all general requirements listed in section 2 of this report.

Recommendations

As previously recommended in CAA_ID 2016-568, when the existing synchronous condenser, C8, at Lakehead TS reaches its end-of-life, the connection applicant is recommended to consider replacing it with an SVC that has a rating of at least ± 100 Mvar.

– End of Section –

TAB 28

ONTARIO ENERGY BOARD

Rules of Practice and Procedure

(Revised November 16, 2006, July 14, 2008, October 13, 2011, January 9, 2012, January 17, 2013, April 24, 2014 and October 28, 2016)

PART I - GENERAL

1. Application and Availability of Rules

- 1.01 These Rules apply to proceedings before the Board except enforcement proceedings. These Rules, other than the Rules set out in Part VII, also apply, with such modifications as the context may require, to all proceedings to be determined by an employee acting under delegated authority.
- 1.02 These Rules, in English and in French, are available for examination on the Board's website, or upon request from the Board Secretary.
- 1.03 The Board may dispense with, amend, vary or supplement, with or without a hearing, all or part of any Rule at any time, if it is satisfied that the circumstances of the proceeding so require, or it is in the public interest to do so.

2. Interpretation of Rules

- 2.01 These Rules shall be liberally construed in the public interest to secure the most just, expeditious, and efficient determination on the merits of every proceeding before the Board.
- 2.02 Where procedures are not provided for in these Rules, the Board may do whatever is necessary and permitted by law to enable it to effectively and completely adjudicate on the matter before it.
- 2.03 These Rules shall be interpreted in a manner that facilitates the introduction and use of electronic regulatory filing and, for greater certainty, the introduction and use of digital communication and storage media.
- 2.04 Unless the Board otherwise directs, any amendment to these Rules comes into force upon publication on the Board's website.

3. Definitions

- 3.01 In these Rules,
"affidavit" means written evidence under oath or affirmation;

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(Revised November 16, 2006, July 14, 2008, October 13, 2011, January 9, 2012,
January 17, 2013, April 24, 2014 and October 28, 2016)

"**appeal**" has the meaning given to it in **Rule 17.01**;

"**appellant**" means a person who brings an appeal;

"**applicant**" means a person who makes an application;

"**application**" when used in connection with a proceeding commenced by an application to the Board, or transferred to the Board by the management committee under section 6(7) of the *OEB Act*, means the commencement by a party of a proceeding other than an appeal;

"**Board**" means the Ontario Energy Board;

"**Board Secretary**" means the Secretary and any assistant Secretary appointed by the Board under the *OEB Act*;

"**Board's website**" means the website maintained by the Board at www.ontarioenergyboard.ca;

"**document**" includes written documentation, films, photographs, charts, maps, graphs, plans, surveys, books of account, transcripts, videotapes, audio tapes, and information stored by means of an electronic storage and retrieval system;

"**Electricity Act**" means the *Electricity Act, 1998*, S.O. 1998, c.15, Schedule A, as amended from time to time;

"**electronic hearing**" means a hearing held by conference telephone or some other form of electronic technology allowing persons to communicate with one another;

"**employee acting under delegated authority**" means an employee to whom a power or duty of the Board has been delegated under section 6 of the *OEB Act*;

"**file**" means to file with the Board Secretary in compliance with these Rules and any directions of the Board;

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"hearing" means a hearing in any proceeding before the Board, and includes an electronic hearing, an oral hearing, and a written hearing;

"interrogatory" means a request in writing for information or particulars made to a party in a proceeding;

"intervenor" means a person who has been granted intervenor status by the Board;

"management committee" means the management committee of the Board established under section 4.2 of the *OEB Act*;

"market rules" means the rules made under section 32 of the *Electricity Act*;

"Minister" means the Minister as defined in the *OEB Act*;

"motion" means a request for an order or decision of the Board made in a proceeding;

"OEB Act" means the *Ontario Energy Board Act*, 1998, S.O. 1998, c.15, Schedule B, as amended from time to time;

"oral hearing" means a hearing at which the parties or their representatives attend before the Board in person;

"party" includes an applicant, an appellant, an employee acting under delegated authority where applicable, and any person granted intervenor status by the Board;

"Practice Directions" means practice directions issued by the Board from time to time;

"proceeding" means a process to decide a matter brought before the Board, including a matter commenced by application, notice of appeal, transfer by or direction from the management committee, reference, request or directive of the Minister, or on the Board's own motion;

"reference" means any reference made to the Board by the Minister;

"reliability standard" has the meaning given to it in the *Electricity Act*;

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"serve" means to effectively deliver, in compliance with these Rules or as the Board may direct;

"statement" means any unsworn information provided to the Board;

"writing" includes electronic media, formed and secured as directed by the Board;

"written" includes electronic media, formed and secured as directed by the Board; and

"written hearing" means a hearing held by means of the exchange of documents.

4. Procedural Orders and Practice Directions

- 4.01 The Board may at any time in a proceeding make orders with respect to the procedure and practices that apply in the proceeding. Every party shall comply with all applicable procedural orders.
- 4.02 The Board may set time limits for doing anything provided in these Rules.
- 4.03 The Board may at any time amend any procedural order.
- 4.04 Where a provision of these Rules is inconsistent with a provision of a procedural order, the procedural order shall prevail to the extent of the inconsistency.
- 4.05 The Board may from time to time issue *Practice Directions* in relation to the preparation, filing and service of documents or in relation to participation in a proceeding. Every party shall comply with all applicable *Practice Directions*, whether or not specifically referred to in these Rules.

ONTARIO ENERGY BOARD

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5. Failure to Comply

- 5.01 Where a party to a proceeding has not complied with a requirement of these Rules or a procedural order, the Board may:
- (a) grant all necessary relief, including amending the procedural order, on such conditions as the Board considers appropriate;
 - (b) adjourn the proceeding until it is satisfied that there is compliance;
or
 - (c) order the party to pay costs.
- 5.02 Where a party fails to comply with a time period for filing evidence or other material, the Board may, in addition to its powers set out in **Rule 5.01**, disregard the evidence or other material that was filed late.
- 5.03 No proceeding is invalid by reason alone of an irregularity in form.

6. Computation of Time

- 6.01 In the computation of time under these Rules or an order:
- (a) where there is reference to a number of days between two events, the days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens; and
 - (b) where the time for doing an act under these Rules expires on a holiday, as defined under **Rule 6.02**, the act may be done on the next day that is not a holiday.
- 6.02 A holiday means a Saturday, Sunday, statutory holiday, and any day that the Board's offices are closed.

7. Extending or Abridging Time

- 7.01 The Board may on its own motion or upon a motion by a party extend or abridge a time limit directed by these Rules, *Practice Directions* or by the Board, on such conditions the Board considers appropriate.

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- 7.02 The Board may exercise its discretion under this Rule before or after the expiration of a time limit, with or without a hearing.
- 7.03 Where a party cannot meet a time limit directed by the Rules, *Practice Directions* or the Board, the party shall notify the Board Secretary as soon as possible before the time limit has expired.

8. Motions

- 8.01 Unless the Board directs otherwise, any party requiring a decision or order of the Board on any matter arising during a proceeding shall do so by serving and filing a notice of motion.
- 8.02 The notice of motion and any supporting documents shall be filed and served within such a time period as the Board shall direct.
- 8.03 Unless the Board directs otherwise, a party who wishes to respond to the notice of motion shall file and serve, at least two calendar days prior to the motion's hearing date, a written response, an indication of any oral evidence the party seeks to present, and any evidence the party relies on, in appropriate affidavit form.
- 8.04 The Board, in hearing a motion, may permit oral or other evidence in addition to the supporting documents accompanying the notice, response or reply.

PART II - DOCUMENTS, FILING, SERVICE

9. Filing and Service of Documents

- 9.01 All documents filed with the Board shall be directed to the Board Secretary. Documents, including applications and notices of appeal, shall be filed in such quantity and in such manner as may be specified by the Board.
- 9.02 Any person wishing to access the public record of any proceeding may make arrangements to do so with the Board Secretary.

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- 9.03 All documents filed in a proceeding, with the exception of documents found by the Board to be confidential, may be accessed through the Board's website or examined free of charge at the Board's offices.

9A Filing of Documents that Contain Personal Information

- 9A.01 Any person filing a document that contains personal information, as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*, of another person who is not a party to the proceeding shall file two versions of the document as follows:

- (a) one version of the document must be a non-confidential, redacted version of the document from which the personal information has been deleted or stricken; and
- (b) the second version of the document must be a confidential, un-redacted version of the document that includes the personal information and should be marked "Confidential—Personal Information".

- 9A.02 The non-confidential, redacted version of the document from which the personal information has been deleted or stricken will be placed on the public record. The confidential, un-redacted version of the document will be held in confidence and will not be placed on the public record. Neither the confidential, un-redacted version of the document nor the personal information contained in it will be provided to any other party, including a person from whom the Board has accepted a Declaration and Undertaking under the *Practice Directions*, unless the Board determines that either (a) the redacted information is not personal information, as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*, or (b) the disclosure of the personal information would be in accordance with the *Freedom of Information and Protection of Privacy Act*.

10. Confidential Filings

- 10.01 A party may request that all or any part of a document, including a response to an interrogatory, be held in confidence by the Board.
- 10.02 Any request for confidentiality made under **Rule 10.01** shall be made in accordance with the *Practice Directions*.
- 10.03 A party may object to a request for confidentiality by filing and serving an

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objection in accordance with the *Practice Directions* and within the time specified by the Board.

10.04 After giving the party claiming confidentiality an opportunity to reply to any objection made under **Rule 10.03**, the Board may:

- (a) order the document be placed on the public record, in whole or in part;
- (b) order the document be kept confidential, in whole or in part;
- (c) order that the non-confidential redacted version of the document or the non-confidential description or summary of the document prepared by the party claiming confidentiality be revised;
- (d) order that the confidential version of the document be disclosed under suitable arrangements as to confidentiality; or
- (e) make any other order the Board finds to be in the public interest.

10.05 Where the Board makes an order under **Rule 10.04** to place on the public record any part of a document that was filed in confidence, the party who filed the document may, subject to **Rule 10.06** and in accordance with and within the time specified in the *Practice Directions*, request that it be withdrawn prior to its placement on the public record.

10.06 The ability to request the withdrawal of information under **Rule 10.05** does not apply to information that was required to be produced by an order of the Board.

10.07 Where a party wishes to have access to a document that, in accordance with the *Practice Directions*, will be held in confidence by the Board without the need for a request under **Rule 10.01**, the party shall make a request for access in accordance with the *Practice Directions*.

10.08 Requests for access to confidential information made at times other than during the proceeding in which the confidential information was filed shall be made in accordance with the *Practice Directions*.

10.09 The party who filed the information to which a request for access under **Rule 10.07** or **Rule 10.08** relates may object to the request for access by filing and serving an objection within the time specified by the Board.

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10.10 The Board may, further to a request for access under Rule 10.07 or Rule 10.08, make any order referred to in Rule 10.04.

11. Amendments to the Evidentiary Record and New Information

11.01 The Board may, on conditions the Board considers appropriate:

- (a) permit an amendment to the evidentiary record; or
- (b) give directions or require the preparation of evidence, where the Board determines that the evidence in an application is insufficient to allow the issues in the application to be decided.

11.02 Where a party becomes aware of new information that constitutes a material change to evidence already before the Board before the decision or order is issued, the party shall serve and file appropriate amendments to the evidentiary record, or serve and file the new information.

11.03 Where all or any part of a document that forms part of the evidentiary record is revised, the party filing the revision shall:

- (a) ensure that each revised document is printed on coloured paper and clearly indicates the date of revision and the part revised; and
- (b) file with the revised document(s) a table describing the original evidence, each revision to the evidence, the date each revision was made, and if the change was numerical, the difference between the original evidence and the revision(s). This table is to be updated to contain all significant revisions to the evidence as they are filed.

11.04 A party shall comply with any direction from the Board to provide such further information, particulars or documents as the Board considers necessary to enable the Board to obtain a full and satisfactory understanding of an issue in the proceeding.

12. Affidavits

12.01 An affidavit shall be confined to the statement of facts within the personal

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knowledge of the person making the affidavit unless the facts are clearly stated to be based on the information and belief of the person making the affidavit.

- 12.02 Where a statement is made on information and belief, the source of the information and the grounds on which the belief is based shall be set out in the affidavit.
- 12.03 An exhibit that is referred to in an affidavit shall be marked as such by the person taking the affidavit, and the exhibit shall be attached to and filed with the affidavit.
- 12.04 The Board may require the whole or any part of a document filed to be verified by affidavit.

13. Written Evidence

- 13.01 Other than oral evidence given at the hearing, where a party intends to submit evidence, or is required to do so by the Board, the evidence shall be in writing and in a form approved by the Board.
- 13.02 The written evidence shall include a statement of the qualifications of the person who prepared the evidence or under whose direction or control the evidence was prepared.
- 13.03 Where a party is unable to submit written evidence as directed by the Board, the party shall:
 - (a) file such written evidence as is available at that time;
 - (b) identify the balance of the evidence to be filed; and
 - (c) state when the balance of the evidence will be filed.

13A. Expert Evidence

- 13A.01 A party may engage, and two or more parties may jointly engage, one or more experts to give evidence in a proceeding on issues that are relevant to the expert's area of expertise.

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(Revised November 16, 2006, July 14, 2008, October 13, 2011, January 9, 2012,
January 17, 2013, April 24, 2014 and October 28, 2016)

13A.02 An expert shall assist the Board impartially by giving evidence that is fair and objective.

13A.03 An expert's evidence shall, at a minimum, include the following:

- (a) the expert's name, business name and address, and general area of expertise;
- (b) the expert's qualifications, including the expert's relevant educational and professional experience in respect of each issue in the proceeding to which the expert's evidence relates;
- (c) the instructions provided to the expert in relation to the proceeding and, where applicable, to each issue in the proceeding to which the expert's evidence relates;
- (d) the specific information upon which the expert's evidence is based, including a description of any factual assumptions made and research conducted, and a list of the documents relied on by the expert in preparing the evidence; and
- (e) in the case of evidence that is provided in response to another expert's evidence, a summary of the points of agreement and disagreement with the other expert's evidence.
- (f) an acknowledgement of the expert's duty to the Board in **Form A** to these Rules, signed by the expert.

13A.04 In a proceeding where two or more parties have engaged experts, the Board may require two or more of the experts to:

- (a) in advance of the hearing, confer with each other for the purposes of, among others, narrowing issues, identifying the points on which their views differ and are in agreement, and preparing a joint written statement to be admissible as evidence at the hearing; and
- (b) at the hearing, appear together as a concurrent expert panel for the purposes of, among others, answering questions from the Board and others as permitted by the Board, and providing comments on the views of another expert on the same panel.

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13A.05 The activities referred to in **Rule 13A.04** shall be conducted in accordance with such directions as may be given by the Board, including as to:

- (a) scope and timing;
- (b) the involvement of any expert engaged by the Board;
- (c) the costs associated with the conduct of the activities;
- (d) the attendance or non-attendance of counsel for the parties, or of other persons, in respect of the activities referred to in paragraph (a) of **Rule 13A.04**; and
- (e) any issues in relation to confidentiality.

13A.06 A party that engages an expert shall ensure that the expert is made aware of, and has agreed to accept, the responsibilities that are or may be imposed on the expert as set out in this **Rule 13A** and **Form A**.

14. Disclosure

14.01 A party who intends to rely on or refer to any document that has not already been filed in a proceeding shall file and serve the document 24 hours before using it in the proceeding, unless the Board directs otherwise.

14.02 Any party who fails to comply with **Rule 14.01** shall not put the document in evidence or use it in the cross-examination of a witness, unless the Board otherwise directs.

14.03 Where the good character, propriety of conduct or competence of a party is an issue in the proceeding, the party is entitled to be furnished with reasonable information of any allegations at least 15 calendar days prior to the hearing.

PART III - PROCEEDINGS

15. Commencement of Proceedings

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January 17, 2013, April 24, 2014 and October 28, 2016)

- 15.01 Unless commenced by the Board, a proceeding shall be commenced by filing an application or a notice of appeal in compliance with these Rules, and within such a time period as may be prescribed by statute or the Board.
- 15.02 A person appealing an order made under the market rules shall file a notice of appeal within 15 calendar days after being served with a copy of the order, or within 15 calendar days of having completed making use of any provisions relating to dispute resolution set out in the market rules, whichever is later.
- 15.03 An appeal of an order, finding or remedial action made or taken by a standards authority referred to in section 36.3 of the *Electricity Act* shall be commenced by the Independent Electricity System Operator by notice of appeal filed within 15 calendar days after being served with a copy of the order or finding or of notice of the remedial action, or within 15 calendar days of receipt of notice of the final determination of any other reviews and appeals referred to in section 36.3(2) of the *Electricity Act*, whichever is later.

16. Applications

- 16.01 An application shall contain:
- (a) a clear and concise statement of the facts;
 - (b) the grounds for the application;
 - (c) the statutory provision under which it is made; and
 - (d) the nature of the order or decision applied for.
- 16.02 An application shall be in such form as may be approved or specified by the Board and shall be accompanied by such fee as may be set for that purpose by the management committee under section 12.1(2) of the *OEB Act*.

17. Appeals

- 17.01 An "appeal" means:

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- (a) an appeal under section 7 of the *OEB Act*;
- (b) a review under section 59(6) of the *OEB Act*;
- (c) a review of an amendment to the market rules under section 33 or section 34 of the *Electricity Act*;
- (d) a review of a provision of the market rules under section 35 of the *Electricity Act*;
- (e) an appeal under section 36, 36.1 or 36.3 of the *Electricity Act*;
- (f) a review of a reliability standard under section 36.2 of the *Electricity Act*; and
- (g) an appeal under section 7(4) of the *Toronto District Heating Corporation Act, 1998*.

17.02 A notice of appeal shall contain:

- (a) the portion of the order, decision, market rules, reliability standard or finding or remedial action referred to in **Rule 15.03** being appealed;
- (b) the statutory provision under which the appeal is made;
- (c) the nature of the relief sought, and the grounds on which the appellant shall rely;
- (d) if an appeal of an order made under the market rules under section 36 of the *Electricity Act*, a statement confirming that the appellant has made use of any dispute resolution provisions of the market rules;
- (e) if an application by a market participant for review of a provision of the market rules under section 35 of the *Electricity Act*, a statement confirming that the market participant has made use of any review provisions of the market rules; and
- (f) if an appeal of an order, finding or remedial action under section 36.3 of the *Electricity Act*, a statement confirming that the Independent Electricity System Operator has commenced all other

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reviews and appeals available to it and such reviews and appeals
have been finally determined.

- 17.03 A notice of appeal shall be in such form as may be approved or specified by the Board and shall be accompanied by such fee as may be set for that purpose by the management committee under section 12.1(2) of the *OEB Act*.
- 17.04 At a hearing of an appeal, an appellant shall not seek to appeal a portion of the order, decision, market rules, reliability standard or finding or remedial action referred to in **Rule 15.03** or rely on any ground, that is not stated in the appellant's notice of appeal, except with leave of the Board.
- 17.05 In addition to those persons on whom service is required by statute, the Board may direct an appellant to serve the notice of appeal on such persons as it considers appropriate.
- 17.06 The Board may require an appellant to file an affidavit of service indicating how and on whom service of the notice of appeal was made.
- 17.07 Subject to **Rule 17.08**, a request by a party to stay part or all of the order, Decision, market rules, reliability standard or finding or remedial action referred to in **Rule 15.03** being appealed pending the determination of the appeal shall be made by motion to the Board.
- 17.08 For greater certainty, a request to stay shall not be made where a stay is precluded by statute.
- 17.09 In respect of a motion brought under **Rule 17.07**, the Board may order that implementation or operation of the order, decision, market rules or reliability standard be delayed or stayed, on conditions as it considers appropriate.

18. Dismissal Without a Hearing

- 18.01 The Board may propose to dismiss a proceeding without a hearing on the grounds that:
- (a) the proceeding is frivolous, vexatious or is commenced in bad faith;

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- (b) the proceeding relates to matters that are outside the jurisdiction of the tribunal; or
- (c) some aspect of the statutory requirements for bringing the proceeding has not been met.

18.02 Where the Board proposes to dismiss a proceeding under **Rule 18.01**, it shall give notice of the proposed dismissal in accordance with the *Statutory Powers Procedure Act*.

18.03 A party wishing to make written submissions on the proposed dismissal shall do so within 10 calendar days of receiving the Board's notice under **Rule 18.02**.

18.04 Where a party who commenced a proceeding has not taken any steps with respect to the proceeding for more than one year from the date of filing, the Board may notify the party that the proceeding shall be dismissed unless the person, within 10 calendar days of receiving the Board's notice, shows cause why it should not be dismissed or advises the Board that the application or appeal is withdrawn.

18.05 Where the Board dismisses a proceeding, or is advised that the application or appeal is withdrawn, any fee paid to commence the proceeding shall not be refunded.

19. Decision Not to Process

19.01 The Board or Board staff may decide not to process documents relating to the commencement of a proceeding if:

- (a) the documents are incomplete;
- (b) the documents were filed without the required fee for commencing the proceeding;
- (c) the documents were filed after the prescribed time period for commencing the proceeding has elapsed; or
- (d) there is some other technical defect in the commencement of the proceeding.

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January 17, 2013, April 24, 2014 and October 28, 2016)

19.02 The Board or Board staff shall give the party who commenced the proceeding notice of a decision made under **Rule 19.01** that shall include:

- (a) reasons for the decision; and
- (b) requirements for resuming processing of the documents, if applicable.

19.03 Where requirements for resuming processing of the documents apply, processing shall be resumed where the party complies with the requirements set out in the notice given under **Rule 19.02** within:

- (a) subject to **Rule 19.03(b)**, 30 calendar days from the date of the notice; or
- (b) 10 calendar days from the date of the notice, where the proceeding commenced is an appeal.

19.04 After the expiry of the applicable time period under **Rule 19.03**, the Board may close its file for the proceeding without refunding any fee that may already have been paid.

19.05 Where the Board has closed its file for a proceeding under **Rule 19.04**, a person wishing to refile the related documents shall:

- (a) in the case of an application, refile the documents as a fresh application, and pay any fee required to do so; or
- (b) in the case of an appeal, refile the documents as a fresh notice of appeal, except where the time period for filing the appeal has elapsed, in which case the documents cannot be refiled.

20. Withdrawal

20.01 An applicant or appellant may withdraw an application or appeal:

- (a) at any time prior to the hearing, by filing and serving a notice of withdrawal signed by the applicant or the appellant, or his or her representative; or
- (b) at the hearing with the permission of the Board.

TAB 29

Statutory Powers Procedure Act

R.S.O. 1990, CHAPTER S.22

Consolidation Period: From November 3, 2015 to the e-Laws currency date.

Last amendment: 2015, c. 23, s. 5.

Legislative History: 1993, c. 27, Sched.; 1994, c. 27, s. 56; 1997, c. 23, s. 13; 1999, c. 12, Sched. B, s. 16; 2002, c. 17, Sched. F, Table; 2006, c. 19, Sched. B, s. 21; 2006, c. 19, Sched. C, s. 1 (1, 2, 4); 2006, c. 21, Sched. C, s. 134; 2006, c. 21, Sched. F, s. 136 (1); 2009, c. 33, Sched. 6, s. 87; 2015, c. 23, s. 5.

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Interpretation

1. (1) In this Act,

“electronic hearing” means a hearing held by conference telephone or some other form of electronic technology allowing persons to hear one another; (“audience électronique”)

“hearing” means a hearing in any proceeding; (“audience”)

“licence” includes any permit, certificate, approval, registration or similar form of permission required by law; (“autorisation”)

“municipality” has the same meaning as in the *Municipal Affairs Act*; (“municipalité”)

“oral hearing” means a hearing at which the parties or their representatives attend before the tribunal in person; (“audience orale”)

“proceeding” means a proceeding to which this Act applies; (“instance”)

“representative” means, in respect of a proceeding to which this Act applies, a person authorized under the *Law Society Act* to represent a person in that proceeding; (“représentant”)

“statutory power of decision” means a power or right, conferred by or under a statute, to make a decision deciding or prescribing,

(a) the legal rights, powers, privileges, immunities, duties or liabilities of any person or party, or

(b) the eligibility of any person or party to receive, or to the continuation of, a benefit or licence, whether the person is legally entitled thereto or not; (“compétence légale de décision”)

“tribunal” means one or more persons, whether or not incorporated and however described, upon which a statutory power of decision is conferred by or under a statute; (“tribunal”)

“written hearing” means a hearing held by means of the exchange of documents, whether in written form or by electronic means. (“audience écrite”) R.S.O. 1990, c. S.22, s. 1 (1); 1994, c. 27, s. 56 (1-3); 2002, c. 17, Sched. F, Table; 2006, c. 21, Sched. C, s. 134 (1, 2).

Meaning of “person” extended

(2) A municipality, an unincorporated association of employers, a trade union or council of trade unions who may be a party to a proceeding in the exercise of a statutory power of decision under the statute conferring the power shall be deemed to be a person for the purpose of any provision of this Act or of any rule made under this Act that applies to parties. R.S.O. 1990, c. S.22, s. 1 (2).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (1-3) - 1/04/1995

2002, c. 17, Sched. F, Table - 1/01/2003

2006, c. 21, Sched. C, s. 134 (1, 2) - 1/05/2007

Liberal construction of Act and rules

2. This Act, and any rule made by a tribunal under subsection 17.1 (4) or section 25.1, shall be liberally construed to secure the just, most expeditious and cost-effective determination of every proceeding on its merits. 1999, c. 12, Sched. B, s. 16 (1); 2006, c. 19, Sched. B, s. 21 (1).

Section Amendments with date in force (d/m/y)

1999, c. 12, Sched. B, s. 16 (1) - 14/02/2000

2006, c. 19, Sched. B, s. 21 (1) - 22/06/2006

Application of Act

3. (1) Subject to subsection (2), this Act applies to a proceeding by a tribunal in the exercise of a statutory power of decision conferred by or under an Act of the Legislature, where the tribunal is required by or under such Act or otherwise by law to hold or to afford to the parties to the proceeding an opportunity for a hearing before making a decision. R.S.O. 1990, c. S.22, s. 3 (1); 1994, c. 27, s. 56 (5).

Where Act does not apply

- (2) This Act does not apply to a proceeding,
 - (a) before the Assembly or any committee of the Assembly;
 - (b) in or before,
 - (i) the Court of Appeal,
 - (ii) the Superior Court of Justice,
 - (iii) the Ontario Court of Justice,
 - (iv) the Family Court of the Superior Court of Justice,
 - (v) the Small Claims Court, or
 - (vi) a justice of the peace;
 - (c) to which the Rules of Civil Procedure apply;
 - (d) before an arbitrator to which the *Arbitrations Act* or the *Labour Relations Act* applies;
 - (e) at a coroner's inquest;
 - (f) of a commission appointed under the *Public Inquiries Act, 2009*;
 - (g) of one or more persons required to make an investigation and to make a report, with or without recommendations, where the report is for the information or advice of the person to whom it is made and does not in any way legally bind or limit that person in any decision he or she may have power to make; or
 - (h) of a tribunal empowered to make regulations, rules or by-laws in so far as its power to make regulations, rules or by-laws is concerned. R.S.O. 1990, c. S.22, s. 3 (2); 1994, c. 27, s. 56 (6); 2006, c. 19, Sched. C, s. 1 (1, 2, 4); 2009, c. 33, Sched. 6, s. 87.

