

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.

Submission
of the
Vulnerable Energy Consumers Coalition
(VECC)

June 4, 2018

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1.0 Summary of the Submissions

1. The Motion sought by Upper Canada Transmission, Inc. operating as NextBridge Infrastructure (“NextBridge”) seeks:
 - a) *An order dismissing the Application filed by Hydro One Networks Inc. (“HONI”) on February 15, 2018 under Board docket number EB-2017-0364 for leave to construct the Lake Superior Link (“LSL”);*
 - b) *In the alternative, a decision or order determining that the Hydro One Application will not be processed because it is incomplete;*
 - c) *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 Such further or other order or orders regarding the Hydro One Application as may be deemed necessary or appropriate by the Board.*
2. In VECC’s submission the LSL Application is seriously deficient and has no real prospect of success in its current form.
3. VECC submits that NextBridge’s Motion should succeed and for these reasons:
 - a) The LSL project cannot be completed and put in-service in the requisite time period required by the IESO (Timing);
 - b) The LSL project costs are not materially different from those proposed by NextBridge in its current Leave-to-Construct (LTC) application (Cost Effectiveness);
 - c) The LSL project is prima facie less reliable than the proposed NextBridge project (Reliability);
 - d) First Nations and Metis Communities have in good faith relied upon the Board’s processes. The LSL proposal would disrupt completed, consultations, business agreements and community economic plans made with these stakeholders (Consultation); and,
 - e) The Application inappropriately interrupts and interferes with the Board’s process (Process).

4. VECC submits the remedy to be applied should be as sought by NextBridge under paragraphs b) and c) of its Motion.
5. It is our position that the Board should hold the Hydro One application in abeyance until such time as has completed its consideration of the NextBridge LTC application.

1.0 BOARD QUESTIONS

6. In its Notice of Motion the Board posed a number of questions with respect to the Motion¹:
 - I. 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?
 - II. 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?
 - III. 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?
7. In our view the Board needs to satisfy itself of the following additional questions:
 - IV. Can the LSL project be put in-service in the current expected time period articulated by IESO?
 - V. If not, can the in-service date be put off without additional cost and reliability consequences?
 - VI. Does the LSL application in its current form provide a realistic least cost alternative to the NextBridge Proposal?
 - VII. Does the LSL alternative offer similar or more reliable transmission service than the NextBridge Proposal?
 - VIII. Will the First Nation and Metis communities, who have relied upon the Board's designation process, be treated fairly if the LSL application is allowed to proceed or the East-West Tie project in either form is delayed?
 - IX. Has Hydro One filed an application which provides a reasonable basis upon which the Board should consider delaying the current Leave-to-Construct Application of NextBridge?

¹ Notice of Motion, EB-2017-0364, April 6, 2018

7. VECC has attempted to respond to all of these questions in the sections below.

2.0 TIMING

8. The crux of many of these questions go to whether the LSL application is moot because it cannot be put-in service in the time frame which meets the requirements of the IESO. The first part of the question is whether the LSL proposal can be constructed within the current expected timeframe of the updated IESO Assessment for the Need for the East-West Tie which recommends an in-service date of 2020. The answer to that is it clearly cannot. The subsidiary question is whether an alternative and later in-service date can be managed. Only IESO knows this.
9. The table below show the most recent Hydro One LSL schedule.²