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (5, 6) - 1/04/1995

2006, c. 19, Sched. C, s. 1 (1, 2, 4) - 22/06/2006

2009, c. 33, Sched. 6, s. 87 - 1/06/2011

Waiver

Waiver of procedural requirement

4. (1) Any procedural requirement of this Act, or of another Act or a regulation that applies to a proceeding, may be waived with the consent of the parties and the tribunal. 1997, c. 23, s. 13 (1).

Same, rules

(2) Any provision of a tribunal's rules made under section 25.1 may be waived in accordance with the rules. 1994, c. 27, s. 56 (7).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (7) - 1/04/1995; 1997, c. 23, s. 13 (1) - 28/11/1997

Disposition without hearing

4.1 If the parties consent, a proceeding may be disposed of by a decision of the tribunal given without a hearing, unless another Act or a regulation that applies to the proceeding provides otherwise. 1997, c. 23, s. 13 (2).

Section Amendments with date in force (d/m/y)

1997, c. 23, s. 13 (2) - 28/11/1997

Panels, certain matters

4.2 (1) A procedural or interlocutory matter in a proceeding may be heard and determined by a panel consisting of one or more members of the tribunal, as assigned by the chair of the tribunal. 1994, c. 27, s. 56 (8).

Assignments

(2) In assigning members of the tribunal to a panel, the chair shall take into consideration any requirement imposed by another Act or a regulation that applies to the proceeding that the tribunal be representative of specific interests. 1997, c. 23, s. 13 (3).

Decision of panel

(3) The decision of a majority of the members of a panel, or their unanimous decision in the case of a two-member panel, is the tribunal's decision. 1994, c. 27, s. 56 (8).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (8) - 1/04/1995; 1997, c. 23, s. 13 (3) - 28/11/1997

Panel of one, reduced panel

Panel of one

4.2.1 (1) The chair of a tribunal may decide that a proceeding be heard by a panel of one person and assign the person to hear the proceeding unless there is a statutory requirement in another Act that the proceeding be heard by a panel of more than one person.

Reduction in number of panel members

(2) Where there is a statutory requirement in another Act that a proceeding be heard by a panel of a specified number of persons, the chair of the tribunal may assign to the panel one person or any lesser number of persons than the number specified in the other Act if all parties to the proceeding consent. 1999, c. 12, Sched. B, s. 16 (2).

Section Amendments with date in force (d/m/y)

1999, c. 12, Sched. B, s. 16 (2) - 14/02/2000

Expiry of term

4.3 If the term of office of a member of a tribunal who has participated in a hearing expires before a decision is given, the term shall be deemed to continue, but only for the purpose of participating in the decision and for no other purpose. 1997, c. 23, s. 13 (4).

Section Amendments with date in force (d/m/y)

1997, c. 23, s. 13 (4) - 28/11/1997

Incapacity of member

4.4 (1) If a member of a tribunal who has participated in a hearing becomes unable, for any reason, to complete the hearing or to participate in the decision, the remaining member or members may complete the hearing and give a decision. 1994, c. 27, s. 56 (9).

Other Acts and regulations

(2) Subsection (1) does not apply if another Act or a regulation specifically deals with the issue of what takes place in the circumstances described in subsection (1). 1997, c. 23, s. 13 (5).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (9) - 1/04/1995; 1997, c. 23, s. 13 (5) - 28/11/1997

Decision not to process commencement of proceeding

4.5 (1) Subject to subsection (3), upon receiving documents relating to the commencement of a proceeding, a tribunal or its administrative staff may decide not to process the documents relating to the commencement of the proceeding if,

- (a) the documents are incomplete;
- (b) the documents are received after the time required for commencing the proceeding has elapsed;
- (c) the fee required for commencing the proceeding is not paid; or
- (d) there is some other technical defect in the commencement of the proceeding.

Notice

(2) A tribunal or its administrative staff shall give the party who commences a proceeding notice of its decision under subsection (1) and shall set out in the notice the reasons for the decision and the requirements for resuming the processing of the documents.

Rules under s. 25.1

(3) A tribunal or its administrative staff shall not make a decision under subsection (1) unless the tribunal has made rules under section 25.1 respecting the making of such decisions and those rules shall set out,

- (a) any of the grounds referred to in subsection (1) upon which the tribunal or its administrative staff may decide not to process the documents relating to the commencement of a proceeding; and
- (b) the requirements for the processing of the documents to be resumed.

Continuance of provisions in other statutes

(4) Despite section 32, nothing in this section shall prevent a tribunal or its administrative staff from deciding not to process documents relating to the commencement of a proceeding on grounds that differ from those referred to in subsection (1) or without complying with subsection (2) or (3) if the tribunal or its staff does so in accordance with the provisions of an Act that are in force on the day this section comes into force. 1999, c. 12, Sched. B, s. 16 (3).

Section Amendments with date in force (d/m/y)

1999, c. 12, Sched. B, s. 16 (3) - 14/02/2000

Dismissal of proceeding without hearing

4.6 (1) Subject to subsections (5) and (6), a tribunal may dismiss a proceeding without a hearing if,

- (a) the proceeding is frivolous, vexatious or is commenced in bad faith;
- (b) the proceeding relates to matters that are outside the jurisdiction of the tribunal; or
- (c) some aspect of the statutory requirements for bringing the proceeding has not been met.

Notice

(2) Before dismissing a proceeding under this section, a tribunal shall give notice of its intention to dismiss the proceeding to,

- (a) all parties to the proceeding if the proceeding is being dismissed for reasons referred to in clause (1) (b); or
- (b) the party who commences the proceeding if the proceeding is being dismissed for any other reason.

Same

(3) The notice of intention to dismiss a proceeding shall set out the reasons for the dismissal and inform the parties of their right to make written submissions to the tribunal with respect to the dismissal within the time specified in the notice.

Right to make submissions

(4) A party who receives a notice under subsection (2) may make written submissions to the tribunal with respect to the dismissal within the time specified in the notice.

Dismissal

(5) A tribunal shall not dismiss a proceeding under this section until it has given notice under subsection (2) and considered any submissions made under subsection (4).

Rules

(6) A tribunal shall not dismiss a proceeding under this section unless it has made rules under section 25.1 respecting the early dismissal of proceedings and those rules shall include,

- (a) any of the grounds referred to in subsection (1) upon which a proceeding may be dismissed;
- (b) the right of the parties who are entitled to receive notice under subsection (2) to make submissions with respect to the dismissal; and
- (c) the time within which the submissions must be made.

Continuance of provisions in other statutes

(7) Despite section 32, nothing in this section shall prevent a tribunal from dismissing a proceeding on grounds other than those referred to in subsection (1) or without complying with subsections (2) to (6) if the tribunal dismisses the proceeding in accordance with the provisions of an Act that are in force on the day this section comes into force. 1999, c. 12, Sched. B, s. 16 (3).

Section Amendments with date in force (d/m/y)

1999, c. 12, Sched. B, s. 16 (3) - 14/02/2000

Classifying proceedings

4.7 A tribunal may make rules under section 25.1 classifying the types of proceedings that come before it and setting guidelines as to the procedural steps or processes (such as preliminary motions, pre-hearing conferences, alternative dispute resolution mechanisms, expedited hearings) that apply to each type of proceeding and the circumstances in which other procedures may apply. 1999, c. 12, Sched. B, s. 16 (3).

Section Amendments with date in force (d/m/y)

1999, c. 12, Sched. B, s. 16 (3) - 14/02/2000

Alternative dispute resolution

4.8 (1) A tribunal may direct the parties to a proceeding to participate in an alternative dispute resolution mechanism for the purposes of resolving the proceeding or an issue arising in the proceeding if,

- (a) it has made rules under section 25.1 respecting the use of alternative dispute resolution mechanisms; and
- (b) all parties consent to participating in the alternative dispute resolution mechanism.

Definition

- (2) In this section,

“alternative dispute resolution mechanism” includes mediation, conciliation, negotiation or any other means of facilitating the resolution of issues in dispute.

Rules

(3) A rule under section 25.1 respecting the use of alternative dispute resolution mechanisms shall include procedural guidelines to deal with the following:

- 1. The circumstances in which a settlement achieved by means of an alternative dispute resolution mechanism must be reviewed and approved by the tribunal.
- 2. Any requirement, statutory or otherwise, that there be an order by the tribunal.

Mandatory alternative dispute resolution

(4) A rule under subsection (3) may provide that participation in an alternative dispute resolution mechanism is mandatory or that it is mandatory in certain specified circumstances.

Person appointed to mediate, etc.

(5) A rule under subsection (3) may provide that a person appointed to mediate, conciliate, negotiate or help resolve a matter by means of an alternative dispute resolution mechanism be a member of the tribunal or a person independent of the tribunal. However, a member of the tribunal who is so appointed with respect to a matter in a proceeding shall not subsequently hear the matter if it comes before the tribunal unless the parties consent.

Continuance of provisions in other statutes

(6) Despite section 32, nothing in this section shall prevent a tribunal from directing parties to a proceeding to participate in an alternative dispute resolution mechanism even though the requirements of subsections (1) to (5) have not been met if

the tribunal does so in accordance with the provisions of an Act that are in force on the day this section comes into force. 1999, c. 12, Sched. B, s. 16 (3).

Section Amendments with date in force (d/m/y)

1999, c. 12, Sched. B, s. 16 (3) - 14/02/2000

Mediators, etc.: not compellable, notes not evidence

Mediators, etc., not compellable

4.9 (1) No person employed as a mediator, conciliator or negotiator or otherwise appointed to facilitate the resolution of a matter before a tribunal by means of an alternative dispute resolution mechanism shall be compelled to give testimony or produce documents in a proceeding before the tribunal or in a civil proceeding with respect to matters that come to his or her knowledge in the course of exercising his or her duties under this or any other Act.

Evidence in civil proceedings

(2) No notes or records kept by a mediator, conciliator or negotiator or by any other person appointed to facilitate the resolution of a matter before a tribunal by means of an alternative dispute resolution mechanism under this or any other Act are admissible in a civil proceeding. 1999, c. 12, Sched. B, s. 16 (3).

Section Amendments with date in force (d/m/y)

1999, c. 12, Sched. B, s. 16 (3) - 14/02/2000

Parties

5. The parties to a proceeding shall be the persons specified as parties by or under the statute under which the proceeding arises or, if not so specified, persons entitled by law to be parties to the proceeding. R.S.O. 1990, c. S.22, s. 5.

Written hearings

5.1 (1) A tribunal whose rules made under section 25.1 deal with written hearings may hold a written hearing in a proceeding. 1997, c. 23, s. 13 (6).

Exception

(2) The tribunal shall not hold a written hearing if a party satisfies the tribunal that there is good reason for not doing so.

Same

(2.1) Subsection (2) does not apply if the only purpose of the hearing is to deal with procedural matters. 1999, c. 12, Sched. B, s. 16 (4).

Documents

(3) In a written hearing, all the parties are entitled to receive every document that the tribunal receives in the proceeding. 1994, c. 27, s. 56 (10).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (10) - 1/04/1995; 1997, c. 23, s. 13 (6) - 28/11/1997; 1999, c. 12, Sched. B, s. 16 (4) - 14/02/2000

Electronic hearings

5.2 (1) A tribunal whose rules made under section 25.1 deal with electronic hearings may hold an electronic hearing in a proceeding. 1997, c. 23, s. 13 (7).

Exception

(2) The tribunal shall not hold an electronic hearing if a party satisfies the tribunal that holding an electronic rather than an oral hearing is likely to cause the party significant prejudice.

Same

(3) Subsection (2) does not apply if the only purpose of the hearing is to deal with procedural matters.

Participants to be able to hear one another

(4) In an electronic hearing, all the parties and the members of the tribunal participating in the hearing must be able to hear one another and any witnesses throughout the hearing. 1994, c. 27, s. 56 (10).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (10) - 1/04/1995; 1997, c. 23, s. 13 (7) - 28/11/1997

Different kinds of hearings in one proceeding

5.2.1 A tribunal may, in a proceeding, hold any combination of written, electronic and oral hearings. 1997, c. 23, s. 13 (8).

Section Amendments with date in force (d/m/y)

1997, c. 23, s. 13 (8) - 28/11/1997

Pre-hearing conferences

5.3 (1) If the tribunal's rules made under section 25.1 deal with pre-hearing conferences, the tribunal may direct the parties to participate in a pre-hearing conference to consider,

- (a) the settlement of any or all of the issues;
- (b) the simplification of the issues;
- (c) facts or evidence that may be agreed upon;
- (d) the dates by which any steps in the proceeding are to be taken or begun;
- (e) the estimated duration of the hearing; and
- (f) any other matter that may assist in the just and most expeditious disposition of the proceeding. 1994, c. 27, s. 56 (11); 1997, c. 23, s. 13 (9).

Other Acts and regulations

(1.1) The tribunal's power to direct the parties to participate in a pre-hearing conference is subject to any other Act or regulation that applies to the proceeding. 1997, c. 23, s. 13 (10).

Who presides

(2) The chair of the tribunal may designate a member of the tribunal or any other person to preside at the pre-hearing conference.

Orders

(3) A member who presides at a pre-hearing conference may make such orders as he or she considers necessary or advisable with respect to the conduct of the proceeding, including adding parties.

Disqualification

(4) A member who presides at a pre-hearing conference at which the parties attempt to settle issues shall not preside at the hearing of the proceeding unless the parties consent. 1994, c. 27, s. 56 (11).

Application of s. 5.2

(5) Section 5.2 applies to a pre-hearing conference, with necessary modifications. 1997, c. 23, s. 13 (10).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (11) - 1/04/1995; 1997, c. 23, s. 13 (9, 10) - 28/11/1997

Disclosure

5.4 (1) If the tribunal's rules made under section 25.1 deal with disclosure, the tribunal may, at any stage of the proceeding before all hearings are complete, make orders for,

- (a) the exchange of documents;
- (b) the oral or written examination of a party;
- (c) the exchange of witness statements and reports of expert witnesses;
- (d) the provision of particulars;
- (e) any other form of disclosure. 1994, c. 27, s. 56 (12); 1997, c. 23, s. 13 (11).

Other Acts and regulations

(1.1) The tribunal's power to make orders for disclosure is subject to any other Act or regulation that applies to the proceeding. 1997, c. 23, s. 13 (12).

Exception, privileged information

(2) Subsection (1) does not authorize the making of an order requiring disclosure of privileged information. 1994, c. 27, s. 56 (12).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (12) - 1/04/1995; 1997, c. 23, s. 13 (11, 12) - 28/11/1997

Notice of hearing

6. (1) The parties to a proceeding shall be given reasonable notice of the hearing by the tribunal. R.S.O. 1990, c. S.22, s. 6 (1).

Statutory authority

(2) A notice of a hearing shall include a reference to the statutory authority under which the hearing will be held.

Oral hearing

(3) A notice of an oral hearing shall include,

- (a) a statement of the time, place and purpose of the hearing; and
- (b) a statement that if the party notified does not attend at the hearing, the tribunal may proceed in the party's absence and the party will not be entitled to any further notice in the proceeding. 1994, c. 27, s. 56 (13).

Written hearing

(4) A notice of a written hearing shall include,

- (a) a statement of the date and purpose of the hearing, and details about the manner in which the hearing will be held;
- (b) a statement that the hearing shall not be held as a written hearing if the party satisfies the tribunal that there is good reason for not holding a written hearing (in which case the tribunal is required to hold it as an electronic or oral hearing) and an indication of the procedure to be followed for that purpose;
- (c) a statement that if the party notified neither acts under clause (b) nor participates in the hearing in accordance with the notice, the tribunal may proceed without the party's participation and the party will not be entitled to any further notice in the proceeding. 1994, c. 27, s. 56 (13); 1997, c. 23, s. 13 (13); 1999, c. 12, Sched. B, s. 16 (5).

Electronic hearing

(5) A notice of an electronic hearing shall include,

- (a) a statement of the time and purpose of the hearing, and details about the manner in which the hearing will be held;
- (b) a statement that the only purpose of the hearing is to deal with procedural matters, if that is the case;
- (c) if clause (b) does not apply, a statement that the party notified may, by satisfying the tribunal that holding the hearing as an electronic hearing is likely to cause the party significant prejudice, require the tribunal to hold the hearing as an oral hearing, and an indication of the procedure to be followed for that purpose; and
- (d) a statement that if the party notified neither acts under clause (c), if applicable, nor participates in the hearing in accordance with the notice, the tribunal may proceed without the party's participation and the party will not be entitled to any further notice in the proceeding. 1994, c. 27, s. 56 (13).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (13) - 1/04/1995; 1997, c. 23, s. 13 (13) - 28/11/1997; 1999, c. 12, Sched. B, s. 16 (5) - 14/02/2000

Effect of non-attendance at hearing after due notice

7. (1) Where notice of an oral hearing has been given to a party to a proceeding in accordance with this Act and the party does not attend at the hearing, the tribunal may proceed in the absence of the party and the party is not entitled to any further notice in the proceeding. R.S.O. 1990, c. S.22, s. 7; 1994, c. 27, s. 56 (14).

Same, written hearings

(2) Where notice of a written hearing has been given to a party to a proceeding in accordance with this Act and the party neither acts under clause 6 (4) (b) nor participates in the hearing in accordance with the notice, the tribunal may proceed without the party's participation and the party is not entitled to any further notice in the proceeding.

Same, electronic hearings

(3) Where notice of an electronic hearing has been given to a party to a proceeding in accordance with this Act and the party neither acts under clause 6 (5) (c), if applicable, nor participates in the hearing in accordance with the notice, the tribunal may proceed without the party's participation and the party is not entitled to any further notice in the proceeding. 1994, c. 27, s. 56 (15).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (14, 15) - 1/04/1995

Where character, etc., of a party is in issue

8. Where the good character, propriety of conduct or competence of a party is an issue in a proceeding, the party is entitled to be furnished prior to the hearing with reasonable information of any allegations with respect thereto. R.S.O. 1990, c. S.22, s. 8.

Hearings to be public; maintenance of order

Hearings to be public, exceptions

9. (1) An oral hearing shall be open to the public except where the tribunal is of the opinion that,

- (a) matters involving public security may be disclosed; or
- (b) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public,

in which case the tribunal may hold the hearing in the absence of the public. R.S.O. 1990, c. S.22, s. 9 (1); 1994, c. 27, s. 56 (16).

Written hearings

(1.1) In a written hearing, members of the public are entitled to reasonable access to the documents submitted, unless the tribunal is of the opinion that clause (1) (a) or (b) applies. 1994, c. 27, s. 56 (17).

Electronic hearings

(1.2) An electronic hearing shall be open to the public unless the tribunal is of the opinion that,

- (a) it is not practical to hold the hearing in a manner that is open to the public; or
- (b) clause (1) (a) or (b) applies. 1997, c. 23, s. 13 (14).

Maintenance of order at hearings

(2) A tribunal may make such orders or give such directions at an oral or electronic hearing as it considers necessary for the maintenance of order at the hearing, and, if any person disobeys or fails to comply with any such order or direction, the tribunal or a member thereof may call for the assistance of any peace officer to enforce the order or direction, and every peace officer so called upon shall take such action as is necessary to enforce the order or direction and may use such force as is reasonably required for that purpose. R.S.O. 1990, c. S.22, s. 9 (2); 1994, c. 27, s. 56 (18).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (16-18) - 1/04/1995; 1997, c. 23, s. 13 (14) - 28/11/1997

Proceedings involving similar questions

9.1 (1) If two or more proceedings before a tribunal involve the same or similar questions of fact, law or policy, the tribunal may,

- (a) combine the proceedings or any part of them, with the consent of the parties;
- (b) hear the proceedings at the same time, with the consent of the parties;
- (c) hear the proceedings one immediately after the other; or
- (d) stay one or more of the proceedings until after the determination of another one of them.

Exception

(2) Subsection (1) does not apply to proceedings to which the *Consolidated Hearings Act* applies. 1994, c. 27, s. 56 (19).

Same

(3) Clauses (1) (a) and (b) do not apply to a proceeding if,

- (a) any other Act or regulation that applies to the proceeding requires that it be heard in private;
- (b) the tribunal is of the opinion that clause 9 (1) (a) or (b) applies to the proceeding. 1994, c. 27, s. 56 (19); 1997, c. 23, s. 13 (15).

Conflict, consent requirements

(4) The consent requirements of clauses (1) (a) and (b) do not apply if another Act or a regulation that applies to the proceedings allows the tribunal to combine them or hear them at the same time without the consent of the parties. 1997, c. 23, s. 13 (16).

Use of same evidence

(5) If the parties to the second-named proceeding consent, the tribunal may treat evidence that is admitted in a proceeding as if it were also admitted in another proceeding that is heard at the same time under clause (1) (b). 1994, c. 27, s. 56 (19).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (19) - 1/04/1995; 1997, c. 23, s. 13 (15, 16) - 28/11/1997

Right to representation

10. A party to a proceeding may be represented by a representative. 2006, c. 21, Sched. C, s. 134 (3).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (20) - 1/04/1995

2006, c. 21, Sched. C, s. 134 (3) - 1/05/2007

Examination of witnesses

10.1 A party to a proceeding may, at an oral or electronic hearing,

- (a) call and examine witnesses and present evidence and submissions; and
- (b) conduct cross-examinations of witnesses at the hearing reasonably required for a full and fair disclosure of all matters relevant to the issues in the proceeding. 1994, c. 27, s. 56 (20).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (20) - 1/04/1995

Rights of witnesses to representation

11. (1) A witness at an oral or electronic hearing is entitled to be advised by a representative as to his or her rights, but such representative may take no other part in the hearing without leave of the tribunal. 2006, c. 21, Sched. C, s. 134 (4).

Idem

(2) Where an oral hearing is closed to the public, the witness's representative is not entitled to be present except when that witness is giving evidence. R.S.O. 1990, c. S.22, s. 11 (2); 1994, c. 27, s. 56 (22); 2006, c. 21, Sched. C, s. 134 (5).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (21, 22) - 1/04/1995

2006, c. 21, Sched. C, s. 134 (4, 5) - 1/05/2007

Summonses

12. (1) A tribunal may require any person, including a party, by summons,

- (a) to give evidence on oath or affirmation at an oral or electronic hearing; and
 - (b) to produce in evidence at an oral or electronic hearing documents and things specified by the tribunal,
- relevant to the subject-matter of the proceeding and admissible at a hearing. R.S.O. 1990, c. S.22, s. 12 (1); 1994, c. 27, s. 56 (23).

Form and service of summons

(2) A summons issued under subsection (1) shall be in the prescribed form (in English or French) and,

- (a) where the tribunal consists of one person, shall be signed by him or her;

- (b) where the tribunal consists of more than one person, shall be signed by the chair of the tribunal or in such other manner as documents on behalf of the tribunal may be signed under the statute constituting the tribunal. 1994, c. 27, s. 56 (24).

Same

- (3) The summons shall be served personally on the person summoned. 1994, c. 27, s. 56 (24).

Fees and allowances

(3.1) The person summoned is entitled to receive the same fees or allowances for attending at or otherwise participating in the hearing as are paid to a person summoned to attend before the Superior Court of Justice. 1994, c. 27, s. 56 (24); 2006, c. 19, Sched. C, s. 1 (1).

Bench warrant

- (4) A judge of the Superior Court of Justice may issue a warrant against a person if the judge is satisfied that,
- (a) a summons was served on the person under this section;
 - (b) the person has failed to attend or to remain in attendance at the hearing (in the case of an oral hearing) or has failed otherwise to participate in the hearing (in the case of an electronic hearing) in accordance with the summons; and
 - (c) the person's attendance or participation is material to the ends of justice. 1994, c. 27, s. 56 (25); 2006, c. 19, Sched. C, s. 1 (1).

Same

- (4.1) The warrant shall be in the prescribed form (in English or French), directed to any police officer, and shall require the person to be apprehended anywhere within Ontario, brought before the tribunal forthwith and,
- (a) detained in custody as the judge may order until the person's presence as a witness is no longer required; or
 - (b) in the judge's discretion, released on a recognizance, with or without sureties, conditioned for attendance or participation to give evidence. 1994, c. 27, s. 56 (25).

Proof of service

(5) Service of a summons may be proved by affidavit in an application to have a warrant issued under subsection (4). 1994, c. 27, s. 56 (26).

Certificate of facts

(6) Where an application to have a warrant issued is made on behalf of a tribunal, the person constituting the tribunal or, if the tribunal consists of more than one person, the chair of the tribunal may certify to the judge the facts relied on to establish that the attendance or other participation of the person summoned is material to the ends of justice, and the judge may accept the certificate as proof of the facts. 1994, c. 27, s. 56 (26).

Same

(7) Where the application is made by a party to the proceeding, the facts relied on to establish that the attendance or other participation of the person is material to the ends of justice may be proved by the party's affidavit. 1994, c. 27, s. 56 (26).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (23-26) - 1/04/1995

2006, c. 19, Sched. C, s. 1 (1) - 22/06/2006

Contempt proceedings

13. (1) Where any person without lawful excuse,
- (a) on being duly summoned under section 12 as a witness at a hearing makes default in attending at the hearing; or
 - (b) being in attendance as a witness at an oral hearing or otherwise participating as a witness at an electronic hearing, refuses to take an oath or to make an affirmation legally required by the tribunal to be taken or made, or to produce any document or thing in his or her power or control legally required by the tribunal to be produced by him or her or to answer any question to which the tribunal may legally require an answer; or
 - (c) does any other thing that would, if the tribunal had been a court of law having power to commit for contempt, have been contempt of that court,

the tribunal may, of its own motion or on the motion of a party to the proceeding, state a case to the Divisional Court setting out the facts and that court may inquire into the matter and, after hearing any witnesses who may be produced against or on behalf of that person and after hearing any statement that may be offered in defence, punish or take steps for the punishment of that person in like manner as if he or she had been guilty of contempt of the court. R.S.O. 1990, c. S.22, s. 13; 1994, c. 27, s. 56 (27).

Same

- (2) Subsection (1) also applies to a person who,
 - (a) having objected under clause 6 (4) (b) to a hearing being held as a written hearing, fails without lawful excuse to participate in the oral or electronic hearing of the matter; or
 - (b) being a party, fails without lawful excuse to attend a pre-hearing conference when so directed by the tribunal. 1997, c. 23, s. 13 (17).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (27) - 1/04/1995; 1997, c. 23, s. 13 (17) - 28/11/1997

Protection for witnesses

14. (1) A witness at an oral or electronic hearing shall be deemed to have objected to answer any question asked him or her upon the ground that the answer may tend to criminate him or her or may tend to establish his or her liability to civil proceedings at the instance of the Crown, or of any person, and no answer given by a witness at a hearing shall be used or be receivable in evidence against the witness in any trial or other proceeding against him or her thereafter taking place, other than a prosecution for perjury in giving such evidence. R.S.O. 1990, c. S.22, s. 14 (1); 1994, c. 27, s. 56 (28).