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

² JT 2.9

10. The Hydro One application proposes an in-service date of December 2021. In order to meet that date the Table below shows that Hydro One must begin construction in July of 2019³. In other places Hydro One has stated that to be able to maintain the December 2021 completion date, construction work must begin no later than January 13, 2020⁴. Either date is based on an assumption of a positive and unambiguous LTC decision by November this year.⁵
11. In our submission the prospect of these dates being met is nil regardless of whether construction must start by mid or the end of 2019.
12. Hydro One itself has identified the significant risk factors in its business case for this proposal that would affect, among other things, timing:⁶
 - Leave to Construct Approval - Since Hydro One's application is competing with NextBridge's application, and OEB policy only contemplates recovery of development costs from one transmitter, there is a possibility of not receiving approval to proceed or approval to recover the development costs.
 - Indigenous Relations - The confidential agreements that NextBridge has signed with some of the communities may impede Hydro One's consultations and EA approval.
 - Real Estate - The confidential Option agreements that NextBridge has signed with some of the property owners may impede Hydro One's Early Access, Option or temporary land rights agreements.
 - Approvals & Agreements - There is a risk that Hydro One may not be granted a regulatory measure, in order to utilize the EA work completed by NextBridge and address Hydro One proposed scope changes. If granted, there is a risk that Hydro One may need to repeat some of the studies and approval process.
13. The LSL requires an Environmental Assessment. The evidence is clear that such an assessment cannot be completed in the requisite time frame. In fact there is some doubt as to whether Hydro One will be unable to get permission for the repurposing of its existing corridor through Pukaskwa National Park.
14. Second Hydro One LSL has duty to consult. It is clear that it cannot dispense with this requirement in the requisite time period.
15. Third, it is unclear whether HONI's LSL project would meet the technical requirements or that it offers the same level of system reliability as the NextBridge LTC proposal.
16. It is clear that MOECC and the First Nations group have vastly different expectations than Hydro One with respect to the necessary environmental assessment and consultations.

³ At JT 2.29 Hydro One has stated that to be able to maintain the December 2021 completion date, construction work must begin no later than January 13, 2020 .

⁴ JT 2.29

⁵ JT2.1

⁶ JT 2.19, Attachment 1, page 3

Environmental Assessment - Routing

17. The timing of Hydro One's proposal relies on the approval for utilizing the NextBridge EA and its amendment⁷. In the absence of using all or parts of the NextBridge EA Hydro One admitted it would expect a full environmental assessment for a new project to take 2 to 3 years.⁸

18. In its letter to the Ministry of the Environment and Climate Change HONI states:

*Since the Hydro One undertaking is similar to the NextBridge undertaking, Hydro One is of the opinion that it is not necessary to prepare a new EA because we believe that the net environmental effects of the Hydro One corridor are lower than the net effects of the proposed Nextbridge corridor, and that preparing a second individual EA for a project with the same purpose would be largely duplicative. Further, it would substantially delay the project's in-service date.*⁹

19. HONI suggests that it might use in amended form the EA of NextBridge. However, the evidence is clear that this is highly unlikely and for three reasons. First is the position taken by MOECC which is:

*"[B]ased on the information provided to date [as of October 2017], it is unlikely than an amendment provision in the prosed Nextbridge EA would be capable of accommodating Hydro One's proposed changes to the current Project. As such, Hydro One's project would not likely be able to take advantage of the proposed Nextbridge EA and Hydro One's project would likely be considered a new undertaking for the purpose of the Environmental Assessment Act"*¹⁰.

20. The second impediment is that the EA is clearly not the property of Hydro One. NextBridge holds that the EA is its own intellectual property, and would preclude Hydro One from gaining access to and relying on it.
21. Finally, a review of the correspondence as between Parks Canada and Hydro One with respect to Pukaskwa Park routing shows that Hydro One is at a very preliminary stage.¹¹ Based on a review of the correspondence between Parks Canada and Hydro One it is far from clear that Parks Canada even understands that the Hydro One proposal is more than a far simpler replacement of existing of existing assets as opposed to a significant upgrade of those assets.¹²

⁷ JT 2.19, Attachment 1, page 1

⁸ JT2.11

⁹ JT 2.1 Attachment 3

¹⁰ JT2.2 Attachment 4

¹¹ JT 2.6

¹² See for example, JT2.6 Attachment 1, page 1 of 60

3.0 COST EFFECTIVENESS

22. Hydro One's purports that its LSL project is more cost effective than the NextBridge alternative in three ways: (1) the route is 10% shorter; (2) it has a lower design and build (capital) costs; and (3) it offers lower operating and maintenance costs¹³. The Utility argues that this would make for savings of up to \$100 million in capital and that it would also provide \$3 million in annual OM&A savings.
23. The strongest and most recent evidence with respect to the actual price of the LSL proposal is found in the Business Case that was prepared for the plan and signed by all senior executives including the President and CEO of Hydro One on February 28, 2018. That memo sought (and received) approval for \$12.2 million in funds for the development phase of the LSL. The business case is at an AACE Class three level of precision. Meaning the variance may be between -20% to + 30% of the \$636 million LSL capital cost estimate. That is, the project might cost as much as \$827 million.

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

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hydroOne

¹³ See for example Exhibit JT 2.17, Hydro One letter of October 13, 2017 to IESO -

24. This Table above shows Hydro One's LSL cost as compared to those of NextBridge (\$737 million)¹⁴. Even a cursory review of the cost differences as presented to Hydro One's Board of Directors suggests that the Utility has taken a broadly optimistic view of the non-construction costs.¹⁵
25. For example, Hydro One lists its First Nation and Metis consultation costs as \$2.2 million yet the Utility has indicated that its Duty to Consult would encompass some 18 different communities.¹⁶
26. However, if Hydro One was required to by-pass Pukaskwa Nation Park (as is being proposed by NextBridge) this would add an additional \$40.751million to the cost of the project.¹⁷
27. Furthermore Hydro One has not imputed the cost NextBridge's development costs. At the time of the designation Upper Canada Transmission (NextBridge) estimated its development costs at \$22.2 million.¹⁸ The Board in its designation decision stated it would approve the development costs up to the budgeted amount for recovery. This means that Hydro One must add, at a minimum \$22 million to its costs to include those sunk development costs.
28. However, it is not clear to us that NextBridge is precluded from seeking recovery of additional development costs if such costs were prudently incurred. NextBridge has identified \$63.8 million in sunk costs. If the Board were to not approve its application, one can expect NextBridge will seek the full recovery of its sunk costs and an indeterminate amount of further wind-up costs. Since such costs, if approved for recovery, inevitably make their way into Uniform Transmission Rate (UTR) then notionally the costs are assigned to the successful LTC proponent.
29. Even in one assumes the LSL capital cost estimates are robust (and we do not) simply adding together the potentially development costs of NextBridge and the additional costs should the LSL not be approved to go through Pukaskwa National Park eliminates any potential cost advantage of Hydro One's proposal.
30. Finally NextBridge's estimate is at the AACE class 2 level. NextBridge has also stated that the room for its cost estimates to escalate are limited due to lump sum construction contracts¹⁹. In our view this means the Board should have more comfort with the veracity of the NextBridge cost estimates as compared to those for the LSL project.

¹⁴ See JT1.16 Attachment 1 for detailed breakdown of NextBridge capital costs

¹⁵ JT 2.19, Attachment 3, East West Tie – Board Approval to Submit Leave to Construct, December 8, 2017

¹⁶ JT 2.27

¹⁷ JT 2.20

¹⁸ Board Decision EB-2011-0140, East West Tie Designation Phase 2 Decision and Order, August 7, 2014, page 32

¹⁹ EB-2017-0182 HONI Interrogatory 7 (Exhibit I.B.NextBridge.HONI.7)

31. In response to a request by VECC, NextBridge provided a detailed list of what it considered would make the Hydro One cost estimate equivalent to its own²⁰. In its list are a number of deficiencies in the Hydro One forecast included as note indigenous participation costs, detailed cost estimates, and clarification on the engineering of the LSL project.
32. The NextBridge proposal suggests it will cost \$7.4 million per year in operating expenses. Hydro one suggested it can do this for \$3 million less. Yet is not clear to us that the costs in question are even comparable. NextBridge's costs include both operating and maintenance costs, but also other related costs as shown below.²¹

	in CADs
Operations & Maintenance	1,272,147
Regulatory	205,000
Compliance, including administration	3,248,463
TOTAL	4,725,610

33. With respect to the OM&A savings when VECC attempted to explore with Hydro One how the savings might be validated given the inherent difficulty of differentiating these incremental costs from Hydro One's other transmission costs. We were surprised with the response. That exchange is shown below²².

MR. GARNER: I see. Okay, thank you. I only have one other question, a final question, and again it's to do with costs.

In your costs, your ongoing OM&A costs are something like 1.5 million and NextBridge's are significantly higher, 4.3. In order for the Board, though -- if you were successful, in order for the Board to validate that proposition, how would you demonstrate that?

You are not going to have a separate company to do this, as I understand it. You are going to do it -- if you'll get it, you will do it within the Hydro One company. So how would one later in life, so to speak, be able to understand whether your 1.5 million is correct or whether in fact you are, in a sense, cross subsidizing?