- (2) REPEALED: 1994, c. 27, s. 56 (29).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (28, 29) - 1/04/1995

Evidence

What is admissible in evidence at a hearing

15. (1) Subject to subsections (2) and (3), a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,

- (a) any oral testimony; and
- (b) any document or other thing,

relevant to the subject-matter of the proceeding and may act on such evidence, but the tribunal may exclude anything unduly repetitious.

What is inadmissible in evidence at a hearing

- (2) Nothing is admissible in evidence at a hearing,
 - (a) that would be inadmissible in a court by reason of any privilege under the law of evidence; or
 - (b) that is inadmissible by the statute under which the proceeding arises or any other statute.

Conflicts

(3) Nothing in subsection (1) overrides the provisions of any Act expressly limiting the extent to or purposes for which any oral testimony, documents or things may be admitted or used in evidence in any proceeding.

Copies

(4) Where a tribunal is satisfied as to its authenticity, a copy of a document or other thing may be admitted as evidence at a hearing.

Photocopies

(5) Where a document has been filed in evidence at a hearing, the tribunal may, or the person producing it or entitled to it may with the leave of the tribunal, cause the document to be photocopied and the tribunal may authorize the photocopy to be filed in evidence in the place of the document filed and release the document filed, or may furnish to the person producing it or the person entitled to it a photocopy of the document filed certified by a member of the tribunal.

Certified copy admissible in evidence

(6) A document purporting to be a copy of a document filed in evidence at a hearing, certified to be a copy thereof by a member of the tribunal, is admissible in evidence in proceedings in which the document is admissible as evidence of the document. R.S.O. 1990, c. S.22, s. 15.

Use of previously admitted evidence

15.1 (1) The tribunal may treat previously admitted evidence as if it had been admitted in a proceeding before the tribunal, if the parties to the proceeding consent. 1994, c. 27, s. 56 (30).

Definition

(2) In subsection (1),

“previously admitted evidence” means evidence that was admitted, before the hearing of the proceeding referred to in that subsection, in any other proceeding before a court or tribunal, whether in or outside Ontario.

Additional power

(3) This power conferred by this section is in addition to the tribunal’s power to admit evidence under section 15. 1997, c. 23, s. 13 (18).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (30) - 1/04/1995; 1997, c. 23, s. 13 (18) - 28/11/1997

Witness panels

15.2 A tribunal may receive evidence from panels of witnesses composed of two or more persons, if the parties have first had an opportunity to make submissions in that regard. 1994, c. 27, s. 56 (31).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (31) - 1/04/1995

Notice of facts and opinions

16. A tribunal may, in making its decision in any proceeding,

(a) take notice of facts that may be judicially noticed; and

(b) take notice of any generally recognized scientific or technical facts, information or opinions within its scientific or specialized knowledge. R.S.O. 1990, c. S.22, s. 16.

Interim decisions and orders

16.1 (1) A tribunal may make interim decisions and orders.

Conditions

(2) A tribunal may impose conditions on an interim decision or order.

Reasons

(3) An interim decision or order need not be accompanied by reasons. 1994, c. 27, s. 56 (32).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (32) - 1/04/1995

Time frames

16.2 A tribunal shall establish guidelines setting out the usual time frame for completing proceedings that come before the tribunal and for completing the procedural steps within those proceedings. 1999, c. 12, Sched. B, s. 16 (6).

Section Amendments with date in force (d/m/y)

1999, c. 12, Sched. B, s. 16 (6) - 14/02/2000

Decision; interest

Decision

17. (1) A tribunal shall give its final decision and order, if any, in any proceeding in writing and shall give reasons in writing therefor if requested by a party. R.S.O. 1990, c. S.22, s. 17; 1993, c. 27, Sched.

Interest

(2) A tribunal that makes an order for the payment of money shall set out in the order the principal sum, and if interest is payable, the rate of interest and the date from which it is to be calculated. 1994, c. 27, s. 56 (33).

Section Amendments with date in force (d/m/y)

1993, c. 27, Sched. - 31/12/1991; 1994, c. 27, s. 56 (33) - 1/04/1995

Costs

17.1 (1) Subject to subsection (2), a tribunal may, in the circumstances set out in rules made under subsection (4), order a party to pay all or part of another party's costs in a proceeding. 2006, c. 19, Sched. B, s. 21 (2).

Exception

(2) A tribunal shall not make an order to pay costs under this section unless,

- (a) the conduct or course of conduct of a party has been unreasonable, frivolous or vexatious or a party has acted in bad faith; and
- (b) the tribunal has made rules under subsection (4). 2006, c. 19, Sched. B, s. 21 (2).

Amount of costs

(3) The amount of the costs ordered under this section shall be determined in accordance with the rules made under subsection (4). 2006, c. 19, Sched. B, s. 21 (2).

Rules

(4) A tribunal may make rules with respect to,

- (a) the ordering of costs;
- (b) the circumstances in which costs may be ordered; and
- (c) the amount of costs or the manner in which the amount of costs is to be determined. 2006, c. 19, Sched. B, s. 21 (2).

Same

(5) Subsections 25.1 (3), (4), (5) and (6) apply with respect to rules made under subsection (4). 2006, c. 19, Sched. B, s. 21 (2).

Continuance of provisions in other statutes

(6) Despite section 32, nothing in this section shall prevent a tribunal from ordering a party to pay all or part of another party's costs in a proceeding in circumstances other than those set out in, and without complying with, subsections (1) to (3) if the tribunal makes the order in accordance with the provisions of an Act that are in force on February 14, 2000. 2006, c. 19, Sched. B, s. 21 (2).

Submissions must be in writing

(7) Despite sections 5.1, 5.2 and 5.2.1, submissions for a costs order, whether under subsection (1) or under an authority referred to in subsection (6), shall be made by way of written or electronic documents, unless a party satisfies the tribunal that to do so is likely to cause the party significant prejudice. 2015, c. 23, s. 5.

(8), (9) REPEALED: 2015, c. 23, s. 5.

Section Amendments with date in force (d/m/y)

1999, c. 12, Sched. B, s. 16 (7) - 14/02/2000

2006, c. 19, Sched. B, s. 21 (2) - 22/06/2006

2015, c. 23, s. 5 - 03/11/2015

Notice of decision

18. (1) The tribunal shall send each party who participated in the proceeding, or the party's representative, a copy of its final decision or order, including the reasons if any have been given,

- (a) by regular lettermail;
- (b) by electronic transmission;
- (c) by telephone transmission of a facsimile; or

- (d) by some other method that allows proof of receipt, if the tribunal's rules made under section 25.1 deal with the matter. 1994, c. 27, s. 56 (34); 1997, c. 23, s. 13 (19); 2006, c. 21, Sched. C, s. 134 (6).

Use of mail

(2) If the copy is sent by regular lettermail, it shall be sent to the most recent addresses known to the tribunal and shall be deemed to be received by the party on the fifth day after the day it is mailed. 1994, c. 27, s. 56 (34).

Use of electronic or telephone transmission

(3) If the copy is sent by electronic transmission or by telephone transmission of a facsimile, it shall be deemed to be received on the day after it was sent, unless that day is a holiday, in which case the copy shall be deemed to be received on the next day that is not a holiday. 1994, c. 27, s. 56 (34).

Use of other method

(4) If the copy is sent by a method referred to in clause (1) (d), the tribunal's rules made under section 25.1 govern its deemed day of receipt. 1994, c. 27, s. 56 (34).

Failure to receive copy

(5) If a party that acts in good faith does not, through absence, accident, illness or other cause beyond the party's control, receive the copy until a later date than the deemed day of receipt, subsection (2), (3) or (4), as the case may be, does not apply. 1994, c. 27, s. 56 (34).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (34) - 1/04/1995; 1997, c. 23, s. 13 (19) - 28/11/1997

2006, c. 21, Sched. C, s. 134 (6) - 1/05/2007

Enforcement of orders

19. (1) A certified copy of a tribunal's decision or order in a proceeding may be filed in the Superior Court of Justice by the tribunal or by a party and on filing shall be deemed to be an order of that court and is enforceable as such. 1994, c. 27, s. 56 (35); 2006, c. 19, Sched. C, s. 1 (1).

Notice of filing

(2) A party who files an order under subsection (1) shall notify the tribunal within 10 days after the filing. 1994, c. 27, s. 56 (35).

Order for payment of money

(3) On receiving a certified copy of a tribunal's order for the payment of money, the sheriff shall enforce the order as if it were an execution issued by the Superior Court of Justice. 1994, c. 27, s. 56 (35); 2006, c. 19, Sched. C, s. 1 (1).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (35) - 1/04/1995

2006, c. 19, Sched. C, s. 1 (1) - 22/06/2006

Record of proceeding

20. A tribunal shall compile a record of any proceeding in which a hearing has been held which shall include,

- (a) any application, complaint, reference or other document, if any, by which the proceeding was commenced;
- (b) the notice of any hearing;
- (c) any interlocutory orders made by the tribunal;
- (d) all documentary evidence filed with the tribunal, subject to any limitation expressly imposed by any other Act on the extent to or the purposes for which any such documents may be used in evidence in any proceeding;
- (e) the transcript, if any, of the oral evidence given at the hearing; and
- (f) the decision of the tribunal and the reasons therefor, where reasons have been given. R.S.O. 1990, c. S.22, s. 20.

Adjournments

21. A hearing may be adjourned from time to time by a tribunal of its own motion or where it is shown to the satisfaction of the tribunal that the adjournment is required to permit an adequate hearing to be held. R.S.O. 1990, c. S.22, s. 21.

Correction of errors

21.1 A tribunal may at any time correct a typographical error, error of calculation or similar error made in its decision or order. 1994, c. 27, s. 56 (36).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (36) - 1/04/1995

Power to review

21.2 (1) A tribunal may, if it considers it advisable and if its rules made under section 25.1 deal with the matter, review all or part of its own decision or order, and may confirm, vary, suspend or cancel the decision or order. 1997, c. 23, s. 13 (20).

Time for review

(2) The review shall take place within a reasonable time after the decision or order is made.

Conflict

(3) In the event of a conflict between this section and any other Act, the other Act prevails. 1994, c. 27, s. 56 (36).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (36) - 1/04/1995; 1997, c. 23, s. 13 (20) - 28/11/1997

Administration of oaths

22. A member of a tribunal has power to administer oaths and affirmations for the purpose of any of its proceedings and the tribunal may require evidence before it to be given under oath or affirmation. R.S.O. 1990, c. S.22, s. 22.

Powers re control of proceedings

Abuse of processes

23. (1) A tribunal may make such orders or give such directions in proceedings before it as it considers proper to prevent abuse of its processes. R.S.O. 1990, c. S.22, s. 23 (1).

Limitation on examination

(2) A tribunal may reasonably limit further examination or cross-examination of a witness where it is satisfied that the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the proceeding. 1994, c. 27, s. 56 (37).

Exclusion of representatives

(3) A tribunal may exclude from a hearing anyone, other than a person licensed under the *Law Society Act*, appearing on behalf of a party or as an adviser to a witness if it finds that such person is not competent properly to represent or to advise the party or witness, or does not understand and comply at the hearing with the duties and responsibilities of an advocate or adviser. 2006, c. 21, Sched. C, s. 134 (7).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (37) - 1/04/1995

2006, c. 21, Sched. C, s. 134 (7) - 1/05/2007

Notice, etc.

24. (1) Where a tribunal is of the opinion that because the parties to any proceeding before it are so numerous or for any other reason, it is impracticable,

- (a) to give notice of the hearing; or
- (b) to send its decision and the material mentioned in section 18,

to all or any of the parties individually, the tribunal may, instead of doing so, cause reasonable notice of the hearing or of its decision to be given to such parties by public advertisement or otherwise as the tribunal may direct.

Contents of notice

(2) A notice of a decision given by a tribunal under clause (1) (b) shall inform the parties of the place where copies of the decision and the reasons therefor, if reasons were given, may be obtained. R.S.O. 1990, c. S.22, s. 24.

Appeal operates as stay, exception

25. (1) An appeal from a decision of a tribunal to a court or other appellate body operates as a stay in the matter unless,
- (a) another Act or a regulation that applies to the proceeding expressly provides to the contrary; or
 - (b) the tribunal or the court or other appellate body orders otherwise. 1997, c. 23, s. 13 (21).

Idem

(2) An application for judicial review under the *Judicial Review Procedure Act*, or the bringing of proceedings specified in subsection 2 (1) of that Act is not an appeal within the meaning of subsection (1). R.S.O. 1990, c. S.22, s. 25 (2).

Section Amendments with date in force (d/m/y)

1997, c. 23, s. 13 (21) - 28/11/1997

Control of process

25.0.1 A tribunal has the power to determine its own procedures and practices and may for that purpose,

- (a) make orders with respect to the procedures and practices that apply in any particular proceeding; and
- (b) establish rules under section 25.1. 1999, c. 12, Sched. B, s. 16 (8).

Section Amendments with date in force (d/m/y)

1999, c. 12, Sched. B, s. 16 (8) - 14/02/2000

Rules

25.1 (1) A tribunal may make rules governing the practice and procedure before it. 1994, c. 27, s. 56 (38).

Application

(2) The rules may be of general or particular application. 1994, c. 27, s. 56 (38).

Consistency with Acts

(3) The rules shall be consistent with this Act and with the other Acts to which they relate. 1994, c. 27, s. 56 (38).

Public access

(4) The tribunal shall make the rules available to the public in English and in French. 1994, c. 27, s. 56 (38).

Legislation Act, 2006, Part III

(5) Rules adopted under this section are not regulations as defined in Part III (Regulations) of the *Legislation Act, 2006*. 1994, c. 27, s. 56 (38); 2006, c. 21, Sched. F, s. 136 (1).

Additional power

(6) The power conferred by this section is in addition to any power to adopt rules that the tribunal may have under another Act. 1994, c. 27, s. 56 (38).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (38) - 1/04/1995

2006, c. 21, Sched. F, s. 136 (1) - 25/07/2007

Regulations

26. The Lieutenant Governor in Council may make regulations prescribing forms for the purpose of section 12. 1994, c. 27, s. 56 (41).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (39, 41) - 1/04/1995

Rules, etc., available to public

27. A tribunal shall make any rules or guidelines established under this or any other Act available for examination by the public. 1999, c. 12, Sched. B, s. 16 (9).

Section Amendments with date in force (d/m/y)

1999, c. 12, Sched. B, s. 16 (9) - 14/02/2000

Substantial compliance

28. Substantial compliance with requirements respecting the content of forms, notices or documents under this Act or any rule made under this or any other Act is sufficient. 1999, c. 12, Sched. B, s. 16 (9).

Section Amendments with date in force (d/m/y)

1999, c. 12, Sched. B, s. 16 (9) - 14/02/2000

29.-31. REPEALED: 1994, c. 27, s. 56 (40).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (40) - 1/04/1995

Conflict

32. Unless it is expressly provided in any other Act that its provisions and regulations, rules or by-laws made under it apply despite anything in this Act, the provisions of this Act prevail over the provisions of such other Act and over regulations, rules or by-laws made under such other Act which conflict therewith. R.S.O. 1990, c. S.22, s. 32; 1994, c. 27, s. 56 (42).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (42) - 1/04/1995

33., 34. REPEALED: 1994, c. 27, s. 56 (43).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (43) - 1/04/1995

FORMS 1, 2 REPEALED: 1994, c. 27, s. 56 (44).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (44) - 1/04/1995

Français

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TAB 30

CITATION: Bastien v. Egalite, 2016 ONSC 7652

COURT FILE NO.: 15-66790

DATE: 2016/12/02

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Marie France Bastien and Alex Bastien
Plaintiffs (Responding Parties)

– and –

Jim Egalite, Jonathan Collings, Stephane
Langlois, Edward Bliss, Katheryn
Chinkiwsky

Defendants

Self- Represented

Ashley L. Barber, counsel for Egalite

Heather J. Williams, counsel for the

Defendants (Moving Parties), Jonathan
Collings and Stephane Langlois

HEARD: October 25, 2016

REASONS FOR DECISION

R. SMITH J.

Overview

[1] The three defendant lawyers, Egalite, Collings and Langlois, have brought motions under Rule 21.01(1)(b) and Rule 21.01 (3)(d) to dismiss the action and to strike out the claim against them without leave to amend.

2016 ONSC 7652 (CanLII)

[2] The plaintiffs have claimed \$700,000 against Mr. Egalite, \$500,000 against Mr. Collings and \$300,000 against Mr. Langlois, alleging that they were all negligent and incompetent. The plaintiffs allege that all three lawyers who represented them were negligent because they failed to take the required steps to rescind or cancel the purchase of their condominium unit after closing had occurred. They wanted to have their purchase rescinded because they discovered that their condo had suffered extensive water damage when they took possession.

[3] The three defendant lawyers submit that the plaintiffs have only made bald allegations of negligence but have not pleaded any material facts to support their allegations. Further, they submit that the claim has no chance of success because the plaintiffs have not suffered any damages attributable to their actions or failure to take action as it was not possible to rescind the purchase without the vendors' consent, which was refused.

Uncontested Facts

[4] After the plaintiffs had signed the Agreement of Purchase and Sale for their condominium, they retained Mr. Egalite to act on their behalf to complete the purchase and to ensure they obtained a valid title to their condo unit.

[5] The purchase of the plaintiffs' condominium was closed at 2:30 p.m. on January 3, 2014. Unfortunately, when they took possession at approximately 6:00 p.m. that day, they discovered extensive water damage, to their condominium due to burst water pipes.

[6] The purchasers advised the vendors, through their lawyer Mr. Egalite, that they wanted to rescind or annul the purchase of their condo unit. The vendors offered either a monetary settlement or to carry out the required repairs to the unit. The plaintiffs refused the vendors' offer and insisted on rescinding the transaction. Mr. Egalite attempted to negotiate a rescission of the purchase with the vendors as instructed by the plaintiffs. He was not successful in his attempted negotiations because the vendors refused to consent.

[7] After being advised of the water damages on January 3, 2014, Egalite contacted a contractor on their behalf to attend at the property in an attempt to mitigate the damages. The

plaintiffs left their key to the property with the contractor. However, the contractor was not engaged to perform the repairs.

[8] At no time did Egalite advise the plaintiffs that they would be successful in rescinding the transaction. Egalite told the plaintiffs on January 6, 2014, that the vendors of the property would compensate the plaintiffs or renovate the property but they did not agree to rescind the sale.

[9] On February 6, 2014, the plaintiffs advised Mr. Egalite that they had retained a litigation lawyer, named Jonathan Collings, to assist them with their claims arising from the water damage to their condominium unit. No limitation periods were missed in the 30 days following the closing and Mr. Egalite did not invoice the plaintiffs for any of his efforts attempting to negotiate rescission of the transaction after it had closed.

Allegations against Mr. Collings

[10] In early February of 2014, the plaintiffs retained Mr. Collings to prosecute a claim against the vendors, Mr. Egalite and an insurance company. The retainer was signed on February 14, 2014. Mr. Collings sent an invoice on February 25, 2014 for \$1,394.99 (\$750 was paid from funds held in trust). A further invoice was sent on March 31, 2014 for \$1,361.09. Mr. Collings refused to take any further steps until his invoices were paid. The plaintiffs did not pay his invoices and so he withdrew as counsel. The assessment officer subsequently assessed his accounts at their full amounts.

Allegations against Mr. Langlois

[11] In July of 2014, the plaintiffs consulted Mr. Langlois to assist them with respect to the water damage to their condominium unit. They paid him a \$1,000 retainer on their credit card. Langlois also attempted to negotiate a rescission of the purchase of the condominium. He sent them an invoice on July 31, 2014 for \$316.40 and a further invoice on September 30, 2014 for \$590.43. Both invoices were paid from funds in trust. Mr. Langlois returned the sum of \$93.17 to the plaintiffs on January 9, 2015 and sought further instructions. He also wrote the plaintiffs on April 17, 2015 stating that as he had not received further instructions, he would close his file

unless further instructions were received. No further instructions were provided to him by the plaintiffs and he closed the file.

[12] The plaintiffs allege that Mr. Egalite, Mr. Collings and Mr. Langlois were all negligent and incompetent for failing to obtain a rescission of the purchase of their condominium without pleading any other material facts.

Analysis

Legal Principles Applying to Rule 21.01(3)(d) of the Rules of Civil Procedure

Frivolous, vexatious, and abuse of process

[13] The terms frivolous, vexatious and abuse of process were defined in the decision of *Currie v. Halton Regional Police Services Board et al.*, 2003 CanLII 7815 (ONCA), the Court of Appeal stated as follow at paras. 14-18:

14. Black's Law Dictionary defines "frivolous" as: "Lacking a legal basis or legal merit; not serious; not reasonably purposeful".²

15. In *Foy v. Foy* (No. 2) (1979), 26 O.R. (2d) 220 at 226, Howland, C.J.O. considered the meaning of "vexatious" under the *Vexatious Proceedings Act*, R.S.O. 1970, c. 481:

- The word "vexatious" has not been clearly defined. Under the Act, the legal proceedings must be vexatious and must also have been instituted without reasonable ground. In many of the reported decisions the legal proceedings have been held to be vexatious because they were instituted without any reasonable ground. As a result the proceedings were found to constitute an abuse of the process of the Court. An example of such proceedings is the bringing of one or more actions to determine an issue which has already been determined by a Court of competent jurisdiction: *Stevenson v. Garnett*, [1898] 1 Q.B. 677 at pp. 680-1; *Re Langton*, [1966] 3 All. E.R. 576.

16. In discussing the inherent power of the court to invoke the doctrine of abuse of process, apart from rule 21.01(3)(d), Finlayson J.A. for the majority in *Canam Enterprises Inc. v. Coles* (2000), 51 O.R. (3d) 481 (C.A.), rev'd on other grounds (2002), 220 D.L.R. (4th) 466, [2002] S.C.C. 63 at para. 31 stated:

- The court can still utilize the broader doctrine of abuse of process. Abuse of process is a discretionary principle that is not limited by any set number of categories. It is an intangible principle that is used to bar proceedings that are inconsistent with the objectives of public policy.

Goudge J.A. for the minority in the same case, stated at paras. 55 and 56:

- The doctrine of abuse of process engages the inherent power of the court to prevent the misuse of its procedure, in a way that would be manifestly unfair to a party to the litigation before it or would in some other way bring the administration of justice into disrepute. It is a flexible doctrine un-encumbered by the specific requirement of concepts such as issue estoppel. See *House of Spring Gardens Ltd. v. Waite*, [1990] 3 W.L.R. 347 at p. 358, [1990] 2 All. E.R. 990 (C.A.).

17. It is apparent that there is a degree of overlap in the meaning of the terms frivolous, vexatious and abuse of process. What I take from the authorities is that **any action for which there is clearly no merit may qualify for classification as frivolous, vexatious or an abuse of process.** (Emphasis added)

18. I am mindful that when the court invokes its authority under rule 21.01(3)(d) or pursuant to its inherent jurisdiction to dismiss or stay an action, it does so only in the clearest of cases. See *Sussman v. Ottawa Sun*, [1997] O.J. No. 181 (Gen. Div.) at paragraph 21.

[14] The characteristics of a vexatious proceeding were set out in *Lang Michener Lash Johnston v. Fabian*, 1978 CarswellOnt 378, 59 O.R. (2d) 353 Henry J. of the Ontario High Court of Justice included the following:

- Where it is obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person can reasonably expect to obtain relief, the action is vexatious;
- Vexatious actions include those brought for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights;

- It is a general characteristic of vexatious proceedings that grounds and issues raised tend to be rolled forward into subsequent actions and repeated and supplemented, often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings; [emphasis added]
- In determining whether proceedings are vexatious, the Court must look at the whole history of the matter and not just whether it was originally a good cause of action, and
- The failure of the person instituting the proceedings to pay the costs of unsuccessful proceedings is one factor to be considered in determining whether proceedings are vexatious.

Legal Principles Applicable to Rule 21.01(2)(b)

[15] Rule 21.01(2)(b) states that a pleading may be struck on the grounds that it discloses no reasonable cause of action. No evidence is admissible on a motion to strike under this rule.

[16] In *R. v. Imperial Tobacco*, 2011 SCC 42 (CanLII) the Supreme Court of Canada stated that “in order to succeed, the moving party must show that it is plain and obvious that the claim has “no chance of success.”

[17] The principles that apply to a Rule 21.01(2)(b) motion were set out in *Trillium Power Wind Corporation v. Ontario (Natural Resources)*, 2013 ONCA 683 (CanLII) at paras. 30-31 the Court of Appeal Stated that:

The analytical framework for assessing whether to strike out a pleading on the ground that it discloses no reasonable cause of action under Rule 21.01(1)(b) of the *Rules of Civil Procedure*, is set out by Paul M. Perell and John W. Morden in *The Law of Civil Procedure in Ontario*, 1st ed. (Markham: LexisNexis Canada Inc., 2010), at p. 445:

The following principles apply to a Rule 21 motion to strike a pleading for failing to disclose a reasonable cause of action or defence: (a) the material facts pleaded must be deemed to be proven or true, except to the extent that the alleged facts are patently ridiculous or incapable of proof; (b) the claim incorporates

by reference any document pleaded and the court is entitled to read and rely on the terms of such documents as if they were fully quoted in the pleadings; (c) novelty of the cause of action is of no concern at this state of the proceeding; (d) the statement of claim must be read generously to allow for drafting deficiencies; and if the claim has some chance of success, it must be permitted to proceed.

The test is not in dispute: the claim will only be dismissed where it is “**plain and obvious**” that it has no reasonable prospect of success: *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959; *Imperial Tobacco*, at paras. 17-19; *Taylor v. Canada (Attorney General)*, 2012 ONCA 479, 111 O.R. (3d) 161 at para 22. **While the court must accept as true the material facts as pleaded, this obligation does not extend to bald conclusory statements of fact, unsupported by material facts.** (Emphasis added)

[18] In *1317424 Ontario Inc. v. Chrysler Canada Inc.*, 2015 ONCA 104 (CanLII) at para. 8, the Court of Appeal held that where a cause of action has “certain defined, long-standing characteristics, which courts have considered essential to the cause of action,” a claim will have no reasonable chance of success if, on the facts pleaded, one of the essential characteristics of the cause of action is missing.

[19] In *Aristocrat Restaurants Ltd. V. Ontario*, 2003 CarswellOnt 5574 Ontario, 2003 CarswellOnt 5574 at paras. 18-19 the court stated that a claim should be struck when “either the allegations it contains do not give rise to a recognized cause of action or it fails to plead the necessary legal elements of an otherwise recognized cause of action.” Vague allegations are also impermissible and should be struck.

[20] In *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, [2008] S.C.R. 114 (SCC) at para. 3 the Supreme Court held that for a plaintiff to succeed in an action in negligence, he or she must prove the following four necessary elements:

- a. that the defendant owed him a duty of care;
- b. that the defendant’s behavior breached the standard of care;
- c. that the plaintiff sustained damage; and
- d. that the damage was caused, in fact and in law, by the defendant’s breach.

[21] In *Williamson v. Toronto Police Service*, 2001 Carswell Ont. 2226, at para. 51, the Court held that a pleading which merely asserts a tort, without alleging the material facts capable of supporting it discloses no cause of action. In this case, the plaintiffs merely allege that the defendants, Egalite, Collings and Langlois were negligent and incompetent without setting out any material facts to support the necessary elements of the tort of negligence.