I mean, are you going to have the helicopter tell people when they are right over the new part and not over the old part? I mean, how do you expect to demonstrate that efficiency of 1.5 versus 4.3?

²⁰ JT1.17

²¹ JT1.12

²² TC May 17, 2018, pages 230-232

MR. SPENCER: So a slight clarification to your assumption. We would, in fact, prior to energization of the line, form a new company that would be subject to its own -- we would file a cost of service application associated with that ongoing operation, maintenance and administration work.

We would establish appropriate service level agreements between the newco and Hydro One Networks in accordance with the Affiliate Relationship Code, and our forecast is certainly that the \$1.5 million is achievable.

We would also consider the revenues into the Hydro One Network side from that SLA to be an offset to otherwise potentially necessary revenue requirements.

34. As far as we can discern this is the first mention that Hydro One intends to operate LSL as a separate company. The application EB-2017-0364 is made in the name of Hydro One and not of a different company. Given this late breaking and unverified information we are at a loss to make any conclusions as to the operating and expense projections of this yet unnamed entity. It does however speak to the inadequacy of the current application.
35. Hydro One has made much of its claim that their application was, at least in part, motivated by the fact that the NextBridge current estimate is some 80% higher than the estimate presented to the Board in the designation proceeding. It is true that in the designation proceeding NextBridge (UTC) put forward a cost estimate of \$409 million and an annual operating cost of \$4.4 million. At the same time Hydro One's partnership proposal of EWT LP provided a cost estimate of between \$427 and \$490 million. And at that time EWT suggested annual operation costs of between \$7.1 million and \$4.9 million²³.
36. On the face of it then the proposal of Hydro One in this LTC-- a \$100 million capital cost saving -- is no different from the original designation proceeding in which the cost advantage of \$90 million of EWT was presented to the Board. What is different is that we have to now add so \$300 million to either proponents "designation estimates". Leaving one to question the accuracy and veracity of the costs presented by any of the competing parties at the designation process.
37. VECC was not an intervenor in EB-2011-0140, the designation proceeding for the East West Tie so it is difficult for us to draw certain conclusions. However, based on the evidence both in this proceeding and that provided the NextBridge LTC proceeding EB-2017-0182 it is clear to us that no party provided to the Board a reasonable estimate of the cost that would be incurred for this type of project.

²³ Board Decision EB-2011-0140, East West Tie Designation Phase 2 Decision and Order, August 7, 2014, pgs. 32-33

38. VECC examined this issue with Nextbridge asking that it show the comparison, based on cost per kilometer of line, its original "designation estimate" with that provided in its current LTC application. The results as well as comparable other projects are shown below.²⁴

	NextBridge EWT (Designation Proceeding)	New EWT	Bruce to Milton	BC NTL	2014 WECC	AESO Project 1	AESO Project 2
Voltage (kV)	230 kV	230 kV	500 kV	287 kV	230 kV	240 kV	240 kV
Length (km)	400	450	180	344	450	450	450
Costs reported in \$	2012	2017	2012	2014	2014	2013	2013
Total Cost Line Only (\$M)	419	777	651	746	611	1468	1333
Line Cost (adjusted to 2017 \$M)	489	748	395	840	794	1621	1474
2017 Cost M/km	1.22	1.66	2.19	2.44	1.76	3.60	3.27

39. Having not been a party to the designation proceeding VECC attempted to understand the veracity of the costs provided in that prior decision. Using the amended table (the far left column in added) from evidence in the NextBridge EB-2017-0182 LTC proceeding we asked as to the reasonableness of the cost estimates put forward in the designation process by querying the engineering experts presented by NextBridge.²⁵

MR. GARNER: Is the 166 on the low side from what you've seen before? It's certainly the lowest in this table, but is it -- have you seen numbers that low before? And again, you know, I know they're not in U.S. dollars per mile, but in your experience?

MR. GILL: Yeah, I think in the grand scheme of things 166 I wouldn't consider to be the lowest cost of a 230 kV transmission line, but given the terrain and climate and the conditions that we're in, it would be appropriate. You could see a lesser number for somewhere a little less challenging and a less costly -

MR. GARNER: All right. Well, and for this one could you see a number, for instance, for this one that might be one half of \$1.66 per kilometre?

MR. GILL: I think that's extremely aggressive.

MR. GARNER: You think it would be very rare to see a number that low, because it would be like in the 80 cents, I guess, per kilometre. That would be a very unusual number to see?

²⁴ JT1.20

²⁵ Technical Conference EB-2017-0182/0194 May 7, 2018, pages 141-142

MR. GILL: Yeah, that does strike me as extremely low.

MR. GARNER: Well, the reason I ask, of course, is that this project cost is now about double what it was at one time. So the original project cost, it seems to me, although we don't have a figure, would have been based on a number that would be somewhat like one half of that number, and you're telling me is that would be extremely rare. That's all I want to be clear about.

MR. GILL: Yes, so to characterize that given the conditions, you know, in this case it's the in-service year and the length. And so I think they need to be considered as part of the criteria that you would levelize those.

40. From this exchange it is apparent to us that none of the cost estimates provided to the Board at the designation process were reasonable approximations of the true capital cost of the East-West Tie. Competing parties were it appears in the vernacular – “low balling” in order to win the designation. In this proceeding there therefore a fair bit of “the pot calling the kettle black” when it comes to the veracity of prior forecasts. Neither Applicant particularly holds the high ground with respect to providing the Board with accurate information in the prior designation process.

Cost Certainty

41. In September 2017 Hydro One wrote to the Chair of the Ontario Energy Board stating that “Subject to discussions at that meeting, Hydro One is also prepared to submit a Leave to Construct application for our proposal with a “not-to-exceed” price guarantee by December of this year.” (emphasis in original).²⁶ This was followed by a letter on September 22, 2017 to the Board reiterating its “not-to-exceed” price proposal.
42. In the event the application filed by Hydro One has quietly resiled from the position of a \$636.1 million “not to exceed price”. While the proposition was put out to the Board prior to the filing of an LTC application no mention is made of its removal when that application was finally filed in 2018. And when questioned by VECC we were told²⁷:

MR. GARNER: Did you explicitly -- I couldn't find it-- did you explicitly inform the Board when you filed that application, or any time before that application, that you were resiling from the idea of the not-to-exceed price?

MR. SPENCER: It would have been clear to the Board when we filed our application for leave to construct.

²⁶ Exhibit JT2.17, Attachment 7, page 1 of 1

²⁷ TC Vol2, May 17, 2018, pages 219-220

MR. GARNER: How would it be clear in there? Did you explicitly state that that was no longer part of that proposal?

MR. SPENCER: The Board would have been able to review the materials to before them to arrive at that understanding.

43. We leave to the Board to draw its own conclusion on the transparency of the Application. However in our view Hydro One in 2017 led parties to believe it had a solid cost advantage proposal when it in fact had no such thing.
44. Hydro One also intervened in the NextBridge Application EB-2017-0182. A review of the interrogatories asked by Hydro One in that proceeding make it clear that it did so at least in part for the purpose of soliciting information for its competing application. An application filed in February of 2018 after interrogatory responses and not in December of 2017 as originally promised.
45. These latter points lead us to believe that Hydro One's LSL proposal is far from robust in its current form. Its costs estimates are preliminary. It cannot guarantee a cost advantage anymore over the NextBridge proposal. The form of the LSL corporate organization is unknown at this time. And the Hydro One requires the information of NextBridge in order to understand how it can proceed forward.t

4.0 RELIABILITY

46. There are obvious differences in the reliability characteristics of the two proposals. It is patently clear that the LSL proposal can be no more reliable than the NextBridge alternative. This is because of the obvious reliability advantage of a "two path" transmission service in east-west corridor as compared to the "single path" service under the LSL proposal. It is a simple truism that two transmission paths (Hydro One's existing and NextBridge's proposed), much like two airplane engines, offer a redundancy that provides safer and more reliable service.
47. The singularity of the Hydro One alternative proposals is highlighted by the issue as to whether to reinforce the current Hydro One line through Pukaskwa National Park. The evidence of NextBridge we think convincingly highlights the reliability questions that arise in the idea of replacement of Hydro One's double circuit towers with quad circuit.²⁸

²⁸ NextBridge, Additional Material Attachment B

48. In VECC's submission Hydro One's quad tower design would need to be reviewed by the IESO in order for the OEB to understand the cost-reliability trade-offs that might be made by this alternative design.