Issue #1: Is the Plaintiffs’ action against the Defendants Egalite, Collings and Langlois Frivolous Vexation or an Abuse of Process?

[22] The plaintiffs’ complaint about the conduct of the three defendant lawyers is that they failed to obtain a rescission or cancelation of the purchase of their condominium after the

closing had occurred. The plaintiffs appear to believe that the lawyers they retained had the ability to unilaterally rescind or cancel the closing of a real estate transaction, without obtaining the vendor's consent. This is clearly not the case as the rescission of a completed real estate transaction could only be accomplished with the consent of the vendor or by way of a judge's order after a hearing, provided the legal and factual basis for the remedy of rescission was established.

[23] The plaintiffs are upset with all three defendant lawyers for failing to meet their request that they obtain the remedy of the rescission of their completed purchase of a condominium unit. Because all three lawyers failed to obtain the result they requested, they allege in their claim that they were negligent and incompetent. In addition, the plaintiffs failed to pay Mr. Collings' account and failed to provide further instructions to both Mr. Collings and Mr. Langlois to proceed to commence a legal action to obtain remedy they were demanding.

[24] The plaintiffs have only established two of the four necessary elements to prove a claim in negligence. The plaintiffs have established that the three lawyers they retained owed them a duty of care and that they have sustained damages. However, the plaintiffs have failed to plead any material facts to demonstrate that any of the three defence lawyers' actions or inactions breached the required standard of care or that their actions or inaction caused them any damage.

[25] In particular, the plaintiffs do not plead that because any of the three defendant lawyers failed to cancel the purchase of the condominium unit, that they have lost the right to obtain this remedy; or that any limitation period was missed which might negatively affect their claim; or that any of the defendant lawyers advised them that such remedy was possible without obtaining the vendor's consent.

Allegations against Mr. Egalite

[26] With regards to Mr. Egalite's actions or inactions, the plaintiffs have not identified any error or negligent conduct or advice provided to them by Mr. Egalite. He took the required steps to complete his retainer and ensure that the plaintiffs' obtained valid title to their condo unit. He was not involved in preparing or providing advice regarding any terms in the Offer to Purchase.

As a result, the plaintiffs have not pleaded any material facts which could support a claim for any negligent actions or allege any material facts that any negligent advice was given to them.

[27] The plaintiffs do not allege that Mr. Egalite made any error in ensuring that they acquired valid title to their condominium unit, or that he failed to prepare all the required documents or to close the transaction on the agreed date. The plaintiffs have not identified any error, negligent action, or inaction on the part of Mr. Egalite that fell below the required standard of care to complete the work he was retained to perform.

[28] The plaintiffs are upset at Mr. Egalite for not rescinding or canceling their purchase of the condo unit as requested, after closing had occurred. However, it is not possible for any solicitor to unilaterally rescind a closed real estate transaction, as the vendors consent or a court order is required. While Mr. Egalite did attempt to negotiate a rescission or cancelation of the purchase, he was unable to do so because the vendor refused to consent to the rescission.

[29] There is also no evidence that Mr. Egalite's actions of attempting to negotiate rescission or accepting the plaintiffs' allegation that he arranged to have a contractor attend the condo to assess the damages were negligent or caused any damages to the plaintiffs. The plaintiffs have not pleaded any material facts that could possibly support a finding that they have suffered any damages that were caused by any action or failure to act by Mr. Egalite.

[30] In the Statement of Claim, the plaintiffs also allege that Mr. Egalite closed the transaction without ensuring that the required insurance was in place. Assuming that it was Mr. Egalite's responsibility and not the purchaser's responsibility to arrange insurance coverage for their condo, the plaintiffs stated that the damages to their condominium unit had occurred before the date of closing. As a result, if insurance had been in place on January 3, 2014, the policy would not have covered the loss in any event. As a result, the plaintiffs have not suffered any damage as a result of insurance only being placed on January 4, 2014 as opposed to on the closing date of January 3, 2014.

[31] The Plaintiffs allege that Mr. Egalite did not attend the property after they discovered the flooding in their condo. In the unlikely event that Mr. Egalite's non-attendance at the property,

following the occurrence of the flood, were found to fall below the standard of care, no damages were caused as a result in any event.

[32] The Plaintiffs allege that Mr. Egalite did not tell the Plaintiffs that a different contractor than the one originally retained was being used. As stated above, in the unlikely event this was found to amount to a breach of the standard of care, no damages were caused as a result of a different contractor being sent, because the contractor did not proceed with any repairs and the plaintiffs have not incurred any expenses with any contractor.

[33] The plaintiffs have not been interested in having the damages repaired as they refused the vendor's offer to complete the repairs; they also refused the vendor's offer of a cash settlement and they have not taken any steps to have the repairs completed to date.

[34] The plaintiffs have insisted on obtaining the remedy of rescission. In addition, the plaintiffs have not alleged that any of the three lawyers advised them that they had reasonable possibility of obtaining the remedy of rescission from the vendors, as opposed to obtaining an award of damages.

Allegations against Mr. Collings

[35] The allegations of negligence and incompetence made against Mr. Collings are similar to the allegations against Mr. Egalite. The plaintiffs have not pleaded any material facts supporting their allegation that Mr. Collings breached the standard of care. In fact, in cross-examination on her affidavit filed under R. 21.01 (3)(d) the plaintiff stated that she was happy with Mr. Collings' services except that he did not obtain the remedy of rescission or cancellation of their purchase as requested. In any event, on the Rule 21.01(1)(b) analysis, the plaintiffs have not pleaded any material facts that would establish a breach of the standard of care by Collings or that his actions or inactions caused any damage to the plaintiffs. As a result, the plaintiff's Statement of Claim against Mr. Collings merely alleges negligence but it is plain and obvious that their cause of action has no reasonable chance of success.

[36] Mr. Collings did not have an obligation to continue representing the plaintiffs when the plaintiffs had not paid his invoices and where no prejudice was caused to the plaintiffs by his

withdrawal. The litigation had not been commenced and there was no imminent limitation date pending. In addition to not being paid, Collings' retainer agreement permitted him to withdraw.

Allegations against Mr. Langlois

[37] The plaintiffs' claim for damages against Mr. Langlois is made on the same basis as against Mr. Collings, namely, that he failed to obtain the remedy of a rescission or cancellation of the purchase of the condominium and was therefore negligent and incompetent. The plaintiffs have not pleaded any material facts to establish that Mr. Langlois' conduct failed to meet the standard of care other than that he failed to obtain the remedy of rescission or of their purchase as sought.

[38] Langlois gave the plaintiffs an estimate of the costs to take further steps on their behalf but he did not receive any further instructions to take any further proceedings and closed his file after giving written notice to the plaintiffs.

[39] The plaintiffs' complaint about Mr. Langlois' conduct is that he used their deposit money to pay his invoices but failed to provide any services that were of any value to them because he failed to obtain the remedy of rescission which they sought. The Plaintiffs complaint about the value of Mr. Langlois' services could possibly be determined by assessing his account.

[40] The plaintiffs have not pleaded any material facts to support a breach of the standard of care by Mr. Langlois nor have they pleaded Mr. Langlois' unsuccessful attempt to obtain the remedy of rescission or cancellation of the sale caused any damage to the plaintiffs.

[41] For the above reasons, I find that it is "plain and obvious" that the plaintiffs claim has no reasonable possibility of success against Egalite, Collings or Langlois because they failed to plead any material facts to establish that their conduct fell below the required standard or caused the plaintiffs any damages.

[42] The action against their three former lawyers, where it is obvious that their action cannot possibly succeed is also consistent with characteristics of a vexatious procedure, identified on the *Lang Mitchener* case. I find that their action against Egalite, Collings, and Langlois is completely

lacking in legal merit and has been instituted without reasonable grounds. As a result, I find that the claim against them is frivolous and vexatious and is struck on this basis without leave to amend.

Issue #2: Should the Plaintiffs' Claims against Egalite, Collings, and Langlois be struck for failing to disclose a reasonable cause of action?

[43] For the same reasons that I have given for finding that the plaintiffs' action against the three defendant lawyers is frivolous and vexatious except for relying on any evidence referred to in the affidavit filed under Rule 21.01 3(d), I find that the claim discloses no reasonable cause of action as the plaintiffs have only pleaded bald conclusory allegations of negligence and incompetence unsupported by any material facts.

[44] I find that it is "plain and obvious" that the plaintiffs' claim has no reasonable chance of success against these three defendants because they have failed to plead any material facts to support their allegation that the three defendant lawyers' conduct fell below the required standard of care or that their actions or failure to act, or advice given caused then any damages. These are two of the essential elements needed to establish a claim for negligence.

Disposition of Issue #2

[45] For the above reasons, I find that the plaintiffs' claim against Egalite, Collings and Langlois discloses no reasonable cause of action and their claim is struck without leave to amend.

Costs

[46] If the defendants are seeking costs they may make brief submissions within 10 days. The plaintiffs shall have 10 days to respond.

R. Smith, J.

Released: December 02, 2016

2016 ONSC 7652 (CanLII)

CITATION: Bastien. v. Egalite, 2016 ONSC 7652

COURT FILE NO.: 15-66790

DATE: 2016/12/02

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

MARIE FRANCE BASTIEN and ALEX BASTIEN

Plaintiffs

– and –

JIM EGALITE, JONATHAN COLLINGS, STEPHANE
LANGLOIS, EDWARD BLISS, KATHERYN
CHINKIWSKY

Defendants

REASONS FOR DECISION

R. Smith J.

Released: December 02, 2016

2016 ONSC 7652 (CanLII)

TAB 31



EB-2011-0087

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

AND IN THE MATTER OF an Application by Marie Snopko,
Wayne McMurphy, Lyle Knight, and Eldon Knight under
section 19 of the *Ontario Energy Board Act, 1998*, S.O.
1998, for an Order of the Board determining that the
contracts, filed with the Application, between the Applicants
and Union Gas Limited / Ram Petroleums Limited have been
terminated;

AND IN THE MATTER OF an Application by Marie Snopko,
Wayne McMurphy, Lyle Knight, and Eldon Knight under
section 38(2) of the *Ontario Energy Board Act, 1998*, S.O.
1998 for an Order of the Board determining the quantum of
compensation the Applicants are entitled to have received
from Union Gas Limited and Ram Petroleums Limited;

AND IN THE MATTER OF a Motion filed by Union Gas
Limited.

BEFORE: Cathy Spoel
Presiding Member

Ken Quesnelle
Member

Karen Taylor
Member

DECISION

Background

On March 16, 2011 Marie Snopko ("Snopko"), Wayne McMurphy ("McMurphy"), Lyle Knight and Eldon Knight (the "Knights") (collectively the "Applicants") filed an application with the Ontario Energy Board under section 19 and section 38(2) of the *Ontario Energy Board Act, 1998* (the "Act"). The Applicants identified Union Gas Limited ("Union") and Ram Petroleums Ltd. ("Ram") as respondents in the Application. The Applicants have requested a decision on two issues (a) the validity of Gas Storage Agreements (GSA) between Union and the Applicants pursuant to section 19 of the Act; and (b) a determination of the compensation the Applicants are entitled to receive from Union and Ram. The Board has assigned Board File No. EB-2011-0087.

The Applicants are landowners in the Edys Mills designated storage area operated by Union. Prior to 1993, the Applicants entered into a number of agreements with Ram, in particular petroleum and natural gas lease agreements, and gas storage agreements (the "Pre-1993 Agreements"). The Applicants' Gas Storage Lease Agreements and related events chronology is as follows:

- Snopko's Gas Storage Lease Agreement (GSLA) with Ram was signed on October 3, 1987 by George John Graham, predecessor in title. The term of the GSLA was 7 years from the date of signing and renewable annually as long as Lessee "shall have installed facilities for storage and /or utilizes the said lands within first 7 years of this lease" ¹.
- McMurphy's Gas Storage Lease Agreement with Ram was signed on October 11, 1989.
- Knights held 3 Gas Storage Lease Agreements with Ram for their properties within Edys Mills: Agnes Knight signed the GSLA with Ram on May 25, 1989; Lyle and Margaret Knight signed the GSLA with Ram on May 25, 1989 for one of their two properties within Edys Mills and signed another agreement for the second property also on May 25, 1989.

¹ Graham (predecessor on title for Snopko's lands), McMurphy and Knights all signed the same form of the Gas Storage Lease Agreement with Ram. There are 3 GSLAs for Knights as there were 3 properties in question. The GSLAs may be found in the Volume 1 in the Tabs to Union's Motion record. All GSLA's had the term of 7 years and were extendable on yearly basis, provided that the storage operation commences within first seven years. Note that the operation of Edys Pool started in 1993 and all GSLAs were signed in 1989, meaning that all the GSLA's were valid in the period from 1993 to 1999. For the period from 1999 to 2008, as all the Applicants signed the amendments (2007) the leases were also valid. For the period from 2009 to 2013 only Knights signed the amendments of their GSLAs.

- In 1989 prior to the storage designation, Ram sold its interest in the Edys Mills Pool to Union and assigned the storage leases to Union by undertaking the following steps:
 - In August 1989, the Applicants and Ram entered into a Consent Agreement by which the Applicants consented to Ram assigning the leases to Union provided Ram takes back a sublease of all oil production rights; and
 - After the Consent Agreement was signed, Ram assigned its interest in the Gas Storage Lease Agreements to Union.
- On March 16, 1992 Union filed an application for a regulation designating the Edys Mills Pool as a gas storage area with the Board under section 35(2) of the *Ontario Energy Board Act*, R.S.O. 1990, c. 013² (E.B.O. 174). On March 16, 1992, Union also applied under section 21(1) of the *Ontario Energy Board Act*, R.S.O. 1990, c. 013 to the Board for an order authorizing Union to inject gas into, store gas in, and remove gas from the Edys Mills proposed gas storage pool (E.B.O. 174) and for leave to construct pipelines in the Edys Mills Pool (E.B.L.O. 243).
- On September 22 to 24, 1992 the Board held a hearing in Sarnia and approved, by way of an oral decision, the recommendation to the Lieutenant Governor in Council for designation of the Edys Mills Pool, the authorization to operate the Edys Mills Pool as well as leave to construct pipelines in the Edys Mills Pool.
- The Reasons for the Decisions were issued by the Board on November 12, 1992.
- The Edys Mills Pool was designated for storage by Ontario Regulation 719/92 on November 30, 1992.
- Union was granted an authorization to operate the Edys Mills Storage Pool and leave to construct pipelines under Board Order E.B.O. 174/E.B.L.O. 243

² Note that the sections of the Act dealing with the storage changed in the current *Ontario Energy Board Act*, R.S.O. 1998.

dated February 1, 1993. Collectively, the regulation designating the Edys Mill Pool and the Board's order granting Union the right to inject, store and remove gas from the Edys Mill Pool are referred to as the "Designation Order" in this Decision.

- In 2000, the Lambton County Storage Association ("LCSA", of which the Applicants Snopko and McMurphy were members) commenced a proceeding at the Board for just and equitable compensation pursuant to section 38(2) of the *Ontario Energy Board Act, 1998*. Following a protracted process and lengthy negotiations, Union and the LCSA reached a settlement on compensation in 2004. Expressly included in the settlement were all claims which were, or could have been raised in the storage compensation hearing before the Board, including claims for disturbance damages, crop loss and loss of opportunity. The settlement had retroactive effect and covered the years 1999-2008 inclusive.
- On March 23, 2004 the Board issued a Decision and Order (RP-2000-0005, the "Compensation Order") which accepted the settlement agreement and covered all compensation matters over which the Board has jurisdiction for the period 1999 to 2008. In RP-2000-0005 the Board determined that Snopko, McMurphy and Knights all have valid storage rights agreements with Union for the period 1999 to 2008.
- Based on the terms of the Compensation Order, Union made individual compensation offers to all LCSA and non-LCSA members in the Edys Mill Pool, including Snopko, McMurphy and Knights.
- On May 5, 2004 Snopko signed a compensation agreement with Union for the period from 1999 to 2008 for the compensation schedule and amounts as set in the Compensation Order.
- On August 17, 2004 Knights signed a compensation agreement with Union for the period from 1999 to 2008 for the compensation schedule and amounts as set in the Compensation Order.
- On January 28, 2005 McMurphy signed a compensation agreement with Union for the period from 1999 to 2008 for the compensation schedule and amounts as set in the Compensation Order.

- In 2007 Union and its storage pools landowners reached a Compensation Agreement which covers the period 2009-2013 (the "2007 Compensation Agreement").
- On April 3, 2007 Knights signed the 2007 Compensation Agreement with Union.
- Snopko and McMurphy have not signed the 2007 Compensation Agreement. Snopko and McMurphy do not have gas storage rights agreements with Union for the period after 2008 to the present.

The Applicants stated in their Application that on April 25, 2006 they terminated the Gas Storage Agreement with Union. The Applicants brought the same claims as presented in this Application to the Ontario Superior Court of Justice ("Superior Court"). Union brought a motion before the Superior Court to have the claim dismissed. On January 6, 2008 the Superior Court granted Union's motion, concluding that the Board has exclusive jurisdiction to hear matters related to just and equitable compensation in respect of the gas or oil rights or any damage resulting from these operations. The Applicants appealed the Superior Court decision. The appeal was heard on January 22, 2010. On April 7, 2010 the Court of Appeal dismissed the Applicants' appeal and concluded that the OEB has the exclusive jurisdiction to hear the case.

On March 16, 2011 the Applicants filed an application with the OEB, which is the subject of this Decision, regarding (a) the validity of Gas Storage Agreements (GSA) between Union and the Applicants pursuant to section 19 of the Act; and (b) a determination of the compensation the Applicants are entitled to receive from Union and Ram. The Applicants' requested that the Application be bifurcated, with determination of the status of the contracts heard first.

On April 18, 2011, Union filed a letter with the Board and copied the Applicants' Counsel ("Union's April 18 Letter"). In Union's April 18 Letter, Union stated that the Board should decline the Applicants' request to bifurcate the Application at this time. Union also stated that it would bring motions challenging the Applicants' standing to assert some or all of their claims on the basis of the compensation agreements and the relevant limitations law.

On May 26, 2011 the Board issued a Notice of Application and Procedural Order No. 1 ("Notice and PO 1").

In the Notice and PO 1 the Board provided procedural direction for Union to file its motion(s) and for the parties to respond as well as for Union to reply to all submissions received. The Board determined that Union's motions would be heard in writing.

As set in the Notice and PO 1, Union filed its Motion Record on June 23, 2011. On July 21, 2011 the Applicants filed the Response to Union's Motion. On August 5, 2011 Union filed Reply Submissions. This filing completed the record with regard to the motion proceeding.

Test for Summary Judgment

Both parties refer to Rule 20 of the Ontario Rules of Civil Procedure in describing the appropriate test for summary judgment. Although the Rules of Civil Procedure apply to civil proceedings before the Ontario Court of Appeal and the Ontario Superior Court of Justice, and not strictly speaking to proceedings before the Board, the Board accepts that the Rules of Civil Procedure and precedents relating thereto are appropriate references for this proceeding.

Rule 20 (Summary Judgment) has recently been amended. A copy of Rule 20 is attached as an Appendix A to this decision. Union argues that the Applicants rely on the old version of the rule, and that the cases they cite do not reflect the recent amendments.

Rule 20.04(2) states: "The court shall grant summary judgment if: (a) the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence." The task before the Board on this motion, then, is to determine if there is a genuine issue requiring a hearing with respect to the issues identified by Union.

A recent decision of the Superior Court of Justice describes the factors a court should consider on the hearing of a summary judgment motion:

The new rule does not change the burden of a party in a summary judgment motion. Rule 20.01 provides that a party who seeks summary judgment must move with supporting affidavit material or other evidence to support its motion. Pursuant to Rule 20.02(2), a responding party "may not rest solely on the allegations or denial in the party's pleadings but must set out affidavit material or other evidence, specific facts showing there is a genuine issue requiring a

trial". In other words, consistent with existing jurisprudence, each side must "put its best foot forward." The court is entitled to assume that the record contains all the evidence which the parties will present if there is an actual trial, although in some circumstances the interests of justice may require that a material issue should be determined at trial, upon a full evidentiary record.³

As proceedings before the Board are not, strictly speaking, governed by the Rules of Civil Procedure, the Board does not necessarily expect that every provision of every Rule be strictly followed on all occasions; or that every decision of the courts relating to the Rules will always apply before the Board. Indeed, the Board has its own *Rules of Practice and Procedure*, though it is not uncommon for the Board to refer to the Rules of Civil Procedure where something is not addressed in detail in its own rules.⁴ The Board does accept, however, that the court's guidance in the Cuthbert decision should be followed on summary judgment motions before the Board – in other words, that parties should be expected to put their best foot forward.

Relief Sought by Applicants

Prior to 1993, the Applicants entered into a number of agreements with Ram, in particular petroleum and natural gas lease agreements, and gas storage agreements (the "Pre-1993 Agreements"). The Pre-1993 Agreements were assigned to Union in 1989 through a consent agreement. The Application alleges that Union has committed various breaches of the Pre-1993 Agreements, and that the Applicants are entitled to further compensation.

The Application was filed with the Board on March 16, 2011. The Applicants seek a determination that the contracts listed in Schedule A to the Application have been terminated and an order for the following damages from the Respondents:

- a) damages against the Respondent Ram for misrepresentation and breach of contract in the amount of \$2,500,000;
- b) damages against both Respondents for negligence in the amount of \$2,500,000;

³ *Cuthbert v. TD Canada Trust*, 2010 ONSC 830, para. 12.

⁴ In the context of the Board's Rules, a motion for summary judgment is essentially akin to a motion to dismiss without a hearing (Rule 8 and Rule 18). The Board's ultimate authority to dismiss a matter without a full hearing comes from section 4.6 of the *Statutory Powers Procedure Act* ("SPPA"). As required by both Rule 18 and section 4.6 of the SPPA, the Board has allowed the Applicants to make full submissions on the proposed dismissal.

- c) damages against both Respondents for loss of income in the amount of \$1,500,000;
- d) damages against the Respondents for unjust enrichment in the amount of \$2,000,000;
- e) damages for storage of natural gas on and in the Applicants' lands without a contractual right estimated at the amount of \$2,500,000 or the disgorgement of all net profit from the date of termination of the contracts to the date of termination of storage;
- f) damages for nuisance against the Respondent Union in the amount of \$1,500,000;
- g) punitive damages for Union operating a gas storage system on the Applicant's land and for dealing with the Applicants in a high handed manner without due regard for their rights in the amount of \$10,000,000;
- h) prejudgment and post judgment interest in accordance with the Courts of Justice Act or a reasonable equitable interest to be determined by the Board; and
- i) the Applicants' costs of these proceedings.

Positions of the Parties respecting the motion

Union makes two arguments concerning why the Board should not hear any portions of the application relating to the Pre-1993 Agreements: there was significant delay in seeking the relief on the part of the Applicants; and that almost all of the claims for compensation are futile because Union has binding compensation agreements with the Applicants (which, together with the Designation Order, have superseded all the Pre-1993 Agreements).

Union alleges that the particulars with respect to the Applicants' claims regarding the pre-1993 agreements were known, or ought to have been known, for between 16 and 21 years, depending in the claim in question. Union states that the Applicants did not bring these claims to court until 2008; and, after the claims were dismissed by the Court of Appeal, delayed almost another year before filing the current application with the Board. Union argues that these delays are unreasonable, and the Board should decline to hear this portion of the Application on this basis.

Union further argues that, delay issues aside, any hearing related to the pre-1993 Agreements would be a waste of time as those agreements were replaced in 1993 by the Designation Order and in 2004 by the Compensation Order. Union argues that the

Designation Order grants it the rights to “inject gas into, store gas in and remove gas from ... Edys Mill Pool ... and to enter into and upon the land in the area and use land for such purposes...” In addition, Union reached a full settlement with the Applicants with respect to all compensation issues for the period 1999-2008, which was approved through an order of the Board in 2004 (the “Compensation Order”). Union has also entered into an agreement with the Knights for the period 2009-2013. Union concedes that it has no specific compensation agreement with Snopko and McMurphy for the period since 2009, and is not seeking to have that portion of the Application dismissed through this motion.

The Applicants argue that Union's assertions with respect to the futility of the Applicants' claims are not relevant to most of the Applicants claims, and are not an appropriate basis for a claim for summary judgment. The Applicants further argue that Union has breached the conditions of the Designation Order, and that Union therefore enjoys no rights under the Designation Order.

Union responds that the import of the Pre-1993 Agreements is in fact a cornerstone of the Application, and that the Applicants' submissions on this motion have done nothing to rebut Union's assertions that any request for relief relating to the Pre-1993 Agreements is futile. Union further responds that the Applicants' claims that Union has breached the Designation Order have not been supported by any evidence, and are in any case irrelevant to the current proceeding as the appropriate remedy for such a breach would be an application to amend or revoke the Edys Mills Pool pursuant to s. 36.1(1)(b) of the Act.

Board Decision

A. Standing versus jurisdiction

Section 38 of the Act provides:

38. (1) The Board by order may authorize a person to inject gas into, store gas in and remove gas from a designated gas storage area, and to enter into and upon the land in the area and use the land for that purpose. 1998, c. 15, Sched. B, s. 38 (1).

Right to compensation

(2) Subject to any agreement with respect thereto, the person authorized by an order under subsection (1),

- (a) shall make to the owners of any gas or oil rights or of any right to store gas in the area just and equitable compensation in respect of the gas or oil rights or the right to store gas; and
- (b) shall make to the owner of any land in the area just and equitable compensation for any damage necessarily resulting from the exercise of the authority given by the order. 1998, c. 15, Sched. B, s. 38 (2).

Determination of amount of compensation

(3) No action or other proceeding lies in respect of compensation payable under this section and, failing agreement, the amount shall be determined by the Board. 1998, c. 15, Sched. B, s. 38 (3).

Appeal

(4) An appeal within the meaning of section 31 of the *Expropriations Act* lies from a determination of the Board under subsection (3) to the Divisional Court, in which case that section applies and section 33 of this Act does not apply. 1998, c. 15, Sched. B, s. 38 (4); 2003, c. 3, s. 31.

The Applicants argue that the Board has jurisdiction over the matters for which they seek relief, and that the Board should therefore proceed to hear the case on its merits. They point out that the recent Court of Appeal decision (which dealt with the same prayer for relief) confirmed that the Board has exclusive jurisdiction over compensation for issues relating to gas storage, and that Union has repeatedly expressed the same opinion. As no one appears to challenge the Board's jurisdiction over this matter, the Applicants submit that the matter should not be dismissed at the pre-hearing stage.

Union argues in its response that the Applicants have confused jurisdiction with standing. Union accepts that the Board has exclusive jurisdiction over just and equitable compensation for gas storage pursuant to section 38 of the Act. What Union challenges is the Applicants' standing to bring these matters to the Board in the current case. Union states that although the Board has exclusive jurisdiction to deal with just and equitable compensation under the Act, no person has standing to raise an issue of just and reasonable compensation under the Act where that person is a party to an existing, unchallenged agreement dealing with compensation. As described below, it is

Union's position that the Applicants (with the exception of the Snopko and McMurphy claims from 2009 onwards) have existing and unchallenged agreements with Union respecting compensation. Union further argues that the majority of the Applicants' claims are time barred, as they were aware, or should have been aware, of the claims for at least 16 years before they came to the Board.

The Board agrees with both parties that it has the jurisdiction to hear all claims relating to just and equitable compensation for the storage, injection, and removal of gas from the subject lands. Indeed, the Ontario Court of Appeal confirmed the Board's jurisdiction in this regard in the Snopko decision.⁵ The mere existence of jurisdiction, however, does not automatically amount to a genuine issue requiring a hearing. On a motion for summary judgment, the Applicants must "put their best foot forward" and satisfy the Board that they are at least potentially entitled to some actual relief with respect to their application.

B. The Right to Inject, Store and Remove Natural Gas, and the Designation Order

The Board finds that Union's rights to inject gas into, store gas in and remove gas from the Edys Mill Pool, and to enter into and upon the land in the area and use land for such purposes is governed solely by the Designation Order, and has been since 1993. The Designation Order supersedes any previous agreements with respect to Union's rights to inject, store and remove gas. Whether previous contracts between the parties relating to the right to inject, store or remove gas have been formally cancelled or not is essentially irrelevant as these rights are now governed by the Designation Order.

Although the Applicants alleged in its responding argument that Union had committed unspecified breaches of the Designation Order, they provided no evidence or particulars to support this contention. Even if there had been breaches of the Designation Order (which was not alleged in the pre-filed Application) it is not clear that such breaches would be the proper subject of a hearing under section 38 of the Act. Section 36.1 of the Act addresses amendments or revocations of designation orders, and the Applicants have sought no relief under this section of the Act. Regardless, there would be no basis for any finding in this proceeding that Union has committed any breaches of the Designation Order. Any claims for damages based on Union not having the right to inject, store, or remove gas from the Applicants properties, or for having breached the Designation Order, are therefore dismissed.

⁵ Pp. 7-9.

C. Just and Equitable Compensation

It is agreed by both parties that the Board, absent an agreement regarding compensation by the parties, has complete jurisdiction over all compensation issues relating to the injection, storage and removal of gas from the Edys Mill Pool since that time. The Board agrees with Union, however, that the issue on this motion with respect to compensation is not so much one of jurisdiction, but one of standing. For the reasons described below, the Board dismisses all claims regarding the sufficiency of compensation paid by Union to the Applicants, with the exception of amounts possibly owing to Snopko and McMurphy for the period 2009 forward.

Pre-Designation Order

Prior to the Designation Order, the Board had no jurisdiction over gas storage (or compensation related thereto) on the Applicants' lands. The Board will therefore not consider any compensation claims relating to the period prior to the imposition of the Designation Order in 1993.

1993 to 1999

Prior to the effective date of the Compensation Order (see below), Union either took over from Ram or entered into various agreements with the parties that covered compensation for gas injection, removal and storage (the "Gas Storage Leases"). Although the Gas Storage Leases were not reviewed or approved by the Board, the Act is clear that the Board is only responsible for setting just and equitable compensation where the parties cannot reach an agreement.

There has been no suggestion by the Applicants that Union did not pay the compensation owing under the Gas Storage Leases for the period from 1993 to when the Compensation Agreement came into effect in 1999. The Applicants have not suggested that the portions of the Gas Storage Leases dealing with compensation were not binding. The Board therefore has no basis upon which it could make any determination that further compensation for this period is appropriate, and dismisses all claims for additional compensation for the period 1993-1999.

The Compensation Order (1999-2008)

The Compensation Order, which was binding on all of the parties to this proceeding, specifically covered all claims that were, or could have been, raised in that application.⁶ In other words, the Compensation Order covered all compensation matters over which the Board has jurisdiction for the period 1999-2008. As these matters were dealt with in a final manner by the Board in the Compensation Order, no party affected by it may seek additional or other relief for the period of time it covers. The fact that the Board has jurisdiction over compensation does not mean that the Board can revisit the issue. The Board will therefore not hear any portions of the Application which relate to compensation for the 1999-2008 period.

2009 to 2013

The Board will not hear any portion of the Application relating to compensation for the Knights for the period after 2008, as they accepted the terms of the 2007 Compensation Agreement which covers the period 2009-2013. However, the Applicants are requested to advise the Board in writing if they wish to proceed with the claims in the Application by Snopko and McMurphy for compensation post-2008, as Snopko and McMurphy are not signatories to the 2007 Compensation Agreement.

Damages respecting roadway acreage

The Application raises the issue of compensation for roadway acreage for Snopko. The exact amount being sought is not itemized, and is presumably subsumed within the headings of damages described at paragraph 41 of the Application. Union argues that it entered into a complete and final agreement (the Roadway Agreement") with Snopko in 1992 respecting compensation for roadways on her property, and that she therefore can be permitted to no further compensation through this Application. The Applicants do not directly respond to this submission in their responding motion record.

The Roadway Agreement (a copy of which was provided as an exhibit to the Wachsmuth affidavit) is a full and final release for roadways located on Snopko's property. The Board agrees with Union that the Roadway Agreement precludes Snopko from seeking further compensation with respect to roadways, and it will not entertain any claims for relief in this regard.

Unreasonable delay

⁶ Union motion record, p. 1682.

Given the findings above, the Board does not consider it necessary to address Union's argument that the relief sought relating to the Pre-1993 Agreements should be dismissed on account of unreasonable delay, and the Board makes no findings in this regard.

Conclusion

As described in greater detail above, the Board dismisses all claims relating to Union's rights to inject, store, or remove natural gas from the Applicants' lands. Irrespective of the Pre-1993 Agreements, the terms and conditions upon which Union holds these rights are now solely governed by the Designation Order. No specific breaches of the Designation Order have been alleged, and there would be no basis for the Board to make any findings in this regard.

The Board also dismisses all claims for just and equitable compensation, save for those made by Snopko and McMurphy for the period after 2008. Prior to 1993, the Board has no jurisdiction over just and equitable compensation. From 1993-1998, compensation issues were covered by Gas Storage Leases, and no party has suggested that Union did not make the appropriate payments. From 1999-2008, all compensation issues were covered by the Compensation Order and the subsequent agreements Union reached individually with all of the Applicants. For the period 2009-2013, the Knights have entered into another agreement with Union regarding compensation. The Board will not overturn any of these agreements, and indeed no party has even specifically requested that it do so. The only remaining issue is whether Snopko and McMurphy are entitled to any additional compensation after 2008, and the Board will hear this issue if the Applicants choose to pursue it.

The Applicants are requested to advise the Board in writing if they wish to proceed with the claims in the Application by Snopko and McMurphy for compensation post-2008.

ISSUED at Toronto, December 8, 2011
ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

TAB 32

DATE: 2016/04/05

2016 ONSC 2294 (CanLII)

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) *Matthew Halpin*, Norton Rose Fulbright
) Canada LLP, counsel for the Plaintiff
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) *Pacifique Siryuyumusi*, P. Siryuyumusi Law
) Office, counsel for the Defendant
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) **HEARD:** March 15, 2016, at Ottawa,
) Ontario

REASONS ON MOTION FOR SUMMARY JUDGMENT

[2] The plaintiff, while a permanent resident of Canada, lives and works in Dubai in the United Arab Emirates. In 2012 he decided to pursue investment opportunities in Canada, in

particular, Ottawa. In order to facilitate this, he incorporated a company called Gulf Classic Inc. (Gulf Classic). The shares of Gulf Classic were owned by the plaintiff and he was the sole director and officer of the company.

[3] The plaintiff and defendant first met in September 2012. Shortly thereafter, the plaintiff hired the defendant as the Development Manager for Gulf Classic. The defendant's role was to pursue potential business opportunities on behalf of Gulf Classic. After some negotiation, the defendant agreed to work on a commission basis rather than receive a salary.

[4] It was the defendant's position that he had been offered a salary in the range of \$300,000.00 per annum; however, after discussion with the plaintiff, agreed instead to receive a commission by way of 25% percent of profits from any successful business ventures he identified and facilitated for Gulf Classic.

[5] The defendant worked for Gulf Classic from February 2013 until June 2014. In June 2014, the plaintiff abruptly closed all of his business dealings in Canada and Gulf Classic is no longer in operation.

[6] Between February 2013 and June 2014, the defendant actively pursued a project that included the identification of a parcel of land on Bank Street in Ottawa, for the purposes of purchasing and developing the land (the Bank Street project). An offer to purchase this land was submitted and conditionally accepted. The transaction was not completed and ultimately failed when the plaintiff ceased operations of Gulf Classic in June 2014.

[7] The defendant and a business partner, Mr. Issa Hamati, owned shares in three companies, Eshmun Medical Centre Inc., Eshmun Pharmacy Inc. and 8115265 Canada Inc. (the Eshmun Companies). In September 2013 the defendant was in the process of selling his shares in the Eshmun Companies and claimed he had a purchaser willing to purchase the shares for \$378,000.00.

[8] Prior to the completion of the share sale to that purchaser, the plaintiff offered to purchase the defendant's shares for the same amount. The defendant agreed to sell the shares to the plaintiff instead of the original prospective purchaser. On November 3, 2013 the plaintiff

advanced the defendant the sum of \$200,000.00 as an advance on the share purchase. The defendant has alleged that the plaintiff asked him to step out of the operation of the Eshmun Companies and appointed Mr. Hamati as the sole manager of the Eshmun Companies.

[9] Of the \$200,000.00 deposit, the defendant provided \$110,000.00 to Mr. Hamati and/or injected it into the operation of the Eshmun Companies, and utilized the remaining \$90,000.00 for his personal expenses.

[10] In March 2014, the plaintiff wrote a second cheque payable to the defendant also in the amount of \$200,000.00. This cheque was advanced as a personal loan from the plaintiff to the defendant.

[11] In June 2014 when the plaintiff decided to cease his business interests and operations in Canada, neither the Bank Street project nor the share purchase of the Eshmun Companies proceeded.

[12] The plaintiff now seeks repayment of the \$400,000.00 advanced to the defendant, alleging that the first \$200,000.00 cheque for the share purchase must be repaid because the purchase did not proceed and that the second payment of \$200,000.00 was a loan that is now due and owing.

[13] The defendant, in examinations for discovery, agreed that the funds are owed to the plaintiff but argued that they should be set off against monies he claims are owed by the plaintiff to him as follows:

- a) Damages in the amount of \$375,000.00 as remuneration for 15 months of work as the plaintiff's "executive manager and right-hand man",
- b) Damages in the amount of \$128,000.00 as compensation for the difference between the amount that the original purchaser of the defendant's shares in the Eshmun Companies had offered and the amount the defendant eventually received after the share purchase agreement with the plaintiff fell through,

- c) A declaration that the defendant is entitled to retain \$100,000.00 of the \$200,000.00 deposit on the shares as a forfeiture for the failed share purchase,
- d) A declaration that the defendant injected \$110,000.00 into the Eshmun Companies purportedly at the plaintiff's request,
- e) General and punitive damages in the amount of \$50,000.00 each, and
- f) The total of the sums claimed by counterclaim, being \$813,000.00, be set off against the \$400,000.00 claimed by the plaintiff leaving a balance owing to the defendant by the plaintiff of \$413,000.00.

Law and Analysis

[14] A court must grant summary judgment if it is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence (*Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, r. 20.04(2)(a); *Hryniak v. Mauldin*, 2014 SCC 7, at para 47 [*Hryniak*]).

[15] There is no genuine issue requiring a trial where the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. When the process allows the judge to make the necessary findings of fact, to apply the law to those facts, and it is a proportionate, more expeditious and less expensive means to achieve a just result, summary judgment is the appropriate remedy (*Hryniak* at para 49).

[16] In determining whether or not there is no genuine issue requiring a trial, a court shall consider the evidence presented by the parties on the summary judgment motion. A judge may also weigh evidence, evaluate the credibility of a deponent and draw any reasonable inference from the evidence, unless it is in the interest of justice for such powers to be exercised only at trial (*Rules of Civil Procedure*, r. 20.04(2.1); *Hryniak* at para 52).

[17] In determining whether to apply Rule 20.04(2.1), the judge should determine whether a full appreciation of the evidence and issues required to make a dispositive finding can be achieved by way of summary judgment, without a trial. The evidence need not be equivalent to

that expected at trial, but the judge must be confident that the dispute can be resolved fairly (*Hryniak* at paras 53, 57).

[18] Justice D. Corbett provided a useful summary of the *Hryniak v. Mauldin* approach in *Sweda Farms Ltd. v. Egg Farmers of Ontario*, 2014 ONSC 1200, where he stated at paragraphs 33 and 34:

33. As I read *Hryniak*, the court on a motion for summary judgment should undertake the following analysis:

- (1) The court will assume that the parties have placed before it, in some form, all of the evidence that will be available for trial;
- (2) On the basis of this record, the court decides whether it can make the necessary findings of fact, apply the law to the facts, and thereby achieve a fair and just adjudication of the case on the merits;
- (3) If the court cannot grant judgment on the motion, the court should:
 - (a) Decide those issues that can be decided in accordance with the principles described in (2), above;
 - (b) Identify the additional steps that will be required to complete the record to enable the court to decide any remaining issues;
 - (c) In the absence of compelling reasons to the contrary, the court should seize itself of the further steps required to bring the matter to a conclusion.

34. The Supreme Court is clear in rejecting the traditional trial as the measure of when a judge may obtain a "full appreciation" of a case necessary to grant judgment. Obviously greater procedural rigour should bring with it a greater immersion in a case, and consequently a more profound understanding of it. But the test is now whether the court's appreciation of the case is sufficient to rule on the merits fairly and justly without a trial, rather than the formal trial being the yardstick by which the requirements of fairness and justice are measured.

[19] *Hryniak v. Mauldin* does not alter the principle that the court will assume that the parties have placed before it, in some form, all of the evidence that will be available for trial. The court is entitled to assume that the parties have respectively advanced their best case and that the record contains all the evidence that the parties will present at trial: *Dawson v. Rexcraft Storage & Warehouse Inc.* (1998), 111 O.A.C. 201 (C.A.); *Bluestone v. Enroute Restaurants Inc.* (1994), 18 O.R (3d) 481 (C.A.); *Canada (Attorney General) v. Lameman*, 2008 SCC 14, [2008] 1 S.C.R. 372, at para 11.

[20] The onus is on the moving party to show that there is no genuine issue requiring a trial, but the responding party must present its best case or risk losing: *Pizza Pizza Ltd. v. Gillespie* (1990), 75 O.R. (2d) 255 (Gen. Div.); *Transamerica Life Insurance Co. of Canada v. Canada Life Assurance Co.* (1996), 28 O.R. (3d) 423 (Gen. Div.), aff'd [1997] O.J. No. 3754 (C.A.).

[21] In *Hryniak v. Mauldin*, although the Supreme Court of Canada commanded a very robust summary judgment procedure, it did not foreclose lower courts from simply dismissing the summary judgment motion and ordering that the action be tried in the normal course. Indeed, where there are genuine issues for trial and the lower court concludes that employing the enhanced forensic tools of the summary judgment procedure would not lead to a fair and just determination of the merits, the court should not decide the matter summarily: *Mitusev v. General Motors Corp.*, 2014 ONSC 2342, at para 79; *Gon (Litigation Guardian of) v. Bianco*, 2014 ONSC 7086, 124 O.R. (3d) 65, at paras 41-47.

Summary of the Issues

[22] The issues before the Court on this motion for summary judgment are summarized as follows:

- a) Is the plaintiff entitled to summary judgment for repayment of the sum of \$400,000.00 from the defendant under the two \$200,000.00 advances/loans to the defendant?
- b) If the plaintiff is entitled to summary judgment, should the defendant's counterclaim be dismissed as containing no genuine issue for trial?
- c) Should the defendant's counterclaim be struck as being frivolous?
- d) If the plaintiff is entitled to summary judgment and the defendant's counterclaim is neither dismissed nor struck, should the summary judgment in favour of the plaintiff be stayed under Rule 20.08?

Is the Plaintiff Entitled to Summary Judgment for Repayment of the \$400,000.00?

[23] The defendant has admitted he received the two \$200,000.00 payments from the plaintiff. He also admitted in his examinations for discovery that the \$400,000.00 must be repaid by way of an accounting and set off against monies that the defendant claims is owed to him by the plaintiff.

[24] On the basis of the admissions and the other evidence filed in support of the motion for summary judgment, I grant the plaintiff's motion for summary judgment, subject to my findings on the remaining issues. There is clearly no genuine issue for trial with respect to the debt of \$400,000.00 owed by the defendant to the plaintiff.

Should the Defendant's Counterclaim be Dismissed or Struck?

[25] The defendant seeks a set off as against the \$400,000.00 that was provided to him by the plaintiff under the various headings in his counterclaim. By the defendant's calculation, if he is entirely successful in his counterclaim, then after setting off the \$400,000.00 owed by him to the plaintiff, there would be \$413,000.00 owing by the plaintiff to the defendant.

[26] The plaintiff alleges that the first part of the defendant's claim to remuneration for his employment with Gulf Classic cannot stand because Gulf Classic is not a party to this action.

[27] The defendant argued that because the plaintiff was the sole shareholder and director of Gulf Classic, that Gulf Classic is no longer an active corporation and has no assets, that he is entitled to look to the plaintiff for recovery since it was the plaintiff who unilaterally pulled out of the business ventures without warning or consultation with the defendant.

[28] There was no written employment agreement or any other documentation prepared by either of the parties or their lawyers that sets out the arrangement between the plaintiff and the defendant regarding the defendant's remuneration or the plaintiff's obligations. The only evidence of the defendant's entitlement is the somewhat contradictory evidence provided by the parties in their respective affidavits and examinations for discovery. They both agreed that the defendant had opted for a percentage of profits rather than a salary, however, the evidence regarding the plaintiff's obligations to the defendant was not clear.

[29] The share purchase arrangement was also undertaken without any signed agreement, although unsigned draft agreements have been included in the record that was before the court. It is not clear from this evidence whether or not it was the plaintiff or Gulf Classic who was purchasing the shares.

[30] On the basis of this record, I am unable to make the necessary findings of fact, apply the law to the facts, and thereby achieve a fair and just adjudication of the counterclaim on the merits in this Motion for Summary Judgment. With such a dearth of written material, the court would require that the parties and their witnesses give evidence in order to assess the credibility of each of the differing positions and determine whether the defendant's counterclaim has merit.

[31] I therefore refuse to either dismiss or strike the defendant's counterclaim and direct that this matter proceed to trial. It is not necessary that I remain seized of this matter since I have not made any substantive findings regarding the defendant's claims. Any trial judge should be able to fully assess the claims after hearing the evidence.

[32] This matter shall be referred to a Case Management Master in order to set out a litigation timetable for moving this matter to trial. Either the plaintiff or the defendant may set this matter down for trial and obtain a pre-trial hearing date.

Should the Summary Judgment in Favour of the Plaintiff be Stayed under Rule 20.08?

[33] I find that the Summary Judgment in favour of the plaintiff should be stayed pending the result of the trial of the defendant's counterclaim. If the defendant is successful on some or all of his claims, he may be entitled to an equitable set off, also of some or all of his claims. This should be an issue for the trial judge to determine.

[34] Should the defendant not conform to a litigation timetable as may be ordered by the Case Management Master or such other order of this Court, the plaintiff may seek to lift the stay of enforcement of this judgment in his favour for repayment of the \$400,000.00 on the basis of unreasonable delay by the defendant in pursuing his counterclaim.

Summary

[35] Summary judgment is granted to the plaintiff as against the defendant in the amount of \$400,000.00.

[36] Enforcement of the summary judgment granted to the plaintiff is stayed pending the hearing of the defendant's counterclaim or until such further order of this court.

[37] This matter shall be placed before a Case Management Master to establish a litigation timetable.

[38] Either the plaintiff or the defendant may set this matter down for trial and obtain a pre-trial hearing date.

Costs

[39] Because there was mixed success in this Motion for Summary Judgment, costs shall be determined in the cause.

Madam Justice B. R. Warkentin

Released: April 5, 2016

CITATION: *Georges v. Nahri*, 2016 ONSC 2294
COURT FILE NO.: CV-15-63196
DATE: 2016/04/05

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

George Georges

Plaintiff (Defendant by Counterclaim)

- and -

Elias Nahri

Defendant (Plaintiff by Counterclaim)

**REASONS ON MOTION FOR SUMMARY
JUDGMENT**

Warkentin J.

Released: April 5, 2016

2016 ONSC 2294 (CanLII)

TAB 33

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BY E-MAIL

November 2, 2016

Mr. Todd Anderson
Sagatay Transmission LP
345 Davis Road
Oakville ON L6J 2X1

Dear Mr. Anderson:

**Re: Sagatay Transmission LP
Application for Leave to Construct Transmission Facilities
OEB File Number: EB-2016-0017**

This letter is with reference to your application to the Ontario Energy Board (OEB) for leave to construct a transmission line from Ignace to Pickle Lake and related transmission facilities. By letter dated February 18, 2016, you were advised that your application was being held in abeyance pending the filing of certain reports. Your application remains incomplete at this time.

In the intervening period, on July 29, 2016 the OEB received a Directive from the Minister of Energy directing the OEB to amend the electricity transmission licence issued to 2472883 Ontario Limited on behalf of Wataynikaneyap Power LP (Wataynikaneyap Power) to require it to develop and seek approvals for the following transmission projects:

- (a) A new 230 kV line originating at a point between Ignace and Dryden and terminating in Pickle Lake. The development of this line is to accord with the scope recommended by the Independent Electricity System Operator (IESO); and
- (b) Transmission lines extending north from Red Lake and Pickle Lake required to connect certain named remote First Nation communities to the provincial electricity grid. The development of these lines is to accord with the scope supported by the IESO.

The OEB amended Wataynikaneyap Power's licence accordingly on September 1, 2016. The OEB has now also received from the IESO a report dated October 13, 2016 setting out the IESO's recommended scope for the new line to Pickle Lake and its supported scope for the transmission lines north from Red Lake and Pickle Lake. The IESO's recommended scope for the new line to Pickle Lake is as outlined in the IESO's 2015 North of Dryden Integrated Regional Resource Plan, as further clarified in the IESO's October 13, 2016 report to the OEB. In particular, the recommended scope is that the new single circuit 230 kV line to Pickle Lake be built by interconnecting to circuit D26A near Dryden/Ignace and terminating at a new or expanded existing transformer station near Pickle Lake (approximately 300 km).

Under section 97.1 of the *Ontario Energy Board Act, 1998 (Act)*, the OEB cannot grant leave to construct to an applicant if a licence issued to another person includes an obligation to develop, construct, expand or reinforce the transmission line that is the subject of an applicant's application, whether that application was filed before or after the day on which section 97.1 of the Act came into force (July 1, 2016).

The OEB has concluded that this section of the Act precludes the OEB from granting your application for leave to construct, as the transmission line proposed in your application is functionally equivalent to the new line to Pickle Lake that Wataynikaneyap Power is required by its licence to develop.

The OEB therefore intends to dismiss your application. If you wish to make a written submission regarding the proposed dismissal of your application, you may do so by November 14, 2016.

The Minister's Directive, the OEB's Decision and Order amending Wataynikaneyap Power's licence and the IESO's October 13, 2016 report are all available on the OEB's Priority Transmission Projects webpage, as is the Order in Council declaring the transmission lines to Pickle Lake and extending north from Red Lake and Pickle Lake to be needed as priority projects.

Yours truly,

Original signed by

Kristi Sebalj
Registrar

c: Tom Brett, Fogler Rubinoff LLP

Ontario Energy
Board

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BY E-MAIL

May 16, 2017

Mr. Thomas Brett
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tbrett@foglers.com

Mr. Zeeshan Ali
Sagatay Transmission LP
345 Davis Road
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zeeshan.ali@algonquinpower.com

Dear Mr. Brett and Mr. Ali:

Re: Sagatay Transmission LP
Application for Leave to Construct Transmission Facilities
OEB File Number: EB-2016-0017

This letter is with reference to the application of Sagatay Transmission LP (Sagatay) to the Ontario Energy Board (OEB) for leave to construct a transmission line from Ignace to Pickle Lake and related transmission facilities. By letter dated February 18, 2016, the OEB advised Sagatay that its application was being held in abeyance pending the filing of certain reports. The OEB issued a further letter on November 2, 2016 indicating the intent to dismiss Sagatay's application and providing an opportunity for Sagatay to make written submissions regarding the dismissal, which the OEB received on November 18, 2016.

For the reasons set out in the OEB's letter of November 2, 2016 and those provided below, the OEB has determined that it will dismiss Sagatay's application.

In its letter, Sagatay broadly submitted that the OEB's dismissal of its application eliminates competition and is contrary to the OEB's mandate to promote economic efficiency and cost effectiveness in as set out in Section 1(1)2 of the *Ontario Energy Board Act, 1998* (OEB Act). As noted in the OEB's November 2, 2016 letter, the dismissal of Sagatay's application is grounded in section 97.1 of the OEB Act, which prohibits the OEB from granting leave to construct to an applicant if a licence issued to another person includes an obligation to develop, construct, expand or reinforce the transmission line that is the subject of the application for leave.

The Minister, with the approval of the Lieutenant Governor in Council, has directed the OEB to amend the licence of Wataynikaneyap Power LP (Wataynikaneyap) to include provisions that require it to proceed with development work (and seek approvals) for a transmission line originating in Dryden/Ignace and terminating at Pickle Lake (Line to Pickle Lake) and to also proceed with development work (and seek approvals) for lines extending north from Pickle Lake to connect certain named Remote Communities (Line to Remote Communities).

By reason of the exercise of this power, in respect of which the OEB sees no deficiency relative to the statutory provision authorizing it, and by virtue of section 97.1 of the OEB Act, the OEB cannot grant leave to construct the lines in question to any proponent other than Wataynikaneyap.

The OEB remains of the view that Sagatay's proposed transmission line is functionally equivalent to the line that Wataynikaneyap has been directed by the Minister and licensed by the OEB to develop. The proposals of each of Wataynikaneyap and Sagatay would achieve the primary function of enabling long-term load-meeting capability in the Pickle Lake Subsystem of approximately 160MW, and of providing a basis for the future grid connection of remote communities north of Pickle Lake. The primary function—load-meeting capability in the North of Dryden region—is described in the IESO's 2015 North of Dryden Integrated Regional Resource Plan, and the line to be constructed is described in the IESO's recommended scope, filed with the OEB on October 13, 2016. Each of the proposed lines is approximately, 300 km in length, interconnects with the provincial transmission grid at a point on Hydro One Transmission's 230kV "D26A" transmission circuit lying between Dryden and Ignace and terminates at a point in Pickle Lake.

The OEB does not agree that dismissal of Sagatay's application is premature. While the Sagatay and Wataynikaneyap projects may be at a relatively early stage, there is sufficient basis to conclude that the two projects are functionally equivalent. Given that section 97.1 of the OEB Act therefore precludes the OEB from granting the relief that Sagatay seeks in its application, it is reasonable for the OEB to dismiss Sagatay's application at this time.