5.0 CONSULTATION

49. In VECC's view the evidence with respect to the issue of consultation is both compelling and disturbing. The second criteria on the Board's designation criteria was "First Nations and Metis Participation". In the designation decision the Board stated:²⁹

In evaluating the applications in this area, the Board kept in mind the distinction between participation and consultation, and considered the following factors:

- *Whether the existing arrangement or plan provides for equity participation by First Nations and Métis communities.*
- *The extent to which the existing arrangement or plan provides for other economic participation such as training, employment, procurement opportunities, etc. for all impacted communities.*
- *• The degree of commitment to the plan.*

50. In VECC's submission the current process makes a mockery of those goals. Having participated in this proceeding we can say that we are disturbed by the manner in which First Nation and Metis interest have become pawns to competing corporate interests. We would draw the Board's attention in this regard to the comments of Chief Collins³⁰:

CHIEF COLLINS: I can help out with that question, I guess. What I'll -- how I'll explain is as we have in our community right now, we have about ten different companies that are starting to purchase equipment and get ready for the job. But also we have 250 students, or 250-plus students also preparing to take on the workforce on this project.

Here's the personal impact of that. We have young people that their lives were going this way. With this opportunity now, it's going this way in anticipation of being on the ground working in 2018.

²⁹ Board Decision EB-2011-0140 Desi page 15.

³⁰ TC May 16, 2018, pages 22-23

So that in-service date is critical for our community, not only for our members, but for our contractors that we have. We have put a lot of time and a lot of effort to get to where we are today. All six of our partnering communities have taken away our leadership roles at our community to make sure this project is getting off the ground, and we get exactly what we're looking for.

If you look at how the structure is, I mean, this is not a simple thing and it's not a simple process that we've been involved with. We walked away from the process a few times because we were not getting what we wanted.

We got to where we are, where we want. We spent a lot of our resources, a lot of our time, a lot of our energy and one of the things people don't understand, I'm not just a president of this board, I am not just the chief of my community. I am everything from A to Z in our community. We have so many responsibilities. I mean, this is one, but there's so many different impacts in our community that we deal with day in and day out.

You know, creating jobs is an opportunity and creating a future for families. And Chief Johanna said this yesterday. We are not just impacting 350; we could be impacting 1,500 people, depending on the size of your family. If you have a family of five, then times that by 300 and you have 1,500 people that you are impacting.

So that's what the impacts will be. Hopefully, I've answered your question.

MS. CRNOJACKI: Thank you.

51. These communities have operated in good faith and attempted to work within the process defined by the Board. They appear now to be victim of the inexactitude of this process. In our submission the Board needs to restore First Nation rectitude to this this processes.
52. For this reasons we urge the Board to highly weight the submissions of the First Nation and Metis Communities.

6.0 THE PROCESS

53. Hydro One has relied upon the fact that the designation process does not grant exclusivity to the successful party (NextBridge). It, follows, then it is argued, that it is open for Hydro One to put forth a new application. We think not.
54. Yes, it is true that Hydro One is technically correct. The designation process was not the leave-to-construct process. But it is also true that the Board did not contemplate a three part process. That is, designation/development work was not to be followed by a phase in which that development work would be reviewed and parties invited to use that work to then apply for a leave to construct. It is obvious from a plain reading of the Board's decision that while designation did not imply approval of leave-to-construct (LTC), barring unusual circumstances that it what would occur.

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. In designating a transmitter, **the Board is providing an economic incentive: the designated transmitter will recover its development costs up to the budgeted amount (in the absence of fault on the part of the transmitter), even if the line is eventually found to be unnecessary. The designation may be rescinded and costs denied if the designated transmitter fails to meet the performance milestones for development or the reporting requirements imposed by the Board in this decision**³¹. (emphasis added)

55. VECC further examined this issue at the Technical Conference³²:

MR. GARNER: I see. Now, I just wanted to talk a little bit about the designation process, and I wasn't part of it, so you'll excuse me if I demonstrate my ignorance in parts of it.