Yours truly,

Original Signed By

Kristi Sebalj
Registrar

c: Eric Roblin, Fogler Rubinoff LLP, Applicant's Counsel

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BY E-MAIL

May 25, 2017

Mr. Thomas Brett
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Mr. Zeeshan Ali
Sagatay Transmission LP
345 Davis Road
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zeeshan.ali@algonquinpower.com

Dear Mr. Brett and Mr. Ali:

**Re: Sagatay Transmission LP
Order to Dismiss Application for Leave to Construct Transmission Facilities
OEB File Number: EB-2016-0017**

This letter is with reference to the application of Sagatay Transmission LP (Sagatay) filed with the Ontario Energy Board (OEB) on January 20, 2016 for leave to construct a transmission line from Ignace to Pickle Lake and related transmission facilities. By letter dated May 16, 2017, the OEB dismissed Sagatay's application.

For the reasons provided in the OEB's May 16, 2017 and November 2, 2016 letters, it is hereby ordered that the application for leave to construct a transmission line filed by Sagatay on January 20, 2016 (EB-2016-0017) is dismissed.

By delegation, before: Kristi Sebalj

Original signed by

Kristi Sebalj
Registrar

c: Eric Roblin, Fogler Rubloff LLP, Applicant's Counsel



Ontario Energy Board Commission de l'énergie de l'Ontario

DECISION AND ORDER

EB-2017-0258

SAGATAY TRANSMISSION LP

Appeal of Registrar's Order in EB-2016-0017

BEFORE: Cathy Spoel
Presiding Member

December 14, 2017

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1 INTRODUCTION AND SUMMARY

Sagatay Transmission LP (Sagatay) appeals the May 25, 2017 order of the Registrar of the Ontario Energy Board (OEB) dismissing its application for leave to construct an electricity transmission line to Pickle Lake.

The Registrar, an employee of the OEB, was acting under authority delegated to her pursuant to section 6 of the *Ontario Energy Board Act, 1998* (the Act). Sagatay has a right to appeal the order to the OEB under section 7 of the Act.

The Registrar found that section 97.1 of the Act precluded the OEB from granting Sagatay's application for leave to construct. That section provides that "leave shall not be granted to a person if a licence issued under Part V that is held by another person includes an obligation to develop, construct, expand or reinforce the line, or make the interconnection, that is the subject of the application." In this case, the Registrar determined that there was "another person" who had an obligation to develop the line to Pickle Lake, namely Wataynikaneyap Power LP (WPLP).

For the reasons that follow, the OEB agrees with the Registrar's conclusion that section 97.1 foreclosed the possibility of approving Sagatay's proposal. The OEB therefore dismisses the appeal and confirms the Registrar's order.

2 THE PROCESS

Sagatay filed its Notice of Appeal with the OEB on June 9, 2017. Under section 7 of the Act, the parties to an appeal of a delegated decision are: (1) the appellant (in this case, Sagatay); (2) the applicant, if the order is made in a proceeding commenced by an application (in this case, also Sagatay); (3) the employee who made the order (the Registrar); and (4) any other person added as a party by the OEB. As in previous section 7 appeals, the OEB added OEB staff as a party. The OEB also received and granted a request by WPLP to be added as a party. WPLP is a limited partnership involving 22 First Nation communities and FortisOntario Inc., which holds an OEB transmission licence requiring it to develop a transmission line to Pickle Lake.¹

In its Notice of Appeal, Sagatay requested a written hearing, and the OEB agreed. Sagatay also asked to file additional affidavit evidence. After considering submissions from the parties, the OEB agreed to accept additional evidence on three of the six areas identified by Sagatay. In accordance with Procedural Order No. 3, Sagatay then filed the additional evidence, together with further written submissions on the appeal, which were followed by written submissions from WPLP and OEB staff, and finally a reply submission from Sagatay. WPLP and OEB staff opposed Sagatay's appeal. The Registrar made no submissions.

¹ The licence is in the name of 2472883 Ontario Limited on behalf of WPLP.

3 ANALYSIS

Sagatay's Application for Leave to Construct and the Registrar's Decision to Dismiss It

The appellant, Sagatay, is a limited partnership in which Algonquin Power and Utilities Corp., the Mishkeegogamang First Nation, the Ojibway Nation of Saugeen and Morgan Geare Inc. have an interest. Sagatay holds a transmission licence issued by the OEB.²

On January 20, 2016, Sagatay filed an application to the OEB for leave to construct a 230 kV high voltage electricity transmission line running approximately 300 km from near Ignace to Pickle Lake in northwest Ontario, as well as related interconnection and transformer facilities (OEB file number EB-2016-0017). On February 18, 2016, the OEB sent a letter to Sagatay advising that the application was incomplete – the application would be held in abeyance until a System Impact Assessment Report and a Customer Impact Assessment Report were filed.

While Sagatay's application was on hold, the Government of Ontario identified the development of a transmission line to Pickle Lake as a priority project, and selected WPLP as the proponent of the project. This was done by way of two new provisions of the Act and two Orders in Council.

On July 1, 2016, sections 28.6.1 and 97.1 of the Act came into force. Section 28.6.1 enables the Minister of Energy to issue directives to the OEB in respect of transmission systems, which directives may require the OEB to amend the licence conditions of a licensed transmitter:

Directives, transmission systems

28.6.1 (1) The Minister may issue, and the Board shall implement directives, approved by the Lieutenant Governor in Council, requiring the Board to take such steps as are specified in the directive relating to the construction, expansion or re-enforcement of transmission systems.

Same

(2) Subsections 28.6 (2) and (3) apply with necessary modifications in respect of directives issued under subsection (1).

Section 97.1 specifies that the OEB is prohibited from granting leave to construct a transmission line if someone else is required to develop the line as a condition of their licence:

² The licence is in the name of Liberty Utilities (Sagatay Transmission) GP Inc. on behalf of Sagatay Transmission LP.

No leave if covered by licence

97.1 (1) In an application under section 92, leave shall not be granted to a person if a licence issued under Part V that is held by another person includes an obligation to develop, construct, expand or reinforce the line, or make the interconnection, that is the subject of the application.

Transition

(2) For greater certainty, an application made, but not determined, before the day section 16 of Schedule 2 to the *Energy Statute Law Amendment Act, 2016* comes into force, is subject to subsection (1).

On July 20, 2016, two Orders in Council were issued. One designated the following transmission lines as “priority projects” under section 96.1 of the Act:

1. The construction of an electricity transmission line originating at a point between Ignace and Dryden and terminating in Pickle Lake; and
2. The construction of electricity transmission lines extending north from Pickle Lake and Red Lake required to connect the Remote Communities..³

The second Order in Council approved a ministerial directive to the OEB under section 28.6.1 of the Act..⁴ The directive required the OEB to amend, without a hearing, the transmission licence of WPLP to require it to:

- (i) Develop and seek approvals for a transmission line, which shall be composed of a new 230 kV line originating at a point between Ignace and Dryden and terminating in Pickle Lake (the “Line to Pickle Lake”). The development of the Line to Pickle Lake shall accord with the scope recommended by the Independent Electricity System Operator.
- (ii) Develop and seek approvals for the transmission lines extending north from Red Lake and Pickle Lake required to connect the Remote Communities to the provincial electricity grid. The development of these transmission lines shall accord with the scope supported by the Independent Electricity System Operator.

The Order in Council approving the ministerial directive explained that “the Government has determined that the Remotes Connection Project and the Line to Pickle Lake should be undertaken by a transmitter that is best positioned to connect remote First Nation communities in the most timely and cost-efficient manner that protects ratepayer interests,” and that “the Government has determined that the preferred manner of proceeding is to require 2472883 Ontario Limited on behalf of Wataynikaneyap Power LP to undertake the development of the Line to Pickle Lake and the Remotes

³ O.C. 1157/2016, July 20, 2016. The “Remote Communities” refer to 16 First Nation communities listed in the Order in Council. Section 96.1 of the Act, which came into force on March 4, 2016, allows the Lieutenant Governor in Council to designate a transmission line as a priority project; when assessing an application for leave to construct a designated project, the OEB must accept the need for the project.

⁴ O.C. 1158/2016, July 20, 2016.

Connection Project, including any and all steps which are deemed to be necessary and desirable in order to seek required approvals.”

The directive was sent by the Minister to the OEB on July 29, 2016. In response, the OEB made the required amendments to WPLP’s transmission licence on September 1, 2016.⁵ In particular, the following new condition, mirroring the directive’s description of the project scope, was added to the licence:

13 Expansion and Upgrading of Transmission System Further to Ministerial Directive

13.1 Effective September 1, 2016, the Licensee shall proceed to do the following related to expansion of the transmission system to connect the Remote Communities to the provincial electricity grid:

(a) Develop and seek approvals for a transmission line, which shall be composed of a new 230 kV line originating at a point between Ignace and Dryden and terminating in Pickle Lake (the “Line to Pickle Lake”). The development of the Line to Pickle Lake shall accord with the scope recommended by the IESO.

(b) Develop and seek approvals for the transmission lines extending north from Red Lake and Pickle Lake required to connect the Remote Communities to the provincial electricity grid. The development of these transmission lines shall accord with the scope supported by the IESO.

(c) For the purposes of this paragraph 13.1 and Schedule 1, the Remote Communities are: Sandy Lake, Poplar Hill, Deer Lake, North Spirit Lake, Kee-Way-Win, Kingfisher, Wawakapewin, Kasabonika Lake, Wunnumin, Wapekeka, Kitchenuhmaykoosib Inninuwug, Bearskin Lake, Muskrat Dam Lake, Sachigo Lake, North Caribou Lake, and Pikangikum.

On November 2, 2016, the Registrar sent a letter to Sagatay advising that the OEB intended to dismiss its application in light of the ministerial directive and the subsequent amendment to WPLP’s licence. The Registrar explained that section 97.1 of the Act “precludes the OEB from granting your application for leave to construct, as the transmission line proposed in your application is functionally equivalent to the new line to Pickle Lake that Wataynikaneyap Power is required by its licence to develop.” The Registrar invited Sagatay to make a written submission on the proposed dismissal.

Sagatay did so on November 18, 2016, urging the OEB not to dismiss its application, arguing, among other things, that its proposed line was not “functionally equivalent” to WPLP’s proposal, and that its “route is superior to the route selected by Wataynikaneyap Power.”

⁵ EB-2016-0258, Decision and Order, September 1, 2016.

On May 16, 2017, the Registrar wrote to Sagatay dismissing the application. The Registrar referred to the reasons provided in the November 2, 2016 letter, and elaborated on why section 97.1 of the Act prohibits the OEB from granting leave to construct the line to Pickle Lake “to any proponent other than Wataynikaneyap”:

The OEB remains of the view that Sagatay’s proposed transmission line is functionally equivalent to the line that Wataynikaneyap has been directed by the Minister and licensed by the OEB to develop. The proposals of each of Wataynikaneyap and Sagatay would achieve the primary function of enabling long-term load-meeting capability in the Pickle Lake Subsystem of approximately 160MW, and of providing a basis for the future grid connection of remote communities north of Pickle Lake. The primary function – load-meeting capability in the North of Dryden region – is described in the IESO’s 2015 North of Dryden Integrated Regional Resource Plan, and the line to be constructed is described in the IESO’s recommended scope, filed with the OEB on October 13, 2016. Each of the proposed lines is approximately, 300 km in length, interconnects with the provincial transmission grid at a point between Dryden and Ignace and terminates at a point in Pickle Lake.

On May 25, 2017, Sagatay asked the Registrar to enshrine the dismissal of the application in an order (out of a concern that the section 7 right to appeal applies to “orders” rather than decisions), which the Registrar did that same day. The Registrar’s order formally dismissed the application, for the reasons set out in the Registrar’s May 16, 2017 and November 2, 2016 letters.

Does the Act preclude the OEB from granting Sagatay’s application for leave to construct?

The question in this appeal is whether the Registrar erred in finding that section 97.1 of the Act precludes the OEB from granting Sagatay’s application for leave to construct a transmission line to Pickle Lake.

The Registrar concluded that WPLP’s proposed line to Pickle Lake and Sagatay’s proposed line were “functionally equivalent”, therefore Sagatay’s line could not proceed under section 97.1. As the Registrar explained in the May 16, 2017 letter to Sagatay (quoted above), both lines would achieve the same primary function of enabling load-meeting capability in the North of Dryden region; both fell within the IESO’s recommended scope; and both would run from a point between Dryden and Ignace and terminate in Pickle Lake.

The OEB agrees with the Registrar’s conclusion that WPLP has an obligation to develop “the line... that is the subject of [Sagatay’s] application,” within the meaning of section 97.1, and that Sagatay’s application could therefore not be approved.

Section 97.1 of the Act was enacted to prevent the OEB from approving a transmission line that someone else is already required to build, or as WPLP says in its submission, to ensure that a ministerial directive issued under section 28.6.1 and the resulting licence condition “are not nullified by a competing leave to construct application.” There is no doubt the Government selected WPLP as the proponent of the “line to Pickle Lake” as defined in the directive and the ensuing licence. As Sagatay’s proposed line also falls within the meaning of “the line to Pickle Lake”, it would defeat the purpose of section 97.1 (and the directive) if the OEB were to approve Sagatay’s application.

WPLP’s licence does not specify the exact route of the line to Pickle Lake, down to each bend and crossing; it merely establishes certain parameters (e.g., the line must commence between Dryden and Ignace; it must terminate at Pickle Lake; it must meet the IESO’s recommended scope). Sagatay does not dispute that its own line falls within those parameters. Instead, much of Sagatay’s submissions to the Registrar and again in this appeal focused on the differences between the details of its proposal and WPLP’s proposal. Sagatay points out that its line would follow Highway 599, while WPLP’s would not, and argues that the lines would therefore have different impacts on the environment and on First Nations in the area. In this regard it is worth repeating what the OEB said in Procedural Order No. 3:

This appeal is about whether the Registrar properly determined that the OEB Act precludes the OEB from proceeding with Sagatay’s application for leave to construct. It is not a hearing on Watay’s proposal; nor is it a hearing to determine which of Sagatay’s or Watay’s proposal is preferable. When Watay files an application for leave to construct its project, which it is required to do by the terms of its transmission licence, the OEB will determine whether that project is in the public interest under s. 96 of the Act (although the OEB must, by virtue of s. 96.1(2), accept that the project is needed, and s. 96(2) limits the factors that the OEB may consider in assessing whether an electricity transmission project is in the public interest).

The line that WPLP is required to build is a high voltage transmission line from a point between Dryden and Ignace to Pickle Lake that meets the IESO’s recommended scope. That is what Sagatay applied for. There may be differences between the detailed routes preferred by each proponent, but in the OEB’s view both Sagatay and WPLP are still proposing the same line.

The OEB agrees with WPLP when it says that Sagatay’s approach to section 97.1 would in effect require the OEB to undertake a comparison of competing leave to construct applications, contrary to the very of intent of the provision, which is to avoid competing applications. As OEB staff put it in their submission, the Registrar’s task in this case was not about selecting Sagatay or WPLP as the developer of the line to Pickle Lake – “the Government had already done that.”

The OEB is also not persuaded by Sagatay's argument that its line is not captured by section 97.1 because its line is narrower in scope than WPLP's line. Under WPLP's licence, WPLP must develop not only the line to Pickle Lake but also the further northward extension of the transmission system beyond Pickle Lake to enable the connection of the "Remote Communities" as defined in the directive. Sagatay's proposal does not include that second component. Even if both components of WPLP's undertaking were seen as one single project, as Sagatay suggests, that would not change the fact that WPLP is required by its licence to develop the line to Pickle Lake, and by the terms of section 97.1, no one else may do so. As OEB staff explained in its submission, no one other than WPLP may develop either of the two components.

Sagatay's argument about procedural fairness

Sagatay asserts in its Notice of Appeal that the Registrar breached the principles of procedural fairness by not providing it with an opportunity to provide a "meaningful response". The Registrar's November 2, 2016 letter to Sagatay explained why the Registrar intended to dismiss the application (that is, because Sagatay's proposed line was functionally equivalent to the line WPLP is required to develop, and therefore could not be approved pursuant to section 97.1) and invited written submissions. When Sagatay asked for more time, the Registrar granted it. The Registrar's May 16, 2017 letter confirming the dismissal shows that the Registrar considered Sagatay's submissions before making a final decision. The OEB sees nothing unfair in the way the Registrar handled this matter. It was consistent with section 4.6 of the *Statutory Powers Procedure Act* and Rule 18 of the OEB's *Rules of Practice and Procedure*, which together allow the OEB to dismiss an application without a hearing if it relates to matters outside the OEB's jurisdiction, as long as the OEB provides notice of its intention to dismiss the application to the applicant and provides the applicant with an opportunity to make written submissions. Section 97.1 deprived the OEB of jurisdiction to approve Sagatay's application; the Registrar's dismissal of the application after receiving written submissions was procedurally proper.

Sagatay's argument about the validity of the ministerial directive

In its reply submission, Sagatay suggests that the ministerial directive requiring the OEB to amend WPLP's licence was "an invalid exercise of executive power on the part of the [Lieutenant Governor in Council] with which the Board should not comply." Sagatay argues that section 28.6.1 of the Act was meant only to authorize directives of a more general nature, and that "[s]uch a dramatic intrusion into a competitive market would need to be specifically authorized in the statute."

Sagatay did not advert to this argument in its Notice of Appeal, or in its supplementary submission filed on October 18, 2017. Under Rule 17.04 of the OEB's *Rules of Practice and Procedure*, an appellant may not rely on any ground that was not stated in the Notice of Appeal. It was therefore too late for Sagatay to raise this in its reply, leaving the other parties with no opportunity to respond.

Even if the OEB considered that this ground of appeal could be raised at this late stage, the OEB would not give effect to it. The text of section 28.6.1 is, on its face, broad: it can be taken to authorize both directives that relate generally to all transmission systems and directives that relate specifically to a particular licensee. Sagatay's argument about legislative intent might be stood on its head: it might be asked why, if the legislature meant for the provision to enable only directives of a general nature, it did not say so expressly. Moreover, it is worth noting that section 28.6.1 was enacted at the same time as section 97.1. When read together, it would appear that the legislature contemplated the very type of situation raised in this appeal, where the Government would direct the OEB to require a specific licensee to develop a transmission system, thereby precluding the OEB from approving any competing proposals for the same system.

Sagatay's argument about the delegation of authority

Sagatay claims in its Notice of Appeal that it was inappropriate for the Registrar to have been delegated the authority to dismiss its application, because "section 6(1) of the Act was never intended to permit the Board to delegate such an important decision to its employee."

This OEB finds no merit in this argument. Subsection 6(1) provides that "any power or duty of the Board" may be delegated to an employee. The only exceptions are those enumerated in subsection 6(2), none of which apply in the circumstances.⁶

⁶ Subsection 6(2) reads:

Subsection (1) does not apply to the following powers and duties:

1. Any power or duty of the Board's management committee.
2. The power to make rules under section 44.
3. The power to issue codes under section 70.1.
4. The power to make rules under section 25.1 of the *Statutory Powers Procedure Act*.
5. Hearing and determining an appeal under section 7 or a review under section 8.
6. The power to make an order against a person under section 112.3, 112.4 or 112.5, if the person gives notice requiring the Board to hold a hearing under section 112.2.
7. A power or duty prescribed by the regulations.

Conclusion

The OEB sees no reason to interfere with the Registrar's determination that Sagatay's application for leave to construct was precluded by section 97.1 of the Act. The Registrar correctly concluded that WPLP is required to develop the line to Pickle Lake as described in the directive and its licence, and the OEB cannot approve a competing application by anyone else.

4 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. The order of the Registrar is confirmed.
2. No party requested costs and none are awarded. Sagatay shall pay the OEB's costs of and incidental to this appeal immediately upon receipt of the OEB's invoice.

DATED at Toronto December 14, 2017

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

TAB 34



EB-2008-0096

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

AND IN THE MATTER OF an application by the
Independent Electricity System Operator for renewal
of its licence

By delegation, before: Jennifer Lea

DECISION AND ORDER

The Application

The Independent Electricity System Operator ("IESO") filed an application dated April 30, 2008 with the Ontario Energy Board under section 60 of the *Ontario Energy Board Act*, 1998 to renew its licence.

The IESO sought Board approval for:

1. Renewal of its licence for five years, beginning on July 31, 2008;
2. Proposed minor modifications to its current licence; and
3. Proposed deletion of the provisions in sections 16 and 17 of its present licence.

The Proceeding

The Board issued a Notice of Application and Hearing on May 16, 2008.

The Board's Notice of Application and Hearing for a licence renewal was posted and distributed by the IESO on May 21, 2008, in accordance with the Board's Letter of Direction.

No parties responded to the Notice of Application and Hearing.

Licence Renewal

After considering the application, it has been found to be in the public interest to renew the licence under Part V of the Act taking into account the determinations made below:

1. The Board approves the applicant's request for the renewal of its licence for a five year period beginning on July 31, 2008.
2. The Board accepts the minor modifications to the licence proposed by the IESO. These modifications are administrative in nature and do not affect the authorizations and obligations under the licence.
3. The applicant proposed the deletion of licence conditions under sections 16 and 17 of the present licence stating that these are no longer applicable. However, these licence provisions originate from a ministerial directive attached to the Order in Council (O.C. 600/99) issued on March 24, 1999 and no change can be made to these licence conditions without the issuance of a ministerial directive. As no ministerial directive has been issued to the Board to date which directs the Board to delete the licence conditions under sections 16 and 17 of the IESO licence, these IESO proposed changes cannot be made. As well, the IESO does acknowledge, in its application, that a ministerial directive is required for the proposed changes to those provisions in the licence that were put in by a directive.

IT IS THEREFORE ORDERED THAT:

The application for renewal of the IESO licence is granted, on such conditions as are contained in the attached licence.

DATED at Toronto, June 26, 2008

ONTARIO ENERGY BOARD

Original signed by

Jennifer Lea
Counsel, Special Projects

TAB 35

Ontario Energy Board Act, 1998

S.O. 1998, CHAPTER 15 Schedule B

Consolidation Period: From April 1, 2018 to the e-Laws currency date.

Last amendment: 2017, c. 34, Sched. 46, s. 33.

Legislative History: 1999, c. 6, s. 48; 2000, c. 26, Sched. D, s. 2; 2001, c. 9, Sched. F, s. 2; 2002, c. 1, Sched. B (But see Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* - December 31, 2012); 2002, c. 17, Sched. F, Table; 2002, c. 23, s. 4; 2003, c. 3, s. 2-90; 2003, c. 8; 2004, c. 8, s. 46, Table; 2004, c. 17, s. 32; 2004, c. 23, Sched. B (But see Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* - December 31, 2014); 2005, c. 5, s. 51; 2006, c. 3, Sched. C; 2006, c. 21, Sched. F, s. 136 (1); 2006, c. 32, Sched. C, s. 42; 2006, c. 33, Sched. X; 2006, c. 35, Sched. C, s. 98; 2007, c. 8, s. 222; 2009, c. 12, Sched. D; 2009, c. 33, Sched. 2, s. 51; 2009, c. 33, Sched. 6, s. 77; 2009, c. 33, Sched. 18, s. 21; 2010, c. 8, s. 38; 2010, c. 26, Sched. 13, s. 17; 2011, c. 1, Sched. 4; 2011, c. 9, Sched. 27, s. 34; See: Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* - December 31, 2011; 2014, c. 7, Sched. 23; 2015, c. 20, Sched. 31; 2015, c. 29, s. 7-20; CTS 16 MR 10 - 3; 2016, c. 10, Sched. 2, s. 11-16; 2016, c. 19, s. 17; 2016, c. 23, s. 61; 2017, c. 1; 2017, c. 2, Sched. 10, s. 2; 2017, c. 16, Sched. 1, s. 44; 2017, c. 16, Sched. 2; 2017, c. 20, Sched. 8, s. 109; 2017, c. 25, Sched. 9, s. 106; 2017, c. 34, Sched. 18, s. 3; 2017, c. 34, Sched. 31; 2017, c. 34, Sched. 46, s. 33.

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88.9.1 REPEALED: 2010, c. 8, s. 38 (21).

Section Amendments with date in force (d/m/y)

2004, c. 23, Sched.B, s. 31 - 20/12/2004

2010, c. 8, s. 38 (21) - 01/01/2011

88.10 REPEALED: 2010, c. 8, s. 38 (21).

Section Amendments with date in force (d/m/y)

2002, c. 1, Sched. B, s. 11 - 01/07/2002

2003, c. 3, s. 60 - 01/08/2003

2010, c. 8, s. 38 (21) - 01/01/2011

88.11 REPEALED: 2010, c. 8, s. 38 (21).

Section Amendments with date in force (d/m/y)

2002, c. 1, Sched. B, s. 11 - 01/07/2002

2010, c. 8, s. 38 (21) - 01/01/2011

88.12 REPEALED: 2010, c. 8, s. 38 (21).

Section Amendments with date in force (d/m/y)

2002, c. 1, Sched. B, s. 11 - 01/07/2002

2010, c. 8, s. 38 (21) - 01/01/2011

88.13 REPEALED: 2003, c. 3, s. 61.

Section Amendments with date in force (d/m/y)

2002, c. 1, Sched. B, s. 11 - 01/07/2002

2003, c. 3, s. 61 - 01/08/2003

88.14 REPEALED: 2003, c. 3, s. 61.

Section Amendments with date in force (d/m/y)

2002, c. 1, Sched. B, s. 11 - 01/07/2002

2003, c. 3, s. 61 - 01/08/2003

**PART VI
TRANSMISSION AND DISTRIBUTION LINES**

Definitions, Part VI

89 In this Part,

“electricity distribution line” means a line, transformers, plant or equipment used for conveying electricity at voltages of 50 kilovolts or less; (“ligne de distribution d’électricité”)

“electricity transmission line” means a line, transformers, plant or equipment used for conveying electricity at voltages higher than 50 kilovolts; (“ligne de transport d’électricité”)

“hydrocarbon line” means a pipe line carrying any hydrocarbon, other than a pipe line within an oil refinery, oil or petroleum storage depot, chemical processing plant or pipe line terminal or station; (“ligne pour hydrocarbures”)

“interconnection” means the plant, equipment and apparatus linking adjacent transmission or distribution systems as defined in Part V; (“interconnexion”)

“work” means a hydrocarbon line, electricity distribution line, electricity transmission line, interconnection or station. (“ouvrage”) 1998, c. 15, Sched. B, s. 89; 2003, c. 3, s. 62.

Section Amendments with date in force (d/m/y)

2003, c. 3, s. 62 (1-3) - 01/08/2003

Leave to construct hydrocarbon line

90 (1) No person shall construct a hydrocarbon line without first obtaining from the Board an order granting leave to construct the hydrocarbon line if,

- (a) the proposed hydrocarbon line is more than 20 kilometres in length;
- (b) the proposed hydrocarbon line is projected to cost more than the amount prescribed by the regulations;
- (c) any part of the proposed hydrocarbon line,
 - (i) uses pipe that has a nominal pipe size of 12 inches or more, and
 - (ii) has an operating pressure of 2,000 kilopascals or more; or
- (d) criteria prescribed by the regulations are met. 2003, c. 3, s. 63 (1).

Exception

(2) Subsection (1) does not apply to the relocation or reconstruction of a hydrocarbon line unless the size of the line is changed or unless the acquisition of additional land or authority to use additional land is necessary. 1998, c. 15, Sched. B, s. 90 (2); 2003, c. 3, s. 63 (2).

Section Amendments with date in force (d/m/y)

2003, c. 3, s. 63 (1, 2) - 01/08/2003

Application for leave to construct hydrocarbon line or station

91 Any person may, before constructing a hydrocarbon line to which section 90 does not apply or a station, apply to the Board for an order granting leave to construct the hydrocarbon line or station. 2003, c. 3, s. 64.

Section Amendments with date in force (d/m/y)

2003, c. 3, s. 64 - 01/08/2003

Leave to construct, etc., electricity transmission or distribution line

92 (1) No person shall construct, expand or reinforce an electricity transmission line or an electricity distribution line or make an interconnection without first obtaining from the Board an order granting leave to construct, expand or reinforce such line or interconnection. 1998, c. 15, Sched. B, s. 92 (1).

Exception

(2) Subsection (1) does not apply to the relocation or reconstruction of an existing electricity transmission line or electricity distribution line or interconnection where no expansion or reinforcement is involved unless the acquisition of additional land or authority to use additional land is necessary. 1998, c. 15, Sched. B, s. 92 (2).

93 REPEALED: 2003, c. 3, s. 65.

Section Amendments with date in force (d/m/y)

2003, c. 3, s. 65 - 01/08/2003

Route map

94 An applicant for an order granting leave under this Part shall file with the application a map showing the general location of the proposed work and the municipalities, highways, railways, utility lines and navigable waters through, under, over, upon or across which the proposed work is to pass. 1998, c. 15, Sched. B, s. 94.

Exemption, s. 90 or 92

95 The Board may, if in its opinion special circumstances of a particular case so require, exempt any person from the requirements of section 90 or 92 without a hearing. 1998, c. 15, Sched. B, s. 95.

Order allowing work to be carried out

96 (1) If, after considering an application under section 90, 91 or 92 the Board is of the opinion that the construction, expansion or reinforcement of the proposed work is in the public interest, it shall make an order granting leave to carry out the work. 1998, c. 15, Sched. B, s. 96.

Applications under s. 92

(2) 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. 2009, c. 12, Sched. D, s. 16.

Section Amendments with date in force (d/m/y)

2003, c. 3, s. 66 - 01/08/2003

2009, c. 12, Sched. D, s. 16 - 09/09/2009

Lieutenant Governor in Council, order re electricity transmission line

96.1 (1) The Lieutenant Governor in Council may make an order declaring that the construction, expansion or reinforcement of an electricity transmission line specified in the order is needed as a priority project. 2015, c. 29, s. 16.

Effect of order

(2) When it considers an application under section 92 in respect of the construction, expansion or reinforcement of an electricity transmission line specified in an order under subsection (1), the Board shall accept that the construction, expansion or reinforcement is needed when forming its opinion under section 96. 2015, c. 29, s. 16.

Obligations must be followed

(3) Nothing in this section relieves a person from the obligation to obtain leave of the Board for the construction, expansion or reinforcement of an electricity transmission line specified in an order under subsection (1). 2015, c. 29, s. 16.

Section Amendments with date in force (d/m/y)

2015, c. 29, s. 16 - 04/03/2016

Condition, land-owner's agreements

97 In an application under section 90, 91 or 92, leave to construct shall not be granted until the applicant satisfies the Board that it has offered or will offer to each owner of land affected by the approved route or location an agreement in a form approved by the Board. 1998, c. 15, Sched. B, s. 97.

No leave if covered by licence

97.1 (1) In an application under section 92, leave shall not be granted to a person if a licence issued under Part V that is held by another person includes an obligation to develop, construct, expand or reinforce the line, or make the interconnection, that is the subject of the application. 2016, c. 10, Sched. 2, s. 16.

Transition

(2) For greater certainty, an application made, but not determined, before the day section 16 of Schedule 2 to the *Energy Statute Law Amendment Act, 2016* comes into force, is subject to subsection (1). 2016, c. 10, Sched. 2, s. 16.

Section Amendments with date in force (d/m/y)

2016, c. 10, Sched. 2, s. 16 - 01/07/2016

Leave in the procurement, selection context

97.2 (1) In an application under section 92, leave to construct, expand or reinforce an electricity transmission line or to make an interconnection shall not be granted to a person if,

- (a) the IESO has commenced, been directed to commence, or announced a future procurement process for the development, construction, expansion or reinforcement of that line or for the making of that interconnection, and the procurement process has not yet been completed or otherwise terminated;
- (b) the IESO has commenced, been directed to commence, or announced a future process to select a transmitter for the development, construction, expansion or reinforcement of that line or for the making of that interconnection, and the process has not yet been completed or otherwise terminated;
- (c) the IESO has completed a procurement process for the development, construction, expansion or reinforcement of that line or for the making of that interconnection, and the person is someone other than the person with whom the IESO

has entered into a procurement contract respecting the development, construction, expansion, reinforcement or interconnection; or

- (d) the IESO has completed a process to select a transmitter for the development, construction, expansion or reinforcement of that line or for the making of that interconnection, and the person is someone other than the selected transmitter. 2016, c. 10, Sched. 2, s. 16.

No hearing required

(2) If the applicant in an application under section 92 is a person with whom the IESO has entered into a procurement contract respecting the development, construction, expansion, reinforcement of the line or the making of the interconnection, the Board may make an order under section 96 without holding a hearing. 2016, c. 10, Sched. 2, s. 16.

Procurement contract

(3) For the purposes of subsections (1) and (2),

“procurement contract” has the same meaning as in the *Electricity Act, 1998*. 2016, c. 10, Sched. 2, s. 16.

Transition

(4) For greater certainty, an application made, but not determined, before the day section 16 of Schedule 2 to the *Energy Statute Law Amendment Act, 2016* comes into force, is subject to subsections (1) and (2). 2016, c. 10, Sched. 2, s. 16.

Section Amendments with date in force (d/m/y)

2016, c. 10, Sched. 2, s. 16 - 01/07/2016

Right to enter land

98 (1) The following persons may enter on land at the intended location of any part of a proposed work and may make such surveys and examinations as are necessary for fixing the site of the work:

1. Any person who has leave under this Part or a predecessor of this Part to construct the work.
2. Any person who is exempted under section 95 from the requirement to obtain leave to construct the work.
3. Where the proposed work is the expansion or reinforcement of a transmission or distribution system, any person who is required by the Board, pursuant to a condition of the person’s licence, to expand or reinforce the transmission or distribution system.
4. The officers, employees and agents of a person described in paragraph 1, 2 or 3. 2006, c. 33, Sched. X, s. 2 (1).

Interim order

(1.1) The Board may, upon application, issue an interim order authorizing a person and the officers, employees and agents of that person to enter on land at the intended location of any part of a proposed work and to make such surveys and examinations as are necessary for fixing the site of the work and as are specified in the order if,

- (a) the person has applied for leave under section 90 or 92 and has complied with section 94;
- (b) the person has applied to the Board for an exemption under section 95; or
- (c) the Board has commenced a proceeding to determine whether to require the person, pursuant to a condition of the person’s licence, to expand or reinforce a transmission or distribution system. 2006, c. 33, Sched. X, s. 2 (2).

Damages

(2) Any damages resulting from an entry onto land carried out under subsection (1) or pursuant to an order under subsection (1.1) shall be determined by agreement or, failing agreement, in the manner set out in section 100. 2006, c. 33, Sched. X, s. 2 (3).

Section Amendments with date in force (d/m/y)

2006, c. 33, Sched. X, s. 2 (1-3) - 22/02/2007

Expropriation

99 (1) The following persons may apply to the Board for authority to expropriate land for a work:

1. Any person who has leave under this Part or a predecessor of this Part.

2. Any person who intends to construct, expand or reinforce an electricity transmission line or an electricity distribution line or make an interconnection and who is exempted from the requirement to obtain leave by the Board under section 95 or a regulation made under clause 127 (1) (f). 1998, c. 15, Sched. B, s. 99 (1).

Hearing

- (2) The Board shall set a date for the hearing of the application, but the date shall not be earlier than 14 days after the date of the application. 1998, c. 15, Sched. B, s. 99 (2).

Information to be filed

- (3) The applicant shall file with the Board a plan and description of the land required, together with the names of all persons having an apparent interest in the land. 1998, c. 15, Sched. B, s. 99 (3).
- (4) REPEALED: 2003, c. 3, s. 67.

Power to make order

- (5) If after the hearing the Board is of the opinion that the expropriation of the land is in the public interest, it may make an order authorizing the applicant to expropriate the land. 1998, c. 15, Sched. B, s. 99 (5).

Section Amendments with date in force (d/m/y)

2003, c. 3, s. 67 - 01/08/2003

Determination of compensation

100 If compensation for damages is provided for in this Part and is not agreed upon, the procedures set out in clauses 26 (a) and (b) of the *Expropriations Act* apply to the determination of the compensation, and the compensation shall be determined under section 27 of that Act or by the Ontario Municipal Board. 1998, c. 15, Sched. B, s. 100.

Crossings with leave

101 (1) The following persons may apply to the Board for authority to construct a work upon, under or over a highway, utility line or ditch:

1. Any person who has leave to construct the work under this Part.
2. Any person who intends to construct the work and who is exempted under section 95 from the requirement to obtain leave.
3. Where the proposed work is the expansion or reinforcement of a transmission or distribution system, any person who is required by the Board, pursuant to a condition of the person's licence, to expand or reinforce the transmission or distribution system.
4. The officers, employees and agents of a person described in paragraph 1, 2 or 3. 2006, c. 33, Sched. X, s. 3.

Procedure

- (2) The procedure set out in subsections 99 (1) to (4) applies with necessary modifications to an application under this section. 1998, c. 15, Sched. B, s. 101 (2).

Order

- (3) Without any other leave and despite any other Act, if after the hearing the Board is of the opinion that the construction of the work upon, under or over a highway, utility line or ditch is in the public interest, it may make an order authorizing the construction upon such conditions as it considers appropriate. 1998, c. 15, Sched. B, s. 101 (3).

Section Amendments with date in force (d/m/y)

2006, c. 33, Sched. X, s. 3 - 22/02/2007

Right to compensation for damages

102 Any person who has acquired land for a work under this Part by agreement with the owner of the land shall pay to the owner due compensation for any damages resulting from the exercise of the person's rights under the agreement and, if the compensation is not agreed upon, it shall be determined in the manner set out in section 100. 1998, c. 15, Sched. B, s. 102.

Entry upon land

103 (1) Any person may at any time enter upon land, without the consent of the owner of the land, for the purpose of inspecting, altering, maintaining, repairing, renewing, disconnecting, replacing or removing a work or part of a work where

leave for the construction, expansion or reinforcement of the work or the making of an interconnection was granted under this Part or a predecessor of this Part. 1998, c. 15, Sched. B, s. 103 (1).

Compensation

(2) Compensation for any damages resulting from the exercise of a right under subsection (1), if not agreed upon by the person and the owner of the land, shall be determined in the manner set out in section 100. 1998, c. 15, Sched. B, s. 103 (2).

Non-application, *Public Utilities Act*, s. 58

104 If leave to construct a work has been granted under this Part, section 58 of the *Public Utilities Act* does not apply to that work. 1998, c. 15, Sched. B, s. 104.

PART VII INSPECTORS AND INSPECTIONS

Board receives complaints and makes inquiries

105 The Board may,

- (a) receive complaints concerning conduct that may be in contravention of an enforceable provision whether the conduct constitutes an offence or not; and
- (b) make inquiries, gather information and attempt to mediate or resolve complaints, as appropriate, concerning any matter that comes to its attention that may be in contravention of an enforceable provision whether the matter constitutes an offence or not. 2010, c. 8, s. 38 (22).

Section Amendments with date in force (d/m/y)

2003, c. 3, s. 68 - 01/08/2003

2010, c. 8, s. 38 (22) - 01/01/2011

Inspectors

106 (1) The Board's management committee may appoint persons to exercise and perform the powers and duties of an inspector under this Part. 2003, c. 3, s. 69.

Certificate of appointment

(2) The Board shall issue to every inspector a certificate of appointment bearing the signature of a member of the Board or a facsimile of his or her signature. 2010, c. 8, s. 38 (23).

Section Amendments with date in force (d/m/y)

2002, c. 1, Sched. B, s. 12 (1, 2) - 27/06/2002

2003, c. 3, s. 69 - 01/08/2003

2010, c. 8, s. 38 (23) - 01/01/2011

Power to require documents, etc.

107 (1) An inspector may, for the purposes of this Act and any other Act that gives powers or duties to the Board, require any of the following persons to provide documents, records or information:

1. A person required to have a licence under section 48 or 57.
- 1.1 An affiliate, agent or employee of a gas marketer or retailer of electricity.
2. A gas distributor, gas transmitter or gas storage company or an affiliate of a gas transmitter, gas distributor or gas storage company.
3. An affiliate of a person required to have a licence under clause 57 (a) or (b).
4. A person exempted from the requirements of clause 57 (a) by regulation.
5. A person exempted from the requirements of clause 57 (b) by regulation.
6. A person exempted from the requirements of section 48 by regulation.
7. An affiliate, agent or employee of a person referred to in paragraph 4. 2003, c. 3, s. 70; 2010, c. 8, s. 38 (24).

TAB 36



Ontario Energy Board

Filing Requirements For Electricity Transmission Applications

Chapter 4

Applications under Section 92 of the Ontario Energy Board Act

July 31, 2014

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Chapter 4: Filing requirements for electricity transmission projects under Section 92 of the Ontario Energy Board Act (“the Act”)

4.1 Introduction

These filing requirements are intended to assist an applicant in preparing its leave to construct application. It sets out the information that is required to be filed by two broad categories of applicants - rate-regulated applicants and non-rate-regulated applicants - to enable the Board to determine whether a project is in the public interest. The different factors considered by the Board between rate-regulated and non-rate-regulated applications lies in the fact that regulated entities seek to recover costs from the consumers of electricity through their rates, while non-rate-regulated entities provide their own funding.

Section 4.2 applies to both rate-regulated and non-rate-regulated applicants. Further information required for rate-regulated entities is covered in section 4.3 and further information required for non-rate-regulated entities is covered in section 4.4.

4.2 The Regulatory Framework

The Act requires transmitters and distributors to obtain leave of the Board for the construction, expansion, or reinforcement of electricity transmission and distribution lines or interconnections. An “electricity transmission line” is defined under section 89 of the Act as a line, transformer, plant or equipment used for conveying electricity at voltages higher than 50 kilovolts.

Any person who obtains leave of the Board under section 92 or who is exempt from obtaining leave under section 95 may apply to the Board for authority to expropriate lands for the purpose of constructing, expanding, or reinforcing an electricity transmission and/or distribution line or interconnection.

4.2.1 Legislation

The applicable sections of the Act for leave to construct proceedings are sections 92, 95, 96, 97, 99, 101 and 102. Each of these sections is addressed briefly below.

Section 92

s. 92. (1) No person shall construct, expand or reinforce an electricity transmission line or an electricity distribution line or make an interconnection without first obtaining from the Board an order granting leave to construct, expand or reinforce such line or interconnection. 1998, c. 15, Sched. B, s. 92 (1).

Section 92 also applies to distributors' projects involving transformation connection projects (e.g. a transformer station transforming from above 50 kV to below 50 kV), if the transmission line tap is more than 2 km in length; and, facilities with voltages which are above 50kV and with line connections greater than 2km in length regardless of whether they have been "deemed" by the Board to be distribution facilities.

The construction, reinforcement or expansion of an electricity transmission line which is 2 kilometres in length or less is exempt from section 92(1) of the Act¹.

Section 95

Section 95 allows an applicant to seek an exemption from the requirements of section 92 in special circumstances. The onus is on the applicant to establish special circumstances. Some examples of what the Board has considered as constituting special circumstances in past cases include whether there is a need to obtain necessary land rights prior to construction, whether there are any environmental impacts, if there are other concerns raised by landowners, etc.

A project summary report should be submitted with a section 95 application for review, consistent with the requirements described in this document. The level of detail in the submission must reflect the issues or concerns encountered during the evaluation phase of the project.

Section 96

Subsection 96(2) specifies that for the purposes of section 92, in determining whether the construction, expansion or reinforcement of the electricity transmission line or interconnection is in the public interest, the Board shall only consider the following:

- "1. The interests of consumers with respect to prices and the reliability and quality of electricity service."

¹ Regulation 161/99 made under the OEB Act, section 6.2

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.”

Section 97

Section 97 requires that information on land requirements must be included as part of the leave to construct application. Section 97 states, “leave to construct shall not be granted until the applicant satisfies the Board that it has offered or will offer to each owner of land affected by the approved route or location an agreement in a form approved by the Board.” An affected landowner means those landowners of property upon, over or under which it is intended to construct facilities.

Section 99

Section 99 relates to expropriation. The Board can order the expropriation of land if it is in the public interest. Compensation issues are dealt with by the *Expropriations Act* and the Ontario Municipal Board. The Board’s consideration of the public interest may be more expansive in a section 99 application than in a section 92 application. For an example, see the discussion of the public interest in Dufferin Wind Power Inc. EB-2013-0268, Procedural Order No. 3 and Decision on Issues, February 7, 2014.

Sections 101 and 102

Upon request, under Section 101 the Board can grant authority to construct upon, over or under a highway, utility line or ditch. Section 102 sets out how compensation for damages will be dealt with if it cannot be agreed upon.

4.2.2 Related Regulatory Hearings

In addition to a leave to construct approval, most projects will require various other (non-Board) regulatory approvals: for example, an environmental assessment approval. In some cases, these approvals will be obtained after the Board issues an order granting leave to construct.

It is possible that other approvals may result in material changes to the project after the project has been reviewed by the Board (for example, a routing change or the imposition of additional costs to rate payers that were not known to the Board). Under such circumstances, an applicant is required to advise the Board. Depending

on the materiality of the change, the applicant may be required to satisfy the Board that the project is still in the public interest.

Outside of the leave to construct application, there are other Board conducted reviews, such as those associated with the review of transmission investments. The Board's authority to review transmitter's capital budgets and set rates is established in subsection 78 (1) of the Act which states "No transmitter shall charge for the transmission of electricity except in accordance with an order of the Board, which is not bound by the terms of any contract." In the case of a rate-regulated transmitter, this could result in the same transmission line construction project coming before the Board in two separate proceedings.

If a leave to construct proceeding is preceded by a transmitter's rate case, the need for the project may not have been dealt with in sufficient detail to satisfy the requirements of a leave to construct proceeding. If the project had received approval in a rate hearing as part of an envelope of expenditures rather than as a discrete approval of the particular project, the Board would, in a subsequent leave to construct hearing, likely revisit the valuation of the project in some detail. The intent, however, is not to re-assess that which has already been specifically addressed in a related proceeding.

4.2.3 The Board's Consideration of a Project

In determining a leave to construct application, the Board seeks information about the project and evaluates whether it is in the public interest taking into consideration aspects of:

- a) Price;
- b) Reliability;
- c) Quality of electricity service; and
- d) Promotion of the use of renewable energy sources.

With respect to need for the project, the Board will only consider matters described in section 96(2) of the Act, and will not consider broader issues.

Further details regarding the need for the project for rate-regulated and non-rate-regulated applicants is set out below.

4.3 Information Required of Rate-regulated Applicants

This section applies only to rate-regulated applicants. Rate-regulated applicants include licensed transmitters that provide transmission services to third parties at Board approved rates. There is an onus on rate-regulated entities whose revenues are derived from ratepayers to satisfy the Board that all expenditures on transmission facilities are required. Applicants that are not rate-regulated are referred to section 4.4

Rate-regulated transmitters and distributors applying for transmission connection projects are subject to additional requirements as set out in the Transmission System Code.

The Board expects an application by a rate-regulated applicant to have the following components:

4.3.1 Exhibit A: The Index

	Content	Described in
Exhibit A	Index	4.3.1
Exhibit B	The Application	4.3.2
	Administrative	4.3.2.1
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	Evidence in Support of Need	4.3.2.3
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Exhibit G	Customer Impact Assessment	4.3.7
Exhibit H	Aboriginal Consultation	4.3.8

4.3.2 Exhibit B: The Application

4.3.2.1 *Administrative*

This section must include the formal signed application, which must incorporate the following:

1. the name of the applicant and any partnerships involved in the application;
2. details of the authorized representative of the applicant, including the name, phone and fax numbers, and email and delivery addresses;
3. an outline of the business of the applicant and the parties to the application;
4. an explanation of the purpose of the project for which leave to construct is being sought;
5. a concise description of the routing and location of the project, including the affected municipalities and regions;
6. an indication of any shared corridors where there could be cross circuit interference, and of any issues related thereto with the owning authority;
7. a description of project components, their locations and purposes;
8. an explanation of how the project is in the public interest, as defined by section 96(2) of the Act; and
9. the current project schedule. Note that the Order of the Board will likely have an expiry date by when the project must have commenced.

4.3.2.2 *Project Overview Documents*

This section of the application provides the background and a summary of the application which will assist the Board in drafting a Notice of Hearing. It must include:

1. a detailed description of location of the project and its components;
2. maps (1:50,000 or more detailed) showing: the route and facility sites;
3. a description of the location of project components and related undertakings;
4. a draft of a drawing suitable for publication with the Notice of Hearing:
This drawing is to indicate the general area of the project and identify features so that potentially affected landowners can determine if they have an interest in the application. The final version of this drawing for publication will be decided following discussion with the Board case manager and the applicant;
5. line drawings of the proposed facility, showing supply connection(s) to the proposed facility and delivery facilities from the proposed facility to any adjacent transmission and/or distribution system(s); and
6. the nominal rating of the main components of the project.

4.3.2.3 *Evidence in Support of Need*

The Board, in determining if the project of a rate-regulated applicant is needed, will consider the aspects mentioned in 4.2.3 and two additional aspects: Project Classification (whether it is a development, connection or sustainment project), and Project Categorization (whether it is discretionary or non-discretionary). The categories and classes have different threshold and criteria for approval.

Furthermore, applications for leave to construct projects which derive from a Regional Integrated Plan will need to demonstrate to the Board that regional issues, including conservation and demand management ("CDM") measures and alternatives, have been appropriately considered and addressed in developing the applicant's infrastructure investment proposal.

4.3.2.3.1 Project Classification

Rate-regulated projects are classified into three groups based on their purpose, each of which has its own threshold for approval. There are three project classes:

Development Projects are those which:

- provide an adequate supply capacity and/or maintain an acceptable or prescribed level of customer or system reliability for load growth or for meeting increased stresses on the system; or

- enhance system efficiency such as minimizing congestion on the transmission system and reducing system losses.

Connection Projects are those which provide connection of a load or generation customer or group of customers to the transmission system.

Sustainment Projects are those which maintain the performance of the transmission network at its current standard or replacing end-of-life facilities on a “like for like” basis.

Where projects include more than one of the elements of development, connection, or sustainment the applicant must identify the proportional make-up of the project, and then classify the project based on the predominant driver.

In any of the three kinds of projects an investment in the Network may be required. Network facilities are comprised of network stations and the transmission lines connecting them, as defined in the Board's Transmission System Code (“TSC”).

4.3.2.3.2 Project Categorization

The purpose of project categorization is to distinguish between a project that is “must-do”, **beyond** the control of the applicant (“non-discretionary”) and one that is **at the discretion** of the applicant (“discretionary”).

Non-discretionary Projects

In the case of a non-discretionary project, the applicant must establish that the preferred option is a better project than the alternatives. The applicant need not include a “do nothing” alternative since this alternative would not meet the need criteria. One way for a rate-regulated applicant to demonstrate that a preferred option is the best option is to show that it has the highest net present value as compared to the other viable alternatives. However, this net present value need not be shown to be greater than zero.

Non-discretionary projects may be triggered or determined by such things as:

1. mandatory requirements to satisfy obligations specified by regulatory organizations including NPCC/NERC (the designated ERO in the future) or by the Independent Electricity System Operator (“IESO”);
2. a need to connect new load (of a distributor or large user) or a new generation connection;

3. a need to address equipment loading or voltage/short circuit stresses when their rated capacities are exceeded;
4. projects identified in a provincial government approved plan;
5. projects that are required to achieve provincial government objectives that are prescribed in governmental directives or regulations; and
6. a need to comply with direction from the Ontario Energy Board in the event it is determined that the transmission system's reliability is at risk.

Discretionary Projects

Discretionary projects are proposed by the applicant to enhance the transmission system performance, benefiting its users. Projects in this category may include projects to:

1. reduce transmission system losses;
2. reduce congestion;
3. build a new or enhance an existing interconnection to increase generation reserve margin within the IESO-controlled grid, beyond the minimum level required;
4. enhance reliability beyond a minimum standard; and
5. add flexibility to the operation and maintenance of the transmission system.

4.3.2.4 Cost Benefit Analysis and Options

The Board requires cost-benefit analysis evidence of the various options that were considered by the applicant as alternatives to the proposed project. The Board expects that rate-regulated applicants will present:

- the preferred option (i.e. the proposed project);
- alternative options, and, where the project is discretionary, the option of "doing nothing"; and
- whether there is an opportunity for CDM to defer the investment.

The Board will either approve or not approve the proposed project (i.e. the preferred option). It will not choose a project from among significant alternative options. The applicant must present to the Board alternatives which meet the same objectives that the preferred option meets.

4.3.2.5 *Avoiding Non-transmission Alternatives*

Where the applicant lists the benefits of a leave to construct project as avoiding non-transmission alternatives such as a peaking generation facility or a "must run" generation requirement, it is helpful for the applicant to include corroborative evidence from the IESO and/or the Ontario Power Authority regarding the applicant's quantitative evaluation of such a benefit. This evidence is required to support the need for the project.

4.3.2.6 *Risks*

The applicant is expected to also compare various risk factors for the different options, including, but not limited to:

- financial risk to the applicant;
- inherent technical risks;
- estimation accuracy risks; and
- any other critical risk that may impact the business case supporting the project.

4.3.2.7 *Qualitative Benefits*

If the proposed project alternatives are expected to have significant qualitative benefits that cannot reasonably be quantified, evidence about these qualitative benefits must be provided. The applicant should consider these benefits in ranking the alternatives. Incorporating qualitative criteria may result in a different ranking of projects compared to the ranking based only on quantitative benefits and costs. For example, a project may be compared on the basis of its degree of disruption to property owners with grades of minimal, significant and highly disruptive.

4.3.2.8 *Quantitative Benefits*

Where an applicant attributes market efficiency benefits to a proposed project, such as lower energy market prices, congestion reduction, or transmission loss reduction, the evidence submitted must include quantification of each of the market efficiency benefits listed for that proposed project.

4.3.2.9 *Apportioning of Project Costs*

Where there are costs which need to be apportioned between rate-regulated and non-rate-regulated parties, the applicant must provide details of an agreement on the apportioning of these costs to the rate-regulated party and applicants must provide details to the Board which includes the costs to be borne by the rate-regulated transmitter. This must include:

1. labour - including a breakdown by facility installations;
2. materials - including a breakdown of all facility costs;
3. cost of similar projects constructed by the applicant or by other entities for baseline cost comparisons covering:
 - a. in-service year of the comparator project;
 - b. similarities and differences in terms of voltage level, type of towers, type of terrain, etc.
4. acquisition of land use rights, and land acquisition including permanent and working easements, survey and appraisals, legal fees, crop and damage compensation;
5. direct and indirect overheads broken down by facility installation; and,
6. allowance for funds used during construction.

4.3.2.10 *Connection Projects Requiring Network Reinforcement*

Certain connection projects may require network reinforcement in order to proceed. In addition to the cost benefit analysis, the applicant must supply specific information on the nature and magnitude of the network impacts e.g. changes in generation dispatch and transmission line losses. In circumstances in which the project will trigger the requirement for investment in the transmission network, the applicant shall file a forecast of these costs.

With these types of applications the Board may determine that a transmitter(s) needs to apply for a leave to construct to make the required network upgrades triggered by the proposed connection project. If a leave to construct is necessary, the Board may invite the transmitter(s) to make the needed applications at the same time, or immediately following, the application of the initial applicant.

Applicants are referred to the TSC in regard to cost responsibility for necessary network reinforcement. Section 6.3.5 of the TSC states that "A transmitter shall not require any customer to make a capital contribution for the construction of or modifications to the transmitter's network facilities that may be required to

accommodate a new or modified connection. If exceptional circumstances exist so as to reasonably require a customer to make a capital contribution for network construction or modifications, the transmitter or any other interested person may apply to the Board for direction."

4.3.2.11 Transmission Rate Impact Assessment

The Board requires information relating to the rate impacts anticipated from transmission investments. Information must cover the short-term impacts as well as long-term impacts of the proposed project. The applicant should refer to the most recent version of the Filing Requirements for Transmission Rate Applications.

4.3.2.12 Establishment of Deferral Accounts

The Board will consider requests for the establishment of deferral accounts to record costs until the conclusion of a rate application. If an applicant chooses to make a request for the establishment of a deferral account, the following eligibility criteria must be met:

- Causation - The forecasted expense must be clearly outside of the base upon which rates were derived;
- Materiality – The forecasted amounts must exceed the Board-defined materiality threshold and have a significant influence on the operation of the distributor, otherwise they must be expensed in the normal course and addressed through organizational productivity improvements; and
- Prudence - The nature of the costs and forecasted quantum must be reasonably incurred although the final determination of prudence will be made at the time of disposition. In terms of the quantum, this means that the applicant must provide evidence demonstrating as to why the option selected represents a cost-effective option (not necessarily least initial cost) for ratepayers.

In addition, applicants must file a draft accounting order which must include a description of the mechanics of the account and provide examples of general ledger entries, and the manner in which the applicant proposes to dispose of the account at the appropriate time.

4.3.3 Exhibit C: Project Details

This section of the application must provide detailed information on the project, focusing on identifying project design features of and operational procedures for the proposed facilities.

4.3.3.1 *The Route*

The Board expects the leave to construct application to be for a single specific route, and that the route will be quite specific from engineering, economic and practical viewpoints. For example, it must be clear which side of the road a line is on, and the specific location of the support towers etc. in relation to affected properties. The route of the line is critical because the Board will only provide leave to construct for a specific route.

Any material deviations to the approved route following Board approval will require further review by the Board. In the course of detailed design and construction some minor deviations from the original route may be required, and the applicant is obligated to advise the Board, which will decide if such changes are of sufficient significance to warrant further examination. Generally changes will be significant if new or existing landowners or public land are affected.

4.3.3.2 *Descriptions of the Physical Design*

1. a section by section description of the physical form of the line;
2. transmission line details, including conductor type, ratings;
3. transmission structure description including the variety of towers;
4. transmission cable burial information and cross-section; and
5. line terminations.

4.3.3.3 *Maps*

1. the route of the line and the Lot number and Concession number of the land over, under, on or adjacent to which the line runs;
2. the plan of each section of the transmission line in relation to the description and indicating clearances to the land profile or, where buried, in relation to the surface;
3. the right-of-way dimensions and an indication of where the route crosses privately owned land; and

4. indication of where Section 41(9) of the Electricity Act, regarding disagreement over the location of structures, equipment or facilities over, under or on Public streets and highways, may be applicable.

4.3.4 Exhibit D: Design Specification and Operational Data

4.3.4.1 *Operational Details*

The application must provide the following details on the planned operation of the transmission line:

- the control stations; and
- monitoring and metering locations.

4.3.5 Exhibit E: Land Matters

The following information with respect to land matters is required in support of an application:

4.3.5.1 *Description of Land Rights*

A description of the land rights required must be provided including:

1. the type of land rights proposed to be acquired for the project and related facilities (e.g. easement, fee simple);
2. the nature and relative proportions of land ownership along the proposed route (i.e. freehold, Crown or public lands); and,
3. where no new land rights are required, a description of the existing land rights that allow for the project;
4. where no new land rights are required, but the land rights of adjacent properties might be affected e.g. building restrictions on those lands;
5. where section 41(9) of the Electricity Act may be brought to bear for the use of public roads and highways as part of the route.

4.3.5.2 *Land Easements Required*

A description of the land area required including:

1. the width(s) of any right-of-way required on new and/or existing easements;
2. the location and ownership of land with existing easements and of any new easements or land use rights that will be required; and
3. the need and amount of additional temporary working rights required at designated locations such as crossings of rivers, roads, railways, drains and other facilities.

4.3.5.3 *Early Access to Land*

Section 98 of the Act allows a person to apply to the Board for an interim order authorizing that person to enter on land for certain purposes if the person has applied for leave under section 90 or 92 and has complied with section 94. Section 94, as noted above, requires an applicant to file with the application a map showing the general location of the proposed work and the municipalities, highways, railways, utility lines and navigable waters through, under, over, upon or across which the proposed work is to pass.

4.3.5.4 *Land Acquisition Process*

A description of the land acquisition process including:

1. identification of the properties and the property owners and/or tenants affected by the proposed construction (landowners line list);
2. evidence of discussion and/or agreements regarding sections of the route where section 41(9) of the Electricity Act may be applicable.

4.3.5.5 *Land-related Forms*

Section 97 operates as a condition precedent to the exercise of the Board's power to grant a leave to construct order pursuant to section 92 of the Act. Under section 97, the Board exercises discretion to approve the form of the agreements that an applicant may offer to an Ontario landowner in relation to the approved route of the proposed transmission or distribution line.

Section 97 of the Act states, "leave to construct shall not be granted until the applicant satisfies the Board that it has offered or will offer to each owner of land

affected by the approved route or location an agreement in a form approved by the Board.”

Appendix A sets out the types of clauses which must be included in an agreement. An applicant must provide this form of agreement to the land owner's attention and it is expected that this form of agreement will be the initial starting point for a negotiation between a landowner and a utility. However, it is open to the landowner and utility to develop the substantive content of these clauses and any other clauses mutually agreed to in the agreement². Further, with the mutual agreement of both the landowner and the utility, certain clauses may be eliminated in appropriate circumstances.

4.3.6 Exhibit F: System Impact Assessment (“SIA”)

All applicants are required to provide evidence to the Board that connection of the applied for line will not affect the reliability of the IESO-controlled grid. This takes the form of an SIA conducted by the IESO as a part of the IESO Connection Assessment and Approval process.

The IESO evaluates the design of the project and its impact on the reliability of the integrated power system, and identifies any transmission facility enhancements that may be required in order for the facilities to have no negative effect upon the reliability of the grid. The Applicant must provide a statement confirming that it will implement the Requirements noted by the IESO in the SIA.

In the absence of a final SIA, the applicant must submit a draft SIA and inform the Board when the final SIA will be available. Final approval by the IESO and conformance with its conditions is a requirement for granting leave to construct.

4.3.7 Exhibit G: Customer Impact Assessment (“CIA”)

All applicants are required to provide evidence to the Board that the incorporation of the applied for facilities will not degrade the electricity service of customers of the transmitter to which the applied for line is connecting. This evidence takes the form of the Customer Impact Assessment (“CIA”).

² In *Conserve Our Rural Environment v Dufferin Wind Power Inc.* (2013) ONSC 7307, (“CORE”) Justice Gordon stated:

It is important to understand that what the Board approved was a *form* of agreement which is the subject of subsequent negotiation between the parties. It represents terms from which the party propounding the project may not unilaterally resile.

The CIA report is to be completed by the transmitter to which the applicant's transmission facilities are proposed to be connected. A transmitter shall carry out a CIA for any proposed new or modified connection where:

- the connection is one for which the IESO's connection assessment and approval process requires a system impact assessment; or
- the transmitter determines that the connection may have an impact on existing customers.

A transmitter may decide not to carry out a CIA for any proposed new connection or modification that is not subject to an SIA. In such a case, the transmitter would notify existing customers in the vicinity, advising them of the proposed new connection or modification and of the transmitter's decision not to carry out a CIA on the basis that no customer impact is expected.

A transmitter would provide each affected customer with a new available fault current level at its delivery point(s). This would allow each customer to take, at its own expense, action to upgrade its facilities as may be required to accommodate the new available fault current level up to the maximum allowable fault levels set out in Appendix 2 of the TSC.

4.3.8 Exhibit H: Aboriginal Consultation

Duty to consult issues have arisen in a number of electricity leave to construct proceedings before the Board. The Board has made significant findings regarding its role respecting the duty to consult in the application by Yellow Falls FP to build a transmission line from a small hydro-electric generating facility to the IESO grid (the "Yellow Falls decision")³. Prior to hearing detailed evidence on the specifics of the dispute, the Board decided to hear submissions on the Board's jurisdiction to consider Aboriginal consultation issues at all in the context of an electricity leave to construct application.

After considering written argument on the issue, the Board decided that it did not have jurisdiction to consider Aboriginal consultation issues in an electricity leave to construct application⁴. The Board held that the restriction imposed by s. 96(2) of the Act limited its review to a consideration of price, reliability, the quality of electrical service, and the promotion, where applicable, of the Government of Ontario's

³ EB-2009-0120, Decision on Questions of Jurisdiction and Procedural Order No. 4, issued November 18, 2009 ("Yellow Falls").

⁴ *Ibid*

renewable energy policies. The Board was clear that its decision did not mean that no duty to consult existed in this case. It found, rather, that the Board had no authority to consider these issues. The Board pointed to the Environmental Assessment process as a suitable forum for the hearing of duty to consult issues.⁵

4.4 Information required of Non Rate-regulated Applicants

The following filing requirements apply to leave to construct applications made by non-rate-regulated applicants.

4.4.1 Exhibit A: The Index

	Content	Described in
Exhibit A	Index	4.4.1
Exhibit B	The Application	4.4.2
	Administrative	4.4.2.1
	Project Overview Documents	4.4.2.2
	Evidence in Support of Need	4.4.2.3
	Impact of Non-rate-regulated Project on Rate-regulated Transmitter	4.4.2.4
	Apportioning of Project Costs	4.4.2.5
	Connection Projects Requiring Network Reinforcement	4.4.2.6
Exhibit C	Project Details	4.4.3
	The Route	4.4.3.1
	Descriptions of the Physical Design	4.4.3.2
	Maps	4.4.3.3
Exhibit D	Design Specification and Operational Data	4.4.4
	Operational Details	4.4.4.1
Exhibit E	Land Matters	4.4.5
	Description of Land Rights	4.4.5.1
	Land Easements Required	4.4.5.2
	Early Access to Land	4.4.5.3
	The Land Acquisition Process	4.4.5.4
	Land-related Forms	4.4.5.5

⁵ *Ibid*, pp. 9-10.

Exhibit F	System Impact Assessment	4.4.6
Exhibit G	Customer Impact Assessment	4.4.7
Exhibit H	Aboriginal Consultation	4.4.8

4.4.2 Exhibit B: The Application

4.4.2.1 *Administrative*

This section must include the formal signed application, which must incorporate the following:

1. the name of the applicant and any partnerships involved in the application;
2. details of the authorized representative of the applicant, including the name, phone and fax numbers, and email and delivery addresses;
3. an outline of the business of the applicant and the parties to the application;
4. an explanation of the purpose of the project for which leave to construct is being sought;
5. a concise description of the routing and location of the project, including the affected municipalities and regions;
6. an indication of any shared corridors where there could be cross circuit interference, and of any issues related thereto with the owning authority;
7. a description of project components and their locations, activities, and related undertakings;
8. an explanation of how the project is in the public interest, as defined by section 96(2) of the Act; and
9. the current project schedule. Note that the Order of the Board will likely have an expiry date by when the project must have commenced.

4.4.2.2 *Project Overview Documents*

The evidence in this section provides the background and a summary of the application, and assists the Board in drafting a Notice of Hearing. This must include:

- a detailed description of location of the project and its components;
- maps (1:50,000 or larger) showing: the route, facility sites and any proposed ancillary facilities;
- a description of the location of project components and related undertakings;

- a draft of a drawing suitable for publication with the Notice of Hearing: This drawing is to indicate the general area of the project and identify features so that potentially affected landowners can determine if they have an interest in the application. The final version of this drawing for publication will be decided following discussion with the Board case manager and the applicant.
- line drawings of the proposed facility, showing supply connection(s) to the proposed facility and delivery facilities from the proposed facility to any adjacent transmission and/or distribution system(s); and
- the nominal rating of the main components of the project, including transformers.

4.4.2.3 *Evidence in Support of Need*

Project justification delineates the responsibilities and necessary evidentiary components required for the project review. The responsibility for the provision of all evidence for the entire case rests with the applicant.

The Board, in accordance with section 96(2) of the Act, requires an applicant of a non-rate regulated proponent-funded project to establish that the project fulfills needs which are in the public interest. This would normally include items such as the need to connect a generator to supply the IESO-controlled grid, or the need to connect a load to the IESO-controlled grid, etc. It is expected that the applicant will submit evidence that it has a valid contract with the OPA to supply renewable generation.

4.4.2.4 *Impact of Non-rate-regulated Project on Rate-regulated Transmitter*

Since a project to transmit electricity cannot be isolated from the grid there are likely related works to be completed in relation to the applied for project. In circumstances in which the project will trigger the requirement for investment in the transmission network, the applicant shall file a forecast of these costs. The Board requires a detailed reference to any applications or approvals for any other projects relating to the applied for project. The need for the other project/s must also be described. For example, if there is an intermediate transmitter connection required outside of the current application then the applicant must provide the details in this section of the application.

The Board, for example, may not grant leave to construct a transmission line if a related project to connect it to the grid was not allowed to proceed, or if the

proponent was not granted a generation licence to own and/operate the generation facility from which the line is intended to convey power. In such a case the Board may require evidence that the generation licence will be granted, or make the leave to construct conditional on receipt of the licence.

Most of the projects proposed by non-rate-regulated applicants are designed to connect generation or load sites or plants to the existing IESO controlled grid. The financial risk of constructing new transmission facilities lies with the owners and shareholders of the company, and not with rate payers.

As rate payer money is typically not involved, non-regulated applicants generally do not need to satisfy the Board that the expenditures on their own transmission facilities are cost effective. However, in certain circumstances these owners and shareholders may be required by the Board to share some or all of the costs associated with Network Reinforcement, as set out in Section 6.3 of the Transmission System Code ("TSC"). In that case the Board will want to ensure that the shared costs are appropriately assigned and will require appropriate detailed information.

Section 6.3 of the TSC sets out how cost sharing will need to be justified.

Transmitters and distributors applying for transmission connection projects must include additional information as set out in the TSC, in their applications to the Board, such as the calculation of any capital contribution, and the relevant annual connection rate revenues over the applicable evaluation period if the costs are not fully recoverable in connection rate revenues.

4.4.2.5 *Apportioning of Project Costs*

Where there are costs which need to be apportioned between rate-regulated and non-rate-regulated parties, the applicant must provide details of an agreement on the apportioning of these costs to the rate-regulated party and applicants must provide details to the Board which includes the costs to be borne by the rate-regulated transmitter. This must include:

1. labour - including a breakdown by facility installations;
2. materials - including a breakdown of all facility costs;
3. cost of similar projects constructed by the applicant or by other entities for baseline cost comparisons covering:
 - a. in-service year of the comparator project;
 - b. similarities and differences in terms of voltage level, type of towers, type of terrain, etc.

4. acquisition of land use rights, and land acquisition including permanent and working easements, survey and appraisals, legal fees, crop and damage compensation;
5. direct and indirect overheads broken down by facility installation; and,
6. allowance for funds used during construction.

4.4.2.6 *Connection Projects Requiring Network Reinforcement*

Certain connection projects may require network reinforcement in order to proceed. In addition to the cost benefit analysis, the applicant must supply specific information on the nature and magnitude of the network impacts e.g. changes in generation dispatch and transmission line losses.

With these types of applications the Board may determine that a transmitter(s) needs to apply for a leave to construct to make the required network upgrades triggered by the proposed connection project. If a leave to construct is necessary, the Board may invite the transmitter(s) to make the needed applications at the same time, or immediately following, the application of the connecting customer.

Applicants are referred to the TSC in regard to cost responsibility for necessary network reinforcement. Section 6.3.5 of the TSC states that "A transmitter shall not require any customer to make a capital contribution for the construction of or modifications to the transmitter's network facilities that may be required to accommodate a new or modified connection. If exceptional circumstances exist so as to reasonably require a customer to make a capital contribution for network construction or modifications, the transmitter or any other interested person may apply to the Board for direction."

4.4.3 *Exhibit C: Project Details*

This section of the application must provide detailed information on the project, focusing on identifying project design features of and operational procedures for the proposed facilities.

4.4.3.1 *The Route*

The Board expects the leave to construct application to be for a single specific route, and that the route will be quite specific from engineering, economic and practical viewpoints. For example, it must be clear which side of the road a line is on, and the specific location of the support towers etc. in relation to affected properties. The route of the line is critical because the Board will only provide leave to construct for a specific route.

Any material deviations to the approved route following Board approval will require further review by the Board. In the course of detailed design and construction some minor deviations from the original route may be required, and the applicant is obligated to advise the Board, which will decide if such changes are of sufficient significance to warrant an examination by the Board and affected parties. Generally changes will be significant if new or existing landowners or public land are affected.

4.4.3.2 *Descriptions of the Physical Design*

1. a section by section description of the physical form of the line;
2. transmission line details, including conductor type, ratings;
3. transmission structure description including the variety of towers;
4. transmission cable burial information and cross-section; and
5. line terminations.

4.4.3.3 *Maps*

1. the route of the line and the Lot number and Concession number of the land over, under, on or adjacent to which, the line runs;
2. the plan of each section of the transmission line in relation to the description and indicating clearances to the land profile or, where buried, in relation to the surface;
3. the right-of-way dimensions and an indication of where the route crosses privately owned land; and
4. indication of where Section 41(9) of the Electricity Act, regarding disagreement over the location of structures, equipment or facilities over, under or on Public streets and highways, may be applicable.

4.4.4 Exhibit D: Design Specification and Operational Data

4.4.4.1 *Operational Details*

The application must provide the following details on the planned operation of the transmission line including:

- the control stations
- monitoring and metering locations

4.4.5 Exhibit E: Land Matters

The following information with respect to land matters is required in support of an application:

4.4.5.1 *Description of Land Rights*

A description of the land rights required must be provided including:

1. the type of land rights proposed to be acquired for the project and related facilities (e.g. easement, fee simple);
2. the nature and relative proportions of land ownership along the proposed route (i.e. freehold, Crown or public lands); and,
3. where no new land rights are required, a description of the existing land rights that allow for the project.
4. where no new land rights are required, but the land rights of adjacent properties might be affected e.g. building restrictions on those lands;
5. where section 41(9) of the Electricity Act may be brought to bear for the use of public roads and highways as part of the route.

4.4.5.2 *Land Easements Required*

A description of the land area required including:

1. the width(s) of any right-of-way required on new and/or existing easements;
2. the location and ownership of land with existing easements and of any new easements or land use rights that will be required; and
3. the need and amount of additional temporary working rights required at designated locations such as crossings of rivers, roads, railways, drains and other facilities.

4.4.5.3 *Early Access to Land*

Section 98 of the Act allows a person to apply to the Board for an interim order authorizing that person to enter on land for certain purposes if the person has applied for leave under section 90 or 92 and has complied with section 94. Section 94, as noted above, requires an applicant to file with the application a map showing the general location of the proposed work and the municipalities, highways, railways, utility lines and navigable waters through, under, over, upon or across which the proposed work is to pass.

4.4.5.4 *The Land Acquisition Process*

A description of the land acquisition process including:

1. identification of the properties and the property owners and/or tenants affected by the proposed construction (landowners line list);
2. Evidence of discussion and/or agreements regarding sections of the route where section 41(9) of the Electricity Act may be applicable.

4.4.5.5 *Land-related Forms*

Section 97 operates as a condition precedent to the exercise of the Board's power to grant a leave to construct order pursuant to section 92 of the Act. Under section 97 the Board exercises discretion to approve the form of the agreements that an applicant may offer to an Ontario landowner in relation to the approved route of the proposed transmission or distribution line.

Section 97 of the Act states, "leave to construct shall not be granted until the applicant satisfies the Board that it has offered or will offer to each owner of land affected by the approved route or location an agreement in a form approved by the Board."

Appendix A sets out the types of clauses which must be included in an agreement. An applicant must provide this form of agreement to the land owner's attention and it is expected that this form of agreement will be the initial starting point for a negotiation between a landowner and a utility. However, it is open to the landowner and utility to develop the substantive content of these clauses and any other clauses

mutually agreed to in the agreement⁶. Further, with the mutual agreement of both the landowner and the utility, certain clauses may be eliminated in appropriate circumstances.

4.4.6 Exhibit F: System Impact Assessment ("SIA")

All applicants are required to provide evidence to the Board that connection of the applied for line will not affect the reliability of the IESO-controlled grid. This takes the form of an SIA conducted by the IESO as a part of the IESO Connection Assessment and Approval process.

The IESO evaluates the design of the project and its impact on the reliability of the integrated power system, and identifies any transmission facility enhancements that may be required in order for the facilities to have no negative effect upon the reliability of the grid. The Applicant must provide a statement confirming that it will implement the Requirements noted by the IESO in the SIA.

In the absence of a final SIA, the applicant must submit a draft SIA and inform the Board when the final SIA will be available. Final approval by the IESO and conformance with its conditions is a requirement for granting leave to construct.

4.4.7 Exhibit G: Customer Impact Assessment ("CIA")

All applicants are required to provide evidence to the Board that the incorporation of the applied for facilities will not degrade the electricity service of customers of the transmitter to which the applied for line is connecting. This evidence takes the form of the Customer Impact Assessment ("CIA").

The CIA report is to be completed by the transmitter to which the applicant's transmission facilities are proposed to be connected. A transmitter shall carry out a CIA for any proposed new or modified connection where:

- the connection is one for which the IESO's connection assessment and approval process requires a system impact assessment; or

⁶ In *Conserve Our Rural Environment v Dufferin Wind Power Inc.* (2013) ONSC 7307, ("CORE") Justice Gordon stated:

It is important to understand that what the Board approved was a *form* of agreement which is the subject of subsequent negotiation between the parties. It represents terms from which the party propounding the project may not unilaterally resile.

- the transmitter determines that the connection may have an impact on existing customers.

A transmitter may decide not to carry out a CIA for any proposed new connection or modification that is not subject to an SIA. In such a case, the transmitter would notify existing customers in the vicinity, advising them of the proposed new connection or modification and of the transmitter's decision not to carry out a CIA on the basis that no customer impact is expected.

A transmitter would provide each affected customer with a new available fault current level at its delivery point(s). This would allow each customer to take, at its own expense, action to upgrade its facilities as may be required to accommodate the new available fault current level up to the maximum allowable fault levels set out in Appendix 2 of the TSC.

4.4.8 Exhibit H: Aboriginal Consultation

Duty to consult issues have arisen in a number of electricity leave to construct proceedings before the Board. The Board has made significant findings regarding its role respecting the duty to consult in the application by Yellow Falls FP to build a transmission line from a small hydro-electric generating facility to the IESO grid (the "Yellow Falls decision")⁷. Prior to hearing detailed evidence on the specifics of the dispute, the Board decided to hear submissions on the Board's jurisdiction to consider Aboriginal consultation issues at all in the context of an electricity leave to construct application.

After considering written argument on the issue, the Board decided that it did not have jurisdiction to consider Aboriginal consultation issues in an electricity leave to construct application⁸. The Board held that the restriction imposed by s. 96(2) of the Act limited its review to a consideration of price, reliability, the quality of electrical service, and the promotion, where applicable, of the Government of Ontario's renewable energy policies. The Board was clear that its decision did not mean that no duty to consult existed in this case. It found, rather, that the Board had no authority to consider these issues. The Board pointed to the Environmental Assessment process as a suitable forum for the hearing of duty to consult issues⁹.

⁷ EB-2009-0120, Decision on Questions of Jurisdiction and Procedural Order No. 4, issued November 18, 2009 ("Yellow Falls").

⁸ *Ibid*

⁹ *Ibid*, pp. 9-10.

Appendix A: Draft Form of Lease or Easement Agreement

Essential Easement Considerations

The form of agreement will be the initial starting point for a negotiation between a landowner and utility. However it is open to the landowner and utility to develop the substantive content of these clauses and any other clauses mutually agreed to in the agreement. Please note that adhering to this form of agreement does not limit the Board's discretion to either approve or not approve a form of agreement submitted in a proceeding.

1. Legal Description of Properties

A complete and accurate description of each of the affected properties must be provided. A full legal description is ideal, but even when this is not available, some description is necessary, even if only described by address, visual depiction or reference to the owners.

2. Description of the Easement Area

The easement area (in other words the portion of property to which one party is granted permission to use or access) must be depicted visually. Such a depiction need not be elaborate, but a clear "drawing" of the relevant easement area will help provide clarity and avoid potential disputes. A professional survey is helpful

3. Covenant Not to Disturb the Use of the Easement – Right of Access

Although it may have a clearly defined right to use the owner's property, the party granted easement rights must also be sure that the owner's use of the property will not create practical problems. The easement agreement should include language that protects the party granted the easement rights a right to undisturbed use of the easement.

4. Determination of Maintenance Obligations

Even after rights and non-disturbance issues are clarified, the parties to an easement agreement face the issue of who will take care of that portion of the property, pay for any needed repairs or address related problems that occur. The parties should determine who will maintain the easement area.

5 Decommissioning

A decommission clause should set out that the energy company will be responsible to cover the cost of decommissioning the facilities and restoring any damage done to the easement lands. This clause should also have specific procedures for the decommissioning process.

6. Independent Legal Advice ("ILA")

Provision must be made that both parties have had the option to obtain legal advice. Note in some cases before the Board, the agreement has provided that the ILA for the landowner would be paid for by the utility.

7. Liability: Indemnification and Exculpation

The parties should consider their potential liabilities with respect to their ownership or use of the property.

8. Insurance

An easement agreement needs to clearly state any obligations of the parties to maintain any forms of insurance. Considerations would obviously include property insurance, but may also include other coverage as well, as dictated by the circumstances.

9. Default Provisions and Termination

Some consideration must be made for events or behavior on the part of either party that will terminate the easement. A property owner may want to include certain activities (including failure to make any required payments) that will result in termination of the easement. Conversely, the other party will want to clarify that breaches (or at least certain breaches) of the agreement explicitly do not result in termination of its easement rights. Possible considerations must include failure to make requirement payments to the property owner, failure to fulfill any maintenance obligations, failure to pay any required taxes or insurance premiums, and any other matters that are deemed relevant by the parties. Much of the detail with respect to default and termination will be dependent upon the unique nature of each situation.

10. Dispute Resolution

Provision setting out the dispute resolution procedure to be used in case of disagreement.

End of document