But as I understand the designation process, the Board went through a number of criteria and it indicated in there it was -- the designation process wasn't the forum in which it would actually provide what became the leave to construct, and it did -- and it selected a person to go forward and begin the development work.

Was it your understanding from that process that the Board would have a -- what I might call phase 3, where once that development work was done, it would then call the parties forward and take a look at that work, and decide whether it should move forward with a different party?

³¹ OEB East-West Tie Designation Phase 2 Decision and Order, EB-2011-0140, Page 4

³² TC Technical Conference May 17, 2018, pages 220-222

MR. SPENCER: My understanding of the Board always intended to have a leave-to-construct process associated with this project.

MR. GARNER: Well, that's pedantic, though, right, because it has to be by law, but that's not the point I'm making. What I'm saying is was it your -- was it Hydro One's view that that process would include a supplementary part of the process where once the designator had done a certain amount of development work, that development work would then be presented and the Board would review its decision and allow parties to now come forward before the leave to construct in any manner to have a review now?

[Witness panel confers]

MR. SPENCER: So I'm just honestly going to read from our evidence filed on May 7th, page 25.

MR. GARNER: Mm-hmm.

MR. SPENCER: And so the paragraph starting:

"Finally, the OEB 2013 order designating NextBridge for the development phase made it clear that it was possible that another proponent would be constructing and building that line. Specifically, under the heading 'implications of designation', the OEB explained the order made it clear that the designation and exclusive rights 21 enjoyed thereunder were limited to the development phase of the project and 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 designated or not."

56. It is clear that the Board did not contemplate a middle step – something between the approval of designation and the LTC. Had it done so we would not be arguing in this proceeding about whether there are common rights to the intellectual properties of NextBridge's development work. The Board would have contemplated that facet of the process and allowed for the use of development work by any party. To do otherwise would be to conclude that the Board was unaware and unconcerned about the potential for millions of dollars to be paid for by ratepayers and then to be thrown away on an unproductive exploration of the needed transmission facilities.
57. What the Board did allow for was the possibility that the proposal of its designee would be so different that it would need to re-examine its designation decision. And this is indeed what has happened. NextBridge's cost proposal bears little resemblance to its designation proposition. But then neither does Hydro One's prior EWT to its current LSL proposal.
58. In our view the question as to why the designation process provided such seriously deficient cost proposals - **from all applicants** - is an issue – just not the one before the

Board in this proceeding. It is certainly an issue that should and undoubtedly will be closely examined as part of any LTC application.

7.0 CONCLUSIONS

59. The state of affairs in this matter speaks highly of no party, including with respect, the Ontario Energy Board. Over \$60 million dollars have been invested in the East-West Tie project and we are now to argue whether that is to be for nought. Plainly put, what the Board has before it is an application based on years of work undertaken because of a Board's decision to allow that to happen. And a wholly new application which in essence challenges the outcome of designation process.
60. On the other hand we have a deadline. If that deadline is to be changed that the Board must engage the IESO to determine the public interest. And more so – the security and reliability of electricity service in the north eastern portion of this Province.
61. This process has not directly engaged the IESO. It is clear to us that if delay is in the opting then it is incumbent on the Ontario Energy Board to have a public process to understand the consequence of its course of action.
62. Whatever the outcome of this motion ratepayers look to be the losers. A process that promised the benefit of competition has ultimately distilled itself down to two companies fighting for monopoly rights over consumers. Neither offers anything close to the cost of service held out as feasible in the designation process. If there is some benefit to ratepayers in all of this it is lost on us.
63. The best that can be hoped for at this juncture is for the current proponent to be scrutinized with the aid of the cost projects provided by Hydro One. Hydro One can be part of that process. If the Board determines that NextBridge has misled the Board or that its costs are inflated and can be significantly reduced then it can take the appropriate action. It can seek the opinion of the IESO, deny the LTC of NextBridge and then proceed with the LTC application of Hydro One. One step at a time.

8.0 COSTS INCURRED

64. VECC respectfully submits that it has acted responsibly and efficiently during the course of this proceeding and requests that it be allowed to recover 100% of its reasonably incurred costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED