EB-2017-0364

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.

COMPENDIUM AND AUTHORITIES OF THE SCHOOL ENERGY COALITION
(Nextbridge Motion)

Shepherd Rubenstein P.C.
2200 Yonge Street, Suite 1302
Toronto, Ontario M4S 2C6

Mark Rubenstein
Tel: 416-483-3300
Fax: 416-483-3305

Counsel for the School Energy Coalition

INDEX

32. Undertaking JT2.30
33. IESO, *Updated Assessment of the Need for the East-West Tie* (December 1 2017)
34. Nextbridge - Additional Material, Attachment H

ONTARIO ENERGY BOARD

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

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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:

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[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 2018[11], NextBridge EA approval by October 2018[12], MOECC approval of the route changes by June 2019[13], Parks Canada approval of the construction of 35 kilometers of new transmission towers with four circuits and guyed wires[14], and that Hydro One starts construction in July 2019[15].

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*.

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[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

Aird & Berlis LLP
Suite 1800, 181 Bay Street
Toronto, Ontario.
M5J 2T9

Fred D. Cass
Counsel for NextBridge

TO: Hydro One Networks Inc.
7th Floor, South Tower
483 Bay Street
Toronto, Ontario.
M5G 2P5

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?

Ontario Energy Board Act, 1998, **S.O. 1998, c. 15, Sched. B**

Board objectives, electricity
1 (1) The Board, in carrying out its responsibilities under this or any other Act in relation to electricity, shall be guided by the following objectives:

1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.

1.1 To promote the education of consumers.

2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.

3. To promote electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances.

4. To facilitate the implementation of a smart grid in Ontario.

5. To promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Government of Ontario, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities. 2004, c. 23, Sched. B, s. 1; 2009, c. 12, Sched. D, s. 1; 2015, c. 29, s. 7.

Board's powers, miscellaneous
21 (1) The Board may at any time on its own motion and without a hearing give directions or require the preparation of evidence incidental to the exercise of the powers conferred upon the Board by this or any other Act. 1998, c. 15, Sched. B, s. 21 (1).

Hearing upon notice
(2) Subject to any provision to the contrary in this or any other Act, the Board shall not make an order under this or any other Act until it has held a hearing after giving notice in such manner and to such persons as the Board may direct. 1998, c. 15, Sched. B, s. 21 (2).

(3) Repealed: 2000, c. 26, Sched. D, s. 2 (2).

No hearing
(4) Despite section 4.1 of the *Statutory Powers Procedure Act*, the Board may, in addition to its power under that section, dispose of a proceeding without a hearing if,

(a) no person requests a hearing within a reasonable time set by the Board after the Board gives notice of the right to request a hearing; or

(b) the Board determines that no person, other than the applicant, appellant or licence holder will be adversely affected in a material way by the outcome of the proceeding and the applicant, appellant or licence holder has consented to disposing of a proceeding without a hearing.

(c) REPEALED: 2003, c. 3, s. 20 (1).

Consolidation of proceedings
(5) Despite subsection 9.1 (1) of the *Statutory Powers Procedure Act*, the Board may combine two or more proceedings or any part of them, or hear two or more proceedings at the same time, without the consent of the parties. 2003, c. 3, s. 20 (2).

Non-application
(6) Subsection 9.1 (3) of the *Statutory Powers Procedure Act* does not apply to proceedings before the Board. 1998, c. 15, Sched. B, s. 21 (6).

Use of same evidence
(6.1) Despite subsection 9.1 (5) of the *Statutory Powers Procedure Act*, the Board 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, without the consent of the parties to the second-named proceeding. 2003, c. 3, s. 20 (3).

Interim orders
(7) The Board may make interim orders pending the final disposition of a matter before it. 1998, c. 15, Sched. B, s. 21 (7).

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. 2016, c. 10, Sched. 2, s. 14.

Same
(2) Subsections 28.6 (2) and (3) apply with necessary modifications in respect of directives issued under subsection (1). 2016, c. 10, Sched. 2, s. 14.

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).

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.

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.

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.

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.

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.

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.

***Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22**

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).

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).

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)

TABLE OF CONTENTS

PART VI - COSTS

PART VII - REVIEW

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;

“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;

"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*;

"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.

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.

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;

(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.

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.

31.03 A member of the Board who presides at a pre-hearing conference may make such orders as he or she considers advisable with respect to the conduct of the proceeding, including adding parties.

PART V - HEARINGS

32. Hearing Format and Notice

32.01 In any proceeding, the Board may hold an oral, electronic or written hearing, subject to the *Statutory Powers Procedure Act* and the statute under which the proceeding arises.

32.02 The format, date and location of a hearing shall be determined by the Board.

32.03 Subject to **Rule 21.02**, the Board shall provide written notice of a hearing to the parties, and to such other persons or class of persons as the Board considers necessary.

33. Hearing Procedure

33.01 Parties to a hearing shall comply with any directions issued by the Board in the course of the proceeding.

34. Summons

34.01 A party who requires the attendance of a witness or production of a document or thing at an oral or electronic hearing may obtain a Summons from the Board Secretary.

34.02 Unless the Board directs otherwise, the Summons shall be served personally and at least 48 hours before the time fixed for the attendance of the witness or production of the document or thing.

34.03 The issuance of a Summons by the Board Secretary, or the refusal of the Board Secretary to issue a Summons, may be brought before the Board for review by way of a motion.

35. Hearings in the Absence of the Public

Ontario Energy Board

Commission de l'énergie de l'Ontario

EB-2011-0140

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.

BEFORE: Cynthia Chaplin
Presiding Member and Vice-Chair

Cathy Spoel
Member

PHASE 1 DECISION AND ORDER

July 12, 2012

INTRODUCTION

On February 2, 2012, the Ontario Energy Board issued notice that it was initiating a 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. The Board assigned File No. EB-2011-0140 to the designation proceeding. Seven transmitters registered their interest in the designation process.

The Board developed the Framework for Transmission Project Development (EB-2010-0059) (the “Policy”) as a way to encourage the timely development of electric transmission construction in Ontario. A number of transmission projects were expected to be identified by the Ontario Power Authority (“OPA”) through an Economic Connection Test or an Integrated Power System Plan to accommodate the connection of renewable generation. The designation process outlined in the Policy has, nevertheless, been adopted by the Board in this proceeding for a single bulk transmission line that was identified in the Minister’s Long Term Energy Plan to address reliability issues. The East-West Tie line will run between Thunder Bay and Wawa, and connect to the bulk transmission system in Northern Ontario at transformer stations owned by Hydro One Networks Inc. ("HONI”).

This designation proceeding represents an evolving process as the Board applies the Policy for the first time. The Board has adopted a two phase process for the designation proceeding. In Phase 1, which is the subject of this decision and order, the Board establishes specifics for the proceeding including decision criteria, filing requirements, obligations and consequences arising on designation, the hearing process for Phase 2 and the schedule for the filing of applications for designation.

In Phase 2, the registered transmitters will have an opportunity to file their applications for designation, and the Board intends to select one of them as the designated transmitter through a hearing process. The Board notes that this proceeding is voluntary on the part of the registered transmitters and intends that this Phase 1 decision and order will assist them in deciding whether to make an application for designation in Phase 2. The Board will not, at this stage, compel any transmitter to file a plan for the line.

It is important to remind participants of the limited scope of this process, which is the selection of a designated transmitter to do development work for the East-West Tie line. The final determination of the need for the line will be considered in a subsequent leave to construct proceeding. In general, environmental matters are not within the mandate of the Board and the necessary environmental assessment will be conducted in another forum.

THE PROCEEDING

On February 2, 2012, the Board issued a Notice of Proceeding for this designation proceeding. On March 9, 2012, the Board issued Procedural Order No. 1, granting intervenor status to the seven transmitters registered in this proceeding, namely: AltaLink Ontario, L.P. ("AltaLink"); Canadian Niagara Power Inc. ("CNPI"); EWT L.P.; Iccon Transmission Inc. ("Iccon"); RES Canada Transmission L.P. ("RES"); TransCanada Power Transmission (Ontario) L.P ("TPT"); and Upper Canada Transmission, Inc. ("UCT").

The Board's Decision on Intervention and Cost Award Eligibility, dated March 30, 2012, and the Board's Procedural Order No.2, dated April 16, 2012, granted intervenor status to 24 parties (or, in some instances, groups of parties) and cost award eligibility for the proceeding to nine of those parties. The matter of costs is discussed in further detail at the end of this decision.

Procedural Order No. 2 included the Board-approved issues list for Phase 1. On June 14, 2012, the Board issued its Phase 1 Partial Decision and Order to deal specifically with issue 19 of the issues list. This decision ordered HONI and Great Lakes Power Transmission LP ("GLPT") to file with the Board, and provide to other parties, certain documents in their possession which may be relevant to the development of the East-West Tie line. This decision addresses the other issues identified for Phase 1 of the proceeding.

BOARD FINDINGS ON THE ISSUES

The Board's primary objective in this proceeding is to select the most qualified transmission company to develop, and to bring a leave to construct application for, the East-West Tie line. The Board recognizes that the key to achieving this objective is the establishment of an efficient and transparent competitive process that avoids bestowing any unfair advantage upon a particular applicant or group of applicants. The Board's view is that competition is best served by creating an open, fair and cost-efficient proceeding that encourages multiple qualified proponents to participate. The Board has considered each of the issues in this light.

Decision Criteria: Issues 1 – 4

Issue 1. What additions, deletions or changes, if any, should be made to the general decision criteria listed by the Board in its policy Framework for Transmission Project Development Plans (EB-2010-0059)?

For the reasons given under issues 1 to 4, the Board's criteria for this designation process are:

- Organization
- First Nation and Métis participation
- Technical capability
- Financial capacity
- Proposed Design for the East-West Tie line
- Schedule
- Costs
- Landowner, municipal and community consultation
- First Nation and Métis consultation
- Other factors

Original criteria

There was general support among the parties for the retention of the original criteria from the Policy. The Board agrees that these original criteria remain valid for the East-West Tie line project, and will retain the following criteria in their original form: organization, technical capability, financial capacity, schedule, costs, and other factors. The criterion "landowner and other consultations" will be subdivided, as described below.

Several parties suggested that the Board provide guidance as to the way in which it would asses the criteria "cost" and "other factors". Regarding cost, the Board acknowledges, as several parties observed, that one of the purposes of the development work itself will be the estimation of construction and operation and maintenance costs, and that therefore applicants for designation will likely not be in a position to provide an accurate estimate of construction and operating and maintenance costs at the time of their application. Nevertheless, the Board finds that it must consider

all costs in assessing the merits of the various applications. Providing benefit to ratepayers through economic efficiency is a core objective in the Board's Policy, and the reasonableness of the total costs of the project will be a critical component in achieving that objective. The Board will therefore require that parties include in their applications an estimate of all costs, including those related to: preparation of an application for designation; development; construction; and operation and maintenance of the line.

However, in recognition of the uncertainty inherent in estimating costs of construction and operation and maintenance of the line, the Board will accept these estimates expressed as a range. All the transmitters who have registered their interest in the East-West Tie line project have, or have access to, experience in the construction of major infrastructure projects, and the Board expects that they will be able to create a reasonable estimated range for these costs, and provide justification for the cost estimates and width of the range. The Board will also require applicants to provide evidence of their plan to manage the costs of construction and operation and maintenance, and of their track record in estimating construction costs and keeping to those estimates.

Applicants should also describe any proposals they have regarding the recovery of the various categories of costs from ratepayers. For example, the Board notes TPT's submission that no applicant, including the designated transmitter, should be able to recover the costs of participating in the designation process. While this is not the Board's ruling (see issue 14 below), the Board invites any applicant to distinguish itself by proposals that reduce costs or risks for ratepayers for any category of cost.

The Board will retain the criterion "other factors", but will not specify at this time what factors or evidence will be considered under this criterion. This criterion offers applicants the opportunity to bring forward any distinguishing feature of their application that is not addressed in the other criteria. The Board acknowledges that this criterion is open-ended. However, all potential applicants are in the same position and have the same opportunity to provide evidence under this criterion. Experienced transmitters, such as those who have registered their interest in this proceeding, may bring forward useful information that the Board cannot anticipate at this stage in the proceeding.

Additional criteria, other than First Nation and Métis issues

The submissions of parties contained several proposals for additional criteria. The Board will not add a specific additional criterion relating to facilitating competition and new entrants. The facilitation of competition and the encouragement of new entrants to transmission in the province was part of the context for the Board's Policy, and are being recognized by the initiation of this designation process. Any applicant who wishes to bring evidence of any advantage to Ontario ratepayers of the designation of a new entrant for this project is invited to do so as part of the "other factors" criterion.

The Board finds that there is no need to create additional criteria related to the provision of socio-economic benefits, the ability to mitigate environmental impacts, regulatory expertise, or location-specific experience. Each of these issues will be considered to some degree under the criteria "technical capability" and "organization". The Board notes that mitigation of environmental and socio-economic impacts is considered as part of the Environmental Assessment process. The Board will not require evidence of an applicant's ability to mitigate these impacts, but will require evidence of the applicant's ability to successfully complete regulatory processes similar to Ontario's Environmental Assessment process.

With respect to regulatory expertise, the Board will require evidence under the criterion "technical capability" of an applicant's ability to successfully complete the regulatory processes necessary for the construction and operation of the line.

The Board will not necessarily favour experience in Ontario over experience in other jurisdictions. It is important that the designated transmitter be fully capable of constructing and operating an electricity transmission line that meets the needs identified by the OPA and the Independent Electricity System Operator ("IESO") in the location proposed in the transmitter's plan. However, the experience necessary to achieve this capability may have been gained in other jurisdictions. The Board invites applicants to bring evidence of their experience and to demonstrate its relevance to the East-West Tie line project.

The Board finds that three additional criteria are appropriate to address the specific circumstances of this designation process. The Board will add the new criterion "Proposed Design for the East-West Tie Line". In creating this additional criterion, the Board has particularly considered the submissions of Board staff, the IESO, RES, the

Power Workers Union ("PWU") and EWT LP. The evidence to be filed to satisfy this criterion is largely that listed in section 5 of Board staff's proposed filing requirements presently titled "Plan Overview". The criterion is intended to be assessed as pass/fail in respect of whether the applicant's plan for the line meets the targeted transfer capability while satisfying all applicable reliability standards. However, the other evidence to be filed under this criterion by each applicant will be compared against the plans of the other applicants to assess the relative strengths of the proposed designs. An applicant may demonstrate under this criterion the ways in which its technical design for the line provides advantages to the transmission system, local communities or transmission ratepayers, or demonstrates advantageous innovation, or in some way exceeds the minimum requirements while remaining cost effective.

The Board will divide the original criterion "landowner and other consultations" into two criteria: "landowner, municipal and community consultation" and "First Nation and Métis consultation". The delineation of "landowner, municipal and community consultation" from the more general original criterion is intended to make explicit the need for consultation with municipalities and communities located along the transmission line corridor.

Issue 2. Should the Board add the criterion of First Nations and Métis participation? If yes, how will that criterion be assessed?

Issue 3. Should the Board add the criterion of the ability to carry out the procedural aspects of First Nations and Métis consultation? If yes, how will that criterion be assessed?

Issue 4. What is the effect of the Minister's letter to the Board dated March 29, 2011 on the above two questions?

The Board finds that the Minister's letter is not a directive within the meaning of the *Ontario Energy Board Act, 1998.* However, the letter is an expression of the government's interest in promoting First Nations and Métis participation in energy projects, and is consistent with government policy as articulated in the Long Term Energy Plan.

The Board will create the criterion "First Nation and Métis participation" and, as indicated in the previous section, divide the original criterion "Landowner and other consultations" into two criteria: "landowner, municipal and community consultation" and

"First Nation and Métis consultation". The Board recognizes that First Nation and Métis consultation is unique in being a constitutional obligation on the Crown, certain aspects of which may be delegated to the designated transmitter. Applicants will be required to demonstrate their ability to conduct successful consultations with First Nation and Métis communities, as may be delegated by the Crown, by providing a plan for such consultations, and evidence of their experience in conducting such consultations.

The Board will not look more favourably upon First Nation and Métis participation that is already in place at the time of application than upon a high quality plan for such participation, supported by experience in negotiating such arrangements. "Participation" can mean many things, and the Board will not restrict its consideration to any particular type of participation. Applicants are invited to demonstrate the advantages of whatever type and level of First Nation and Métis participation they have in place, or are proposing to secure.

The Board notes the proposal of the Ojibways of Pic River First Nation ("PRFN") that the First Nation and Métis participation criterion be categorized, weighted, and scored by the impacted relevant communities. The Board will not adopt this methodology for assessing the criterion, which could amount to an improper delegation of its decision making power. The Board will evaluate this criterion through the public hearing process, and the various intervenors representing First Nation and Métis interests, along with the other parties, can seek input from their constituencies and bring that information forward for the Board's consideration in the hearing.

Use of the Decision Criteria: Issues 5 and 6

Issue 5: ***Should the Board assign relative importance to the decision criteria through rankings, groupings or weightings? If yes, what should those rankings, groupings or weightings be?***

Issue 6: ***Should the Board articulate an assessment methodology to apply to the decision criteria? If yes, what should this methodology be?***

The Board will not, at this time, articulate an assessment methodology to be applied to the decision criteria, nor will it ascribe any relative importance to the decision criteria through a weighting system. The Board appreciates the points made in the submissions from some parties that assigning weights or rankings to the criteria would

assist applicants in focusing their applications towards factors that the Board considers important. However, the Board is unwilling to remove the discretion and flexibility it may need in evaluating the applications for designation. The Board will exercise its judgment for each criterion, with the assistance of the evidence presented and the submissions received from all parties.

The Board notes that in providing decision criteria and filing requirements, it has provided some guidance to potential applicants, and that all applicants face the same challenge in designing their proposals around these criteria and filing requirements. All the decision criteria are important, and the Board is unwilling to restrict its ability to give full consideration to each criterion before it is informed by the content of the applications for designation.

Filing Requirements: Issues 7 and 8

Issue 7. What additions, deletions or changes should be made to the Filing Requirements (G-2010-0059)?

As part of its Policy, the Board issued its "Filing Requirements: Transmission Project Development Plans" (G2010-0059) dated August 26, 2010. Board staff proposed revisions to the original filing requirements to take into account the specific circumstances of the East-West Tie line. These revised filing requirements were attached as Appendix A to Board staff's April 24, 2012 submission. Most parties agreed with the reorganization of the filing requirements proposed by Board staff, but had specific suggestions for additions, deletions or changes.

The approved filing requirements for the East-West Tie line designation process are attached as Appendix A to this decision. The filing requirements have been modified from Board staff's proposed filing requirements to reflect the Board's findings in this Phase 1 decision. Certain issues raised by parties, and not otherwise addressed in this decision, are discussed below.

Background Information

AltaLink submitted that an additional requirement should be added to require each applicant to file a statement from a senior officer that the applicant is not in a position of an actual or perceived conflict of interest. The Board finds that this requirement is

unnecessary at this time. The Board, in issues 20 – 22 in this decision, addresses issues arising from the participation of entities related to incumbents. The Board can address this issue further through Phase 2 in the event additional concerns are identified.

Technical Capability

AltaLink and Iccon submitted that references to experience in Ontario and experience involving similar terrain, climate and other environmental conditions should be excluded from the filing requirements. EWT LP submitted that experience in Ontario and in similar terrain, climate and other environmental conditions is important when assessing a transmitter's technical experience.

As mentioned under issue 1 in this decision, the Board finds that it is appropriate for applicants to document their experience, wherever gained, and to demonstrate the relevance of that experience to the East-West Tie line project.

The Board will not, as urged by TPT, change the wording in the filing requirements to refer only to “linear infrastructure”, but recognizes that such experience may be relevant to the construction and operation of the East-West Tie line.

The Board will require evidence of consistency with good utility practice in the areas of safety, environmental compliance, and regulatory compliance.

Financial Capacity

School Energy Coalition (“SEC”) recommended the addition of a requirement for information on the current credit rating of the applicant and its parent company. The Board has adopted this proposal.

Plan Overview (now Proposed Design)

Some parties submitted that the requirements listed in Section 5.1 of Board staff’s proposed filing requirements are too detailed for the designation applications since providing this information would require development work which should not be part of the designation process. EWT LP suggested that these requirements should be determined by the designated transmitter once designated and that only a description of

the development activities planned to determine these requirements should be included in the designation application.

The Board is of the view that the filing requirements should require the applicant transmitters to provide sufficient detail to allow the Board to carry out a meaningful, thorough and accurate assessment of the applicant transmitters and their proposed plans. However, the Board also recognizes the time, effort and cost associated with preparation of detailed designation applications. If an applicant is unable to provide certain information, then it can provide a description of the methodology it will use to develop the information. The Board has made the list under this section (now 6.1) optional rather than mandatory, and provided the option of describing the method and criteria for the determination of these parameters.

Board staff noted that section 2.1.5 of the Board's Minimum Technical Requirements requires that "all proposed design assumptions" be provided by the applicant. Board staff recommended that the need to provide "all proposed design assumptions" be excluded from the designation application because this information will not be available to the applicants before development work for the line is well underway.

The Board agrees with Board staff that it would be premature to expect the applicants to be able to provide this information prior to having done at least some development work, and will not include a requirement for "all" design assumptions in the filing requirements. As a general rule, the Board agrees with UCT and PWU that if the filing requirements require detail which is impossible or impractical to obtain, the applicant should respond to the best of its ability and identify the factors that prevent a full response or require deviation from the filing requirements. The Board also acknowledges, as submitted by RES, that plans will evolve during the development phase.

The Board will adopt the proposal of the OPA (supported by SEC) for a requirement to outline how a proposed plan leads to a lower cost solution than other alternatives while meeting the project requirements. The Board is not, at this stage, asking applicants to compare their plans to those of other applicants, but to other options for the East-West Tie line that could reasonably be considered to satisfy the need for the line.

Schedule

EWT LP suggested that section 6.3 of Board staff's proposed filing requirements related to information regarding the construction phase of the project should be eliminated since this would require environmental assessment work and consultation which will not have been done at the time of filing the applications. Some parties suggested that specific milestone dates should be removed.

The Board is of the view that the requirements in section 6.3 will be helpful to the Board in assessing the merits of the applicants' proposed plans and that they should remain in the filing requirements. The Board is not seeking a commitment, but information to assist it in understanding the applicant's overall strategy for completion of the project. The Board recognizes that the construction schedule will change as a result of the more detailed development work to be carried out by the designated transmitter.

Costs

Board staff's revisions to the original filing requirements propose a number of additions including, among other things, amounts already spent for preparation of an application, major risks that could cause the applicant to exceed its development budget, strategy to mitigate risks, threshold of materiality for prudence review of cost overruns and evidence of the applicant's past success in completing similar transmission line projects.

The Board finds that it is reasonable to simplify the development cost breakdown by grouping some categories of cost. The Board is of the view that, while development cost estimates will be considered, the magnitude of development costs will be small in comparison to the total costs of the East-West Tie project. Consequently, an applicant's demonstrated ability to manage complex projects and control all costs is more important for the selection of a designated transmitter than the estimate of development costs.

Also, the Board concludes that the applicants are not required to propose a threshold of materiality for prudence review if cost overruns occur for the costs of development. Instead, the Board will ask parties to address this matter in their submissions in Phase 2.

Consultation

The Board determined under issue 1 that there will be a separate criterion for First Nation and Métis consultation, and the filing requirements have been modified accordingly. The Board has adopted most of the wording for this section proposed by the Métis Nation of Ontario ("MNO").

Several parties submitted that the information regarding routing in staff's proposed section 8.3 should not be required as this information will be unreliable until environmental assessment work has been done. The Board will permit applicants to file routing information at the level of detail they believe is appropriate, and will be assisted by such description as the applicant can provide regarding the route or routes it is considering.

Issue 8: May applicants submit, in addition or in the alternative to plans for the entire East-West Tie Line, plans for separate segments of the East-West Tie Line?

The Board will not permit applicants to submit plans for separate segments of the East-West Tie line. The Board recognizes that the proposed line could possibly be considered two segments, one from Wawa to Marathon and one from Marathon to Thunder Bay. However, the need identified by the OPA and the IESO cannot be satisfied by one of these two segments alone, and the project is best considered as a single unit. The Board agrees with those parties that submitted that attempting to consider separate applications for the two line segments would add cost and complexity to the designation process, require extensive co-ordination between the two selected transmitters, and could create additional risk for ratepayers and confusion for communities that are to be consulted. However, the Board would consider a joint venture or joint application from two or more parties who together propose to complete the entire East-West Tie line. Such a joint application would have to include a clear acceptance of risks and obligations by each party for the completion of the entire project.

Obligations and Milestones: Issues 9 – 12

Issue 9: ***What reporting obligations should be imposed on the designated transmitter (subject matter and timing)? When should these obligations be determined? When should they be imposed?***

Issue 10: ***What performance obligations should be imposed on the designated transmitter? When should these obligations be determined? When should they be imposed?***

Issue 11: ***What are the performance milestones that the designated transmitter should be required to meet: for both the development period and for the construction period? When should these milestones be determined? When should they be imposed?***

Issue 12: ***What should the consequences be of failure to meet these obligations and milestones? When should these consequences be determined? When should they be imposed?***

The Board will not impose a "performance obligation" in the sense of a performance bond or other financial instrument on the designated transmitter. Those parties who chose to address this issue in their submissions largely agreed with Board staff that a financial performance obligation was not necessary. The Board accepts the submission of EWT LP that the regulatory risk of cost disallowance is a deterrent to a voluntary failure to perform. The Board also agrees with SEC that the Board has the authority to impose conditions through amendments to the designated transmitter's licence if non-financial obligations are necessary.

The Board agrees with Board staff and other parties that it will be necessary to impose performance milestones and reporting obligations on the designated transmitter. The objectives of the milestones and reporting are:

- to ensure that the designated transmitter is moving forward with the work on the East-West Tie line in a timely manner;
- to facilitate early identification of circumstances which may undermine this ability to move forward; and

- to maintain transparency, as the costs of development work are intended to be recovered from ratepayers.

The Board will require, through its filing requirements, applicants for designation to propose performance milestones and reporting obligations that accomplish these objectives. The Board is reluctant to pre-determine the milestones and reporting that the successful applicant must accept, and expects that the experience in major project management that the applicants will bring to the designation process will be of assistance to the Board in setting appropriate conditions.

The proposed milestones and reporting obligations should apply to both the development phase and construction phase of the project, although the Board accepts that the milestones and reporting for the construction phase will be reconsidered and finalized during the Board's consideration of the leave to construct application. The Board will consider construction milestones and reporting only as indicative, and does not intend to impose those obligations at the time of designation.

Potential applicants for designation and other parties should note that the Board is not limited to imposing on a designated transmitter only those performance milestones and reporting obligations that the transmitter proposed in its application. All parties may choose to make submissions concerning the appropriate milestones that should be imposed on any transmitter that may be selected for designation. The Board will not impose novel conditions without providing designation applicants the opportunity to address the appropriateness of such conditions. The Board will establish the reporting requirements and performance milestones through an amendment to the designated transmitter's licence.

The Board finds that is it premature to determine in this Phase 1 decision the consequences for failure to meet the required performance milestones and performance obligations. Applicants for designation must include in their applications their proposals regarding the consequences of failure to meet their proposed performance milestones and reporting obligations.

The Board's policy indicates that the loss of designation and the inability to recover development costs are two potential consequences of failure. The Board is of the view that the severity of the consequences should be proportional to the severity of the

breach, and take into account the designated transmitter's mitigation efforts. In determining how to address any failure the Board will consider:

- the nature and severity of the failure
- the specific circumstances related to the failure
- the consequences of the failure
- the designated transmitter's proposal to address the failure

The Board notes SEC's submission that if a designated transmitter does not bring forth a leave to construct application, it must relinquish ownership of all information and intellectual property that it created or acquired during the development phase. AltaLink and others argued in response that to require delivery of all such information and intellectual property would be punitive, confiscatory and contrary to the public interest. The Board will not determine this issue at this time. However, if failure of the project occurs, and development costs are to be recovered from ratepayers, the Board may wish to consider whether information gathered and even design work completed at ratepayer expense must be made available to a substitute transmitter.

Runner up

Board staff, in its submission, asked parties to comment on the issue of whether one or more "runners-up" for designation should be selected by the Board. Some of the registered transmitters were not in favour of the Board selecting a runner-up, in part because keeping capital and human resources on hold awaiting potential failure of the designated transmitter would not be practical. However, several parties mentioned the potential efficiency to be gained, as if the original designee failed, no new designation process would be required to continue work on the project.

The Board will invite applicants for designation to indicate whether they are willing to be named as a runner-up. If the designated transmitter fails to fulfill its obligations and the line is still needed, the Board could offer the development opportunity to the runner-up. The runner-up would not be under an obligation to take on the project, but would have right of first refusal to undertake the work. Applicants that indicate their willingness to be named runner-up should also provide in their application any conditions that they believe are necessary to enable them to take on this role. The Board will not consider

willingness to take on the runner-up role in its selection of the primary designated transmitter. This is a choice for applicants, not a requirement.

Consequences of Designation: Issues 13 – 16

Issue 13: On what basis and when does the Board determine the prudence of budgeted development costs?

The Board agrees with the general tenor of parties' submissions that the time to review the budgeted development costs put forward in applications for designation is during Phase 2 of this designation proceeding. The level of development costs, which are expected to be recovered from ratepayers, will be a factor in the Board's selection of a designated transmitter. In this light, the Board does not foresee a circumstance, as suggested by SEC, in which it would adjust the amount of development costs proposed by a transmitter at the time the Board designates that transmitter.

The level of development costs is only one aspect of the proposal put forward by a transmitter. The Board does not intend to adjust this part of the proposal any more than it would adjust the proposed organization, design, financing or any other aspect. Unlike an application for rates or approval of a facility, this proceeding concerns itself with choosing from among several competing proposals. The Board will compare these proposals to each other and will determine which proposal is best overall. It would be inappropriate and unfair to the applicants to expect any of them to adjust their applications once they have been filed.

This does not mean that the development costs proposed in applications for designation cannot be questioned. The Board will receive and consider interrogatories and submissions regarding the level of these budgeted costs during Phase 2 and will take that evidence into account in assessing the applications. The selection of a transmitter for designation will indicate that the Board has found the development costs to be reasonable as part of an overall development plan. This selection will also establish that the development costs are approved for recovery. The Board will not select a transmitter for designation if it cannot find that the development costs are reasonable. However, applicants should be aware that costs in excess of budgeted costs that are put forward for recovery from ratepayers will be subject to a prudence review, which would include consideration of the reasons for the overage.

Issue 14: Should the designated transmitter be permitted to recover its prudently incurred costs associated with preparing its application for designation? If yes, what accounting mechanism(s) are required to allow for such recovery?

The Board finds that the designated transmitter will be permitted to recover from ratepayers its prudently incurred costs associated with preparing its application for designation, with one restriction. Cost recovery will be restricted to costs incurred on or after the date that the Board gave notice of the proceeding, February 2, 2012. This date represents the beginning of the proceeding and therefore is a date after which the designated transmitter could reasonably expect to recover its costs.

Applicant transmitters should identify the costs already incurred to prepare an application, as well as an estimate of the costs required to complete the designation proceeding, as part of their budgeted development costs. The Board will establish a deferral account for the designated transmitter in which the budgeted development costs, including amounts incurred after February 2, 1012 for the preparation of the application for designation, will be recorded for future recovery. As noted earlier in this decision, an applicant transmitter can choose not to seek recovery of all its costs, as a way to reduce the costs of its proposal to ratepayers.

Issue 15: To what extent will the designated transmitter be held to the content of its application for designation?

The Board will be choosing a designated transmitter based on the plans that applicants for designation file. Therefore, the Board will generally expect the designated transmitter to conform to its filed application, as it formed the basis for designation. However, the Board understands that there is a need for some flexibility, as the plan for the line will evolve as development work takes place.

The Board has discussed in the previous section of this decision the need for performance milestones and reporting obligations, and the expectation that these will be adhered to. Any development costs in excess of budgeted costs may not be recovered from ratepayers, and will be subject to a prudence review if recovery is sought. The leave to construct proceeding will provide an opportunity for the Board to assess the reasonableness of any deviations from other aspects of the designated transmitter's

plan, and the Board may choose to deny the leave to construct application or impose special conditions on its approval if warranted.

Particular concern was expressed by some parties regarding commitment to construction costs, First Nation and Métis participation, and First Nation and Métis consultation. The Board recognizes that these three areas in particular may be subject to modification to accommodate new information, and changing needs and circumstances. Nevertheless, in the leave to construct proceeding, the Board will compare the actual performance of the designated transmitter in these areas to the evidence filed in its designation application to assess the reasonableness of any deviations from the application.

Issue 16: What costs will a designated transmitter be entitled to recover in the event that the project does not move forward to a successful application for leave to construct?

On the issue of cost recovery after a failure to obtain an order for leave to construct the line, the Board agrees with Board staff and other parties that the reason for failure will be an important consideration in determining what costs, if any, are to be recovered from ratepayers. Generally, if the project does not move forward due to factors outside the designated transmitter's control, the designated transmitter should be able to recover the budgeted development costs spent and reasonable wind-up costs. If failure occurs due to factors within the designated transmitter's control, neither recovery nor automatic denial is certain. The Board will review the circumstances of the failure to determine a fair level of cost recovery. The Board acknowledges that it may not be possible to attribute failure to a single cause, and the sources of failure may be both internal and external to the designated transmitter. It is not possible to decide on the level of cost recovery in the abstract at this time, as the specific circumstances of the failure will need to be considered.

Process: Issues 17 – 23

Issue 17: The Board has stated its intention to proceed by way of a written hearing and has received objections to a written hearing. What should the process be for the phase of the hearing in which a designated transmitter is selected (phase 2)?

The Board will continue to proceed for the present by way of written hearing, and adopt the procedural steps proposed by Board staff (and largely supported by the registered transmitters). The Board is master of its own process, within the limits set by the *Ontario Energy Board Act, 1998* and the *Statutory Powers Procedure Act*. In the interests of fairness to all applicants and of keeping the costs of the designation proceeding within reasonable limits, the Board will exercise considerable control over the process. The Board's primary aim in Phase 2 is to obtain a good record upon which to make a decision on designation. The Board will ensure, as it does in all its hearings, that the process is open, transparent and fair.

The Board notes the concern of parties over the suggestion by Board staff that interrogatories be funneled through the Board, and that "culling and editing" may occur before the Board sends the interrogatories to the applicants. The Board will require all parties to send their interrogatories to the Board, and the Board panel (not Board staff) reserves the right to combine and edit interrogatories for matters such as relevance, duplication and excessive demands upon the applicants. The primary purpose of the interrogatory process is to create a good record for the Board to assist it in making a determination in this designation proceeding. The fact that this proceeding involves multiple competitive applicants and has elements similar to a procurement process that are absent from most Board proceedings calls for specific procedural approaches that respect fairness and efficiency.

Some parties suggested that an oral hearing is necessary to ensure full participation from non-applicant intervenors, particularly First Nation and Métis intervenors, and intervenors from northern communities. The Board will evaluate the need for an oral component to this proceeding, including the scope and location of any oral component, as the hearing proceeds.

The Board will not adopt the proposal of the PWU to remove intervenor status from the registered transmitters. The Board expects to receive useful information and submissions from all intervenors.

Issue 18: Should the Board clarify the roles of the Board's expert advisor, the IESO, the OPA, Hydro One Networks Inc. and Great Lakes Power Transmission LP in the designation process? If yes, what should those roles be?

The Board agrees with the description of the roles of the IESO and the OPA provided in their respective submissions. The Board panel will not receive information from either of these participants privately, and requires that any advice they have to offer be provided on the record of the hearing. The Board expects that the OPA and the IESO will remain neutral as between applicants. Consistent with the reply submissions from the OPA and the IESO, the Board does not anticipate that the participation of these entities in this proceeding will be affected by Bill 75, which contemplates their merger.

The Board panel will communicate with Board staff both on and off the record. The panel will be vigilant to ensure that Board staff continues to remain neutral as between other parties in the proceeding, and provides any new information or any opinion on the record so that other parties may respond to it. The Board will not receive any advice off the record from the Board's expert advisor, and expects any information from this expert to be placed on the record by Board staff.

HONI and GLPT must remain neutral as between applicants. The Board expects that the primary role of these transmitters will be to respond to reasonable requests for information. The Board would also appreciate receiving comment from these transmitters on any technical matters, or matters affecting existing infrastructure, as they see fit, through submissions in Phase 2 of the proceeding.

Issue 19: What information should Hydro One Networks Inc. and Great Lakes Power Transmission be required to disclose?

The Board ruled on this issue in the Phase 1 Partial Decision and Order, dated June 14, 2012.

Issue 20. Are any special conditions required regarding the participation in the designation process of any or all registered transmitters?

Issue 21. Are the protocols put in place by Hydro One Networks Inc. and Great Lakes Power Transmission LP, and described in response to the Board's letter of December 22, 2011, adequate, and if not, should the Board require modification of the protocols?

Issue 22. Given that EWT LP shares a common parent with Great Lakes Power Transmission LP and Hydro One Networks Inc., should the relationship between EWT LP and each of Great Lakes Power

Transmission LP and Hydro One Networks Inc. be governed by the Board's regulatory requirements (in particular the Affiliate Relationships Code) that pertain to the relationship between licensed transmission utilities and their energy service provider affiliates?

Board staff did not suggest any particular measures to address the concerns raised by issues 20 through 22, but asked that parties requesting such measures "explain the harm they are seeking to prevent, how the proposed condition or measure mitigates that harm without causing other harm, and whether the proposed condition or measure should apply to all similar participants in the interest of fairness."

EWT LP submitted that all designation applicants should be prohibited from working together or coordinating the preparation of plans or strategies and, moreover, that any party found to be coordinating or communicating with other designation applicants with respect to their designation plans or designation strategy be disqualified. In their reply submissions, a number of the other parties disagreed and, instead, suggested that a prohibition of co-operative submissions or co-development agreements was not only unwarranted but potentially counter-productive.

As discussed in the Board's findings on issue 8, the Board will not prohibit co-operation or co-ordination between the prospective applicants, whether among themselves or with other parties. As there may be potential for certain parties to demonstrate that their co-operation and co-ordination of efforts will be to the advantage of ratepayers, the Board will not impose conditions to preclude this. However, the nature and extent of any co-operation or co-ordination must be disclosed in the application(s).

A number of the parties submitted that there should be special conditions placed specifically on EWT LP, generally in furtherance of the Board's objective for a fair process. In particular, these applicants point to a perceived informational advantage of EWT LP given its relationship with HONI and GLPT, and submit that such advantage should be negated by preventing the sharing of employees between them, or by precluding EWT LP from participating altogether. Several of the parties submitted that EWT LP's relationship with HONI and GLPT should be governed by the Board's Affiliate Relationships Code for Electricity Distributors and Transmitters ("ARC"). As well, a number of these parties suggested that the protocols put in place by HONI and GLPT are insufficient to address data management and data access for shared employees, and they proposed various remedies, including modifications to the protocols.

EWT LP argued that the current protocols are adequate, and that they have effectively served to ensure that no information from HONI and GLPT was or will be provided to EWT LP that was or will not also be provided to all proponents. EWT LP also submitted that it is neither an affiliate of HONI nor GLPT; that the activities of EWT LP are not analogous to the activities of energy service providers; that EWT LP is comprised of three arm's length partners each of whom is unable to control EWT LP; and that, ultimately, the circumstances for which the ARC was developed do not apply to their circumstances.

The Board acknowledges the arguments of EWT LP that neither transmission development nor participation in the designation process is an activity controlled by the ARC and that no affiliate relationship exists between EWT LP and either of GLPT or HONI. The Board also appreciates the point made by PWU that, as the licenses currently stand, the ARC would not apply to many of the proponents.

In the Board's view, while the ARC does not apply to the relationship between EWT LP and each of HONI and GLPT, the types of harm that the ARC seeks to prevent in the context of affiliate relationships can also exist in other contexts. The Board notes that almost all of the parties to this proceeding have referred to HONI and GLPT as the "incumbents". While it is true that each of them (as well as CNPI) are transmission utilities operating in the Province of Ontario, the position of HONI is unique. HONI has information critical to the proposed East-West Tie line, as it owns the assets to which the East-West Tie line will connect and, under the Reference Option, the East-West Tie line will be located beside HONI's existing line and right of way. While GLPT, and to a lesser extent CNPI, may have some knowledge of similar terrain and the local transmission system, neither has the advantage of owning and operating an existing line in this specific area, or of determining the conditions and costing related to connection of the new line to the existing transmission system.

The Board believes that HONI and GLPT have been and will continue to be diligent in following the existing protocols. However, the Board is not satisfied that the protocols provide adequate protection against the inadvertent sharing or disclosure of information between HONI and EWT LP, if they continue to share employees in Phase 2 of this proceeding. While the Board is confident in the commitment of staff at HONI to not intentionally share information with one applicant that is not also shared with all other applicants, the legitimacy and integrity of this process requires that, going forward, there

be no opportunity during Phase 2 of this process for the disclosure or sharing (whether intentional or inadvertent) of any relevant information by HONI to EWT LP.

In order to avoid any real or perceived informational advantage, the Board will require that EWT LP make arrangements to ensure that no individual will be performing work concurrently for HONI and EWT LP during Phase 2 of this proceeding. This condition will be effective as of fifteen days from the date of issuance of this decision until the close of the record in Phase 2 of this proceeding.

Employees engaged by EWT LP must be placed in the position where they cannot inadvertently acquire advantageous information from employees currently employed by HONI, and, therefore, the work location of EWT LP must also be physically separated from the HONI offices until the record is closed in Phase 2 of this proceeding. This means, at a minimum, that HONI and EWT LP must not share a computer system or other data management system, and must occupy separate premises.

EWT LP's continued participation as an intervenor and as a registered transmitter is dependent on compliance with these conditions, as well as its role in adhering to the protocols established by HONI and GLPT.

Except for this ruling requiring a separation of employees and premises between EWT LP and HONI, the Board will not impose regulatory conditions governing the relationship between EWT LP and each of HONI and GLPT. However, the Board reminds both HONI and GLPT that careful separation of costs attributable to EWT LP's creation and participation in the designation process must be maintained.

Issue 23: What should be the required date for filing an application for designation?

The Board has considered the various timelines, and reasons for those timelines, proposed in the submissions on this issue. The Board finds that it will require applications for designation to be filed no later than January 4, 2013. This filing date should allow sufficient time for the preparation of applications, and is consistent with the period of six months which many transmitters proposed. The Board is of the view that this relatively generous timeline is appropriate because this is the first designation proceeding for transmission in Ontario, and all parties may need time to resolve matters related to the provision of information and the preparation of plans.

THE BOARD ORDERS THAT:

1. The Board adopts the filing requirements attached as Appendix A to this decision for the purpose of applications for designation to undertake development work for the East-West Tie line.

2. EWT LP must make arrangements so as to ensure that no individual will be performing work concurrently for HONI and EWT LP during Phase 2 of this designation proceeding, and the work location of EWT LP must also be physically separated from the HONI offices as described in this decision. This condition will be effective as of fifteen days from the date of issuance of this decision until the close of the record in Phase 2 of this proceeding. EWT LP must provide confirmation to the Board that this condition has been implemented, within 21 days of the date of this decision.

3. A licensed transmitter seeking designation to undertake development work for the East-West Tie line must file its application for designation no later than January 4, 2013.

Cost Claims for Phase 1 of the Proceeding

On March 30, 2012, the Board issued its Decision on Intervention and Cost Award Eligibility. Procedural Order No. 2 issued on April 16, 2012 also, to some extent, dealt with the issues of interventions and cost award eligibility. As a result of these orders, certain parties have been ruled eligible to apply for cost awards in both phases of this designation proceeding and certain other parties have been ruled eligible to apply for limited cost awards relating to their attendance at an all party conference in Phase 1 of this designation proceeding.

In total, nine parties have been determined to be eligible to apply for cost awards in both phases of this designation proceeding. These parties will be referred to as the "eligible parties". They are:

- the coalition representing the City of Thunder Bay, Northwestern Ontario Associated Chambers of Commerce and Northwestern Ontario Municipal Association;

- the coalition representing the Municipality of Wawa and the Algoma Coalition;
- Consumers Council of Canada;
- MNO;
- National Chief's Office on Behalf of the Assembly of First Nations;
- Nishnawbe-Aski Nation;
- Northwatch;
- PRFN; and
- SEC.

Each of the following parties has been granted eligibility for an award of costs up to a maximum of 12 hours if it attended the all party conference in Phase 1 of this proceeding on March 23, 2012:

- Association of Major Power Consumers in Ontario (“AMPCO”);
- Building Owners and Managers Association Toronto (“BOMA”);
- Canadian Manufacturers and Exporters (“CME”); and
- Energy Probe Research Foundation (“Energy Probe”).

The cost awards to the eligible parties, the cost awards to AMPCO, BOMA, CME and Energy Probe, and the Board’s own costs will be recovered from licensed transmitters whose revenue requirements are recovered through the Ontario Uniform Transmission Rate (and the costs will be apportioned between the transmitters based on their respective transmission revenues). These transmitters are:

- CNPI;
- Five Nations Energy Inc. (“FNEI”);
- GLPT; and
- HONI.

A schedule for claiming cost awards for Phase 1 is provided in the Board’s order below. A decision and order on cost awards will be issued after these steps have been completed.

Furthermore, parties claiming cost awards are reminded that they must submit their cost claims in accordance with the Board's *Practice Direction on Cost Awards* and ensure that their claims are consistent with the Board's required forms and the Cost Awards Tariff.

THE BOARD FURTHER ORDERS THAT:

1. Eligible parties shall submit their cost claims for Phase 1 of the Designation Proceeding by **July 26, 2012**. A copy of the cost claim must be filed with the Board and one copy is to be served on each of CNPI, FNEI, GLPT and HONI.

2. AMPCO, BOMA, CME and Energy Probe shall submit their cost claims up to a maximum of 12 hours if they attended the all party conference in Phase 1 of the Designation Proceeding on March 23, 2012 by **July 26, 2012**. A copy of the cost claim must be filed with the Board and one copy is to be served on each of CNPI, FNEI, GLPT and HONI.

3. CNPI, FNEI, GLPT and HONI will have until **August 2, 2012** to object to any aspect of the costs claimed. A copy of the objection must be filed with the Board and one copy must be served on the party against whose claim the objection is being made.

4. The party whose cost claim was objected to will have until **August 9, 2012** to make a reply submission as to why its cost claim should be allowed. A copy of the submission must be filed with the Board and one copy must be served on the party who objected to the claim.

All filings with the Board must quote the file number EB-2011-0140, and be made through the Board's web portal at www.errr.ontarioenergyboard.ca, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must be received by the Board by 4:45 p.m. on the stated date. Parties should use the

document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca. If the web portal is not available, parties may e-mail their documents to the attention of the Board Secretary at BoardSec@ontarioenergyboard.ca.

DATED at Toronto, July 12, 2012
ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

Ontario Energy Board

Commission de l'énergie de l'Ontario

EB-2011-0140

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.

BEFORE: Cynthia Chaplin
Presiding Member and Vice-Chair

Emad Elsayed
Member

Cathy Spoel
Member

EAST-WEST TIE LINE DESIGNATION

PHASE 2 DECISION AND ORDER

August 7, 2013

DESIGNATION DECISION

The Board has decided that the designated transmitter for the development phase of the proposed East-West Tie line is Upper Canada Transmission Inc. This selection is based on the submitted applications as well as the subsequent interrogatory answers and submissions.

BACKGROUND

This decision is the result of a process initiated by the Ontario Energy Board to designate a transmission company to undertake development work for the proposed East-West Tie line. The Ontario Government published its Long Term Energy Plan in November of 2010. The Plan identified five priority transmission projects, one of which was the East-West Tie, an electricity transmission line running between Thunder Bay and Wawa, Ontario. On March 29, 2011, the Minister of Energy wrote to the Board to express the government's interest in the Board undertaking a designation process to select the most qualified and cost-effective transmitter to develop the East-West Tie line.

Origin of Designation

The origin of the designation process is the Board's policy for transmission development. That policy was developed through a consultation process and culminated in the Board's report entitled *Board Policy: Framework for Transmission Development Plans.*[1] The report describes the issues considered through the consultation and the Board's conclusion that economic efficiency in transmission service is best pursued by introducing competition, and that providing greater certainty for cost recovery of development work would encourage participation in the competitive process. In describing the goals of the policy, the Board said:

> The Board believes that this policy will:
>
> - allow transmitters to move ahead on development work in a timely manner;

[1] EB-2010-0059 issued August 26, 2009.

- encourage new entrants to transmission in Ontario bringing additional resources for project development; and
- support competition in transmission in Ontario to drive economic efficiency for the benefit of ratepayers.

A transmission utility seeking to build a major transmission line applies to the Board under section 92 of the *Ontario Energy Board Act, 1998* ("the OEB Act") for leave to construct the line. Before bringing an application for leave to construct, the transmitter incurs costs to complete "development" work, which includes negotiating access and land rights, acquiring permits, conducting environmental assessment activities, consulting with affected communities, preparing line design and engineering studies, conducting economic feasibility studies, and obtaining a system impact assessment. The development phase ends with the filing of an application for leave to construct the line.

Board Authority to Implement Designation

The Board does not have the jurisdiction or authority to procure transmission services, or the authority to enter into contracts with transmitters to build or operate transmission infrastructure. The Board premised its original policy on its authority under section 70(2.1) of the OEB Act to require the filing of plans for the expansion of the transmission system to accommodate the connection of renewable energy generation facilities. The East-West Tie line is not primarily needed for the connection of renewable energy generation facilities. However, the Board has broad licensing and rate making jurisdiction under sections 70, 74 and 78 of the OEB Act to prescribe conditions under which a transmitter engages in owning or operating a transmission system, to amend transmission licences, and to set transmission rates. Subsection 78(3.0.5) specifically provides the Board with authority to provide incentives to a transmitter for siting, design and construction of an expansion to the transmitter's transmission system. In this decision, the Board will make an order under the authority of these sections to give effect to its decision on designation.

Implications of Designation

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.

Initiation of Designation for the East-West Tie Line Project

After receiving the Minister's letter, the Board sought and received from the Ontario Power Authority (the "OPA") a preliminary assessment of the need for the East-West Tie line, which provided planning justification to support the implementation of a designation process. The OPA indicated that the primary driver for the East-West Tie line is the need to ensure long-term system reliability in northwestern Ontario. The Board also received a feasibility study of options for meeting the transfer capability requirements for the line from the Independent Electricity System Operator (the "IESO").

A double circuit 230 kV electricity transmission line already exists between Thunder Bay transmission station ("TS") and Wawa TS. The East-West Tie line project involves the construction of a new transmission line which, in conjunction with the existing line, will increase capacity and reliability of electrical transmission between northeast and northwest Ontario. The length of the new line will be approximately 400 kilometres.

The specifications for the East-West Tie line project were defined as follows:

- A new line that, in conjunction with the existing line, will provide total eastbound and westbound capabilities in the East-West corridor in the order of 650 MW, while respecting all NERC (North American Electric Reliability Corporation), NPCC (Northeast Power Coordinating Council), and IESO reliability standards.
- Lifetime of at least 50 years.

- Target in-service date: 2017 (applicants were invited to propose alternate in-service dates).
- The East-West Tie line is to be built in 2 segments:
  - Wawa TS to Marathon TS; and
  - Marathon TS to Lakehead TS.
- The demarcation points of each segment are the first transmission line structures outside the fence of the Wawa TS, Marathon TS and Lakehead TS, but within 250 metres of that fence.
- The East-West Tie line segments will dead-end on the demarcation point structures with a mid-span opener for non-compensated lines.
- If the proposal involves series compensated AC line or DC lines, the East-West Tie line will include the protection system, associated communications, and line isolation breaker(s).

For the purposes of designation, the Board assumed that the new East-West Tie line between the demarcation points would be owned and operated by the designated transmitter once constructed, although this was not an absolute requirement.

The Board invited transmitters to register their interest in filing a plan for development of the line.

Process Adopted by the Board for Designation

On February 2, 2012, the Board published notice in English, French, Cree and Ojibway that it was initiating a proceeding to designate an electricity transmitter to undertake the development work for the East-West Tie line, and invited intervention and public comment. The notice was published in the Globe and Mail, Ottawa Le Droit and seven newspapers in communities local to the existing line. The notice was also served on municipalities and First Nation and Métis communities in the area of the line. The Board received thirty-one requests for intervenor status, including the seven transmitters who had initially registered an interest in the project. The list of intervenors is attached as Appendix A to this decision. All materials on the record of the proceeding are available on the Board's website.

The Board used a two phase process to reach its designation decision. In Phase 1 of the East-West Tie designation process, the Board established criteria and filing requirements specific to the East-West Tie line project, considering the Minister's letter, the reports from the OPA and the IESO, and the submissions of all parties. The Board issued its Phase 1 decision on July 12, 2012. The Phase 1 decision is attached as Appendix B to this decision. The Phase 1 decision required transmitters seeking designation to file applications by January 4, 2013. The following six transmitters applied for designation:

- AltaLink Ontario LP ("AltaLink"): a wholly owned subsidiary of AltaLink Investments LP, which is wholly owned by SNC Lavalin Group Inc.
- Canadian Niagara Power Inc. ("CNPI"): owned by FortisOntario Inc., which is owned by Fortis Inc.
- EWT LP: a partnership of Hydro One Inc., Great Lakes Power Transmission EWT LP, and Bamkushwada LP.
- "Iccon/TPT": a joint application by Iccon Transmission Inc. (a wholly owned subsidiary of Isolux Infrastructure Netherlands B.V.), and TransCanada Power Transmission (Ontario) LP (a wholly owned subsidiary of TransCanada Corporation)
- RES Canada Transmission LP ("RES"): a partnership of Renewable Energy Systems Canada Inc., MEHC Transmission Canada Limited Partnership, and RES Canada Transmission GP Inc.
- Upper Canada Transmission Inc. ("UCT"): a partnership of NextEra Energy Canada (a wholly owned subsidiary of NextEra Energy Resources LLC), Enbridge Inc. and Borealis Infrastructure Management.

The Board adopted a written hearing process and tailored its process to suit the nature of the proceeding. The Board found in its Phase 1 decision that as the proceeding involved multiple competitive applicants and had some similarity to a procurement process, it called for specific procedures that respected fairness and efficiency in that context.

For example, while the Board invited parties to propose written interrogatories for the applicants to answer, the Board itself issued the interrogatories, having combined, edited and eliminated some interrogatories proposed by parties. The Board was of the

view that the applicants should be compared on the basis of the applications as filed, and attempted to avoid providing opportunities for applicants to fill any gaps in their applications. Parties were also invited to file written argument, with applicants filing an argument in chief, other parties filing responding arguments and applicants filing reply argument.

The Board convened an oral session in Thunder Bay to allow representatives of intervenors from communities local to the existing East-West Tie line to make oral presentations. The presentations were not sworn testimony, but oral commentary on matters concerning local interests. The oral session occurred on May 2 and 3, 2013, subsequent to the filing of argument in chief and prior to the receipt of arguments from non-applicant intervenors.

EVALUATION OF APPLICATIONS

The record of this proceeding demonstrates that all applicants spent a significant level of effort and resources to prepare these applications and to respond to interrogatories. Given that this is the first such competitive process for a transmission project in Ontario, it is encouraging that there are qualified entities which are willing to commit resources to compete in this market.

There was a significant amount of information for the Board to assess in order to arrive at a final decision. The overriding principle in establishing and executing the evaluation methodology is that it be fair and equitable and result in an outcome that serves the public interest. The evaluation was largely based on the applications as originally submitted. Information provided in response to interrogatories was used for clarification purposes, and not to enhance the original application. For example, the original applications included cost estimates for development, construction, and operation and maintenance phases of the project. In order to properly compare these estimates, the Board asked the applicants to break down these estimates into specific common components. The expectation was that the original bottom line cost estimates would not change, and if they did, then a full explanation would be provided to ensure that the answer did not represent an attempt to improve the proposal.

The intervenor and applicant submissions assisted the Board in deciding how to apply the criteria and evaluate the applications. However, any new facts provided through submissions were given little weight.

Evaluation Methodology

The evaluation was based on the decision criteria established in the Phase 1 Decision and Order. The headings of these criteria are provided below, and the information that was required of the applicants under each heading can be found in the Filing Requirements (Appendix A of the Phase 1 Decision and Order).

In its Phase 1 Decision and Order, the Board did not articulate an assessment methodology to be applied to the decision criteria, nor did it ascribe any relative importance to the decision criteria through a weighting system. The Board stated that it was unwilling to remove the discretion and flexibility it might need in evaluating the applications, and that it would exercise its judgment for each criterion, with the assistance of the evidence presented and the submissions received from all parties.

The Board has found no compelling reason to assign different weights to the decision criteria, and has therefore weighted them all equally at ten points each.

The criteria are:

- Organization
- First Nations and Métis participation
- Technical capability
- Financial capacity
- Proposed design
- Schedule; development and construction phases
- Cost; development, construction, operation and maintenance phases
- Landowner, municipal, and community consultation
- First Nations and Métis consultation

“Other Factors” was a criterion listed in the Phase 1 decision. Under that criterion, however, all applicants reiterated what they believe are strong features of their

proposals. Since these features have already been evaluated as part of the other criteria, the Other Factors criterion was not included in the evaluation.

For each of the criteria, the applications were reviewed and the proponents were ranked from 6 to 1, with 6 being the best. A score was assigned to each of the rankings with scores of 6, 5, 4, 3, 2, and 1 corresponding to the respective rankings. Given the qualitative nature of the ranking, if two or more applications were judged to rank equally in a certain criterion, they were given the same ranking with a corresponding average score (e.g. if two applicants were ranked at 5, they were each given a score of 4.5). The applicant's score for each criterion was then multiplied by ten. The process was repeated for each decision criterion and the scores added to determine the total score for each application. The application with the highest overall score was determined to be the most qualified applicant for designation.

EVALUATION RESULTS

Background Information

Background information was requested from the applicants in the Filing Requirements. All applicants provided the requested information and the Board has no substantive concerns with the information provided.

The Board also invited applicants to indicate whether they would be willing to be "runner up". The runner up would have the right of first refusal to undertake the project development work if the designated transmitter fails to fulfill its obligations. AltaLink confirmed that it would be willing to be runner up without qualification. CNPI, Iccon/TPT, and RES also confirmed but with some conditions attached, while UCT and EWT LP stated that they would not be willing to be runner up. As indicated in the Phase 1 Decision and Order, an applicant's willingness to be runner up had no influence on the assessment of the application.

In the following sections, the results of applying the methodology described above are summarized for each of the decision criteria, and the resulting ranking of the six applications for the particular criterion is provided.

Organization

The applicants were required to provide, among other things, a project organizational plan, a chart illustrating the organizational structure, identification of the project management team with resumés for key management personnel, and an overview of the applicant's experience with similar projects.

Subsequently, by interrogatories in Procedural Order No. 6, issued March 4, 2013, the applicants were asked to provide the following information regarding organization:

- Proposed organizational charts for the various project phases (development, construction, operation and maintenance) showing the various functions, including those listed in section 4.1 of the Filing Requirements, as well as the reporting structure.
- The names of members of the proposed management team (including the project manager / lead) and technical team who would be leading each function.
- Confirmation as to whether the project manager / lead will be dedicated to this project, and a description of this person's experience in managing similar projects.
- The specific proposed project / operation and maintenance role for each member of the "key technical team personnel" provided in response to section 4.2 of the Filing Requirements. (This item is evaluated under Technical Capability.)

In evaluating the applications in the area of Organization, the Board ranked applicants by considering the following factors:

- Clarity of the organizational structure for the various project phases and inclusion of all key project functions.
- Clarity as to who is accountable for the overall management of the project.
- Clarity as to the governance structure and lines of accountability, including the role of any third parties.
- Quality of the overall organization and the strength of the supporting structure.
- The relevance and extent of the experience of the proposed project manager and the management team in terms of size, type and complexity of projects.

- Experience in managing similar large projects.

The more of these characteristics which a proponent demonstrated through its application, the higher the Board ranked the proponent. Below, the Board sets out the proponents in ranked order for Organization and provides a brief discussion of the main characteristics of each application.

UCT (6)

UCT provided a project organizational structure with clearly defined accountabilities for all major areas of work, which would be used for all three phases of the project to ensure a seamless transition. The overall project management accountability and associated oversight structure were well defined. The structure consists of a Management Team with a Project Director having an overall accountability for the project, supported by an Operations Committee and an Aboriginal Advisory Board, all reporting to the Board of Directors. The proposed Project Director has significant experience with the transmission business and associated projects. UCT confirmed that the Project Director will be dedicated to the project. Names and resumés were provided for each of the positions in the chart which showed a strong combination of technical and managerial experience. UCT indicated that it would mostly use in-house resources seconded to it from partner organizations, supplemented by third-party contractors as required. UCT also proposed that, once in the operations phase, it will have an operation and maintenance contract with NextEra and that the Project Director will be replaced by a President of NextBridge Infrastructure to reflect the change in the nature of the role. UCT provided a description of its significant experience with relevant projects involving many aspects that are similar to this project, both in and outside Ontario.

AltaLink (5)

AltaLink provided two charts including all the key functions; one for the project (development and construction) and one for operations and maintenance with a description of the roles and accountabilities of proposed key management positions. Although the overall project management accountability was well defined, the oversight structure above the project lead was not clear. The proposed project lead has

significant project experience with transmission and other infrastructure projects in Canada and abroad. Names as well as a brief description of experience were provided for those leading the functions shown in the project chart, which showed strong technical and managerial experience. AltaLink confirmed that the project lead will be dedicated to this project and will be responsible for project delivery from development to in-service. AltaLink provided a detailed overview of its extensive experience with specific similar projects, mostly in Alberta. AltaLink also indicated that project planning and development as well as engineering, procurement and construction management services will be provided by SNC Lavalin, Altalink's owner.

EWT LP (4)

EWT LP provided two charts; one for the development phase and one for the construction phase of the project, including the key functions. In both charts, the project management function is split between two individuals; a Project Manager reporting to a Project Director who has three Special Advisors representing the three partners (Hydro One Inc., Great Lakes Power Transmission EWT LP ("GLPT-EWT"), and Bamkushwada LP ("BLP")). The distinction between these two roles in terms of the overall project management accountability is not clear. The charts showed the Project Director reporting to EWT LP, but the nature of this reporting (i.e. oversight) was also not clear. Names and resumés were provided only for those leading the functions shown in the project development chart. No names or detailed functions were provided for the construction phase. While the proposed Project Director and Project Manager appear to have extensive operational experience in transmission and other related areas, it is not apparent that they have significant experience in managing major projects first hand. EWT LP confirmed that the Project Manager will be dedicated to the project for the development phase only, while the Project Director will continue to the construction phase. EWT LP proposed that GLPT-EWT will be responsible for managing the development and construction phases of the project on EWT LP's behalf supported by a number of contractors. EWT LP did not provide an operations and maintenance organizational chart and contemplated that the ongoing operation of the facilities will be outsourced to Hydro One Networks Inc. ("HONI"). EWT LP provided an overview of its experience with similar projects which shows extensive experience in the development and construction of large transmission projects in Ontario.

RES (3)

One project organization chart was provided for the project development phase with a project management team representing the key project functions and led by a Project Manager. No charts were provided for the construction or the operation and maintenance phases. The oversight structure above the Project Manager was not clear. Although the proposed project management team appears to have significant relevant experience, RES was non-committal in terms of assigning the key personnel to the project and stated that it will "use its reasonable efforts" to ensure they remain involved. However, in its answer to interrogatory #2, RES confirmed that the Project Manager will be dedicated to the project. Names and resumés were provided for those leading the functions shown in the project chart which showed significant relevant experience. RES also indicated that it will use a "qualified owner's engineer" to augment its design review effort. RES provided an overview of its extensive relevant experience with similar projects. RES did not provide information for the operation and maintenance phase stating that a plan will be prepared during the project development phase.

CNPI (2)

The organizational chart provided initially by CNPI was not a functional chart, but rather a chart of participating organizations. Three charts were provided in answer to interrogatory #1 for the various phases which included key functions. The lead for all three phases (development, construction, operation and maintenance) is provided by an Executive Lead, managing the project on Fortis Inc.'s ("Fortis") behalf, and supported by a number of Fortis personnel as well as Aboriginal advisors. The structure and associated accountabilities below the Executive Lead for the development and construction phases of the project are not clear (i.e. the distinctive role of a Project Manager reporting to an Executive Sponsor, reporting to the Executive Lead). CNPI confirmed that the Executive Lead will be dedicated to the development and completion of the project. A list of proposed management team members was provided with names and resumés but without their specific project function. A long list of "key technical team personnel" was provided which included internal as well as third-party consultants; however, it was not clear to what degree they will all be involved in this project. CNPI

also provided an overview of its relevant experience with several transmission projects, mostly involving Fortis.

Iccon/TPT (1)

Iccon/TPT initially proposed that a management committee will govern the general partnership, with the day-to-day management of the partnership provided by a management team reporting to the management committee. The organizational chart provided initially by Iccon/TPT was not a functional chart, but a chart of participating organizations. In its answer to interrogatory #1, Iccon/TPT provided one chart for the development and construction phases of the project showing a General Manager reporting to the management committee with three functions reporting to the General Manager (a Project Director, Legal/Environment/Regulatory, and Controller/Finance). No further detail was provided beyond that level, which hampered the Board in its assessment of the proposed organization's effectiveness. Iccon/TPT did not provide an organizational chart for the operation and maintenance phase of the project. Iccon/TPT proposed that the preliminary engineering, detailed engineering, procurement and construction (EPC) management will be contracted to Isolux Ingenieria, which is an EPC company owned by Isolux Corsan. Iccon/TPT confirmed that the proposed General Manager, who has significant relevant experience, will be dedicated to the project. A "preliminary" list of personnel to be considered for the management team was provided but with no commitment of which personnel would actually be on the team. Iccon/TPT also provided an overview of its relevant extensive experience with similar projects in Canada and globally.

First Nation and Métis Participation

Applicants were required to describe their approach to First Nations and Métis participation in the project. They were asked to indicate whether or not arrangements have already been made and, in either case, to provide further details.

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.
>
> There are a number of ways in which First Nation and Métis communities could participate in transmission projects. Where a new transmission line crosses the traditional territories of aboriginal communities, Ontario will expect opportunities be explored to:
>
> - Provide job training and skills upgrading to encourage employment on the transmission project development and construction.
> - Further Aboriginal employment on the project.
> - Enable Aboriginal participation in the procurement of supplies and contractor services.
>
> Ontario will encourage transmission companies to enter into partnerships with aboriginal communities, where commercially feasible and where those communities have expressed interest.

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.

The more that an application demonstrably provided opportunities for participation and was committed to that participation, the higher the Board ranked the proponent. Below,

the Board identifies the proponents in ranked order for this criterion and provides a brief discussion of the main characteristics of each application.

It should be noted that one of the key considerations in the ranking process was articulated in the Board's Phase 1 Decision and Order which stated:

> The Board will not look more favourably upon First Nation and Métis participation that is already in place at the time of the application than upon a high quality plan for such participation, supported by experience in negotiating such agreements.

AltaLink (6)

AltaLink indicated that it had contacted the18 First Nations and Métis communities identified by the Ministry of Energy as being potentially affected by the project (May 31, 2011 letter), and engaged Ishkonigam (Phil Fontaine) in preparing its participation plan. AltaLink proposed to offer up to 49% equity ownership of the project to affected First Nations and Métis communities, to be held by a single entity in a limited partnership. AltaLink indicated that if requested, it would assist participating First Nations and Métis communities in arranging financing for their equity through independent financial institutions; and if necessary, AltaLink would provide loans. In addition to equity partnership, AltaLink proposed economic participation such as employment, contracting, and training and development. Priority for those forms of economic participation would be given to affected communities. AltaLink believes that no directly or indirectly affected First Nation or Métis community should be excluded; however, its plan provides for different levels of participation depending on the nature of the impact resulting from the project.

EWT LP (5)

One of EWT LP's partners is BLP which consists of six First Nations, all located within 40 km of the existing East-West line. In addition to having one-third equity in the partnership, BLP's participating First Nations will have priority for economic participation in areas such as employment, training, etc. However, according to EWT LP, other First Nations and Métis communities are not precluded from competing to provide goods and services that the participating First Nations may not be able to provide. While EWT LP's

plan is good for the six First Nation partners comprising BLP, there are more limited opportunities for other affected First Nations and Métis communities to participate in the various aspects of this project, and no opportunity for equity participation.

CNPI (5)

CNPI has formed a joint venture with Lake Huron Anishinabek Transmission Company Inc. (LHATC). LHATC is made up of 21 First Nations, two of which are on the project's list of affected First Nations. CNPI proposed that LHATC, along with other interested First Nations, will have the right to acquire in aggregate up to 49% equity interest in the project. It was not clear to what extent, if any, CNPI expected the Métis communities to be equity participants. However, CNPI stated that it is prepared to work towards negotiations resulting in meaningful participation by the Métis communities in this project. If needed, CNPI indicated that loans from Fortis could be provided to facilitate participation. CNPI is also prepared to offer First Nations and Métis communities opportunities for employment, apprentice training, preferential consideration for Aboriginal businesses, and a Skill Builder Program. CNPI's economic participation offer goes well beyond the identified affected communities but does not specify what criteria would be used to determine who participates. This has the potential of causing confusion and delay.

UCT (3)

As described in the Organization section of its application, UCT has created an Aboriginal Advisory Board to provide independent oversight in the areas of aboriginal participation and consultation. UCT indicated that it intends to offer negotiated participation in the project to the affected First Nations and Métis communities, including BLP; a partner of EWT LP. It has developed an initial set of approaches (e.g. preferred equity/limited partnership, common equity/limited partnership, lump sum payment, First Nations and Métis Adder) which it intends to explore with affected communities and other stakeholders and to finalize prior to submitting its leave to construct application. Some aspects of the proposals such as lump sum payments and an "adder" are not really in the nature of participation and may cause unanticipated costs for ratepayers. UCT's plan includes economic participation components such as employment, education and training, procurement and contracting, strategic community investment,

and access to other supporting programs. UCT provided a participation plan and schedule for each stage of the project (prior to designation, development, construction, and operation), and indicated that priority for these opportunities will be given to affected communities.

RES (3)

RES indicated that it invited the 18 First Nations and Métis communities identified by the Ministry of Energy in the project area to become involved in the development of its participation plan, and that some communities responded. RES provided a First Nations and Métis participation plan, which was supported by former Ontario Grand Chief John Beaucage, and indicated that it is prepared to offer as much as $50 million investment opportunity to affected First Nations and Métis communities, provided that that investment does not exceed 20% equity in the project. As an alternative, RES offered to negotiate Impact Benefits Agreements with those communities, although this type of arrangement may cause unanticipated costs for ratepayers. RES also proposed economic participation by the affected communities in areas such as employment, training, procurement of supplies and services, etc.

Iccon/TPT (1)

Iccon/TPT had initial communication with a number of affected First Nations and Métis communities (9 listed) in the spring of 2011. It provided an Aboriginal Engagement Plan which contained details in areas such as engagement process, capacity funding, Aboriginal working group, Traditional Ecological Knowledge, education and training, employment, contracting, and other areas. Iccon/TPT has not proposed equity participation at this time but indicated that, if selected, it would engage with affected communities as well as those who express an interest. Iccon/TPT described TransCanada's project experience and its role in leading the execution of its Aboriginal Engagement Plan. Iccon/TPT's participation plan is less well-defined than the other applicants' plans and does not distinguish sufficiently between participation and consultation.

Technical Capability

To demonstrate their technical capability to plan, engineer, construct, operate and maintain the East-West Tie line, the applicants were required to provide details regarding their technical resources in various disciplines, resumés of key technical team personnel, a description of experience with relevant projects and activities, and other related information. It should be noted that there is some overlap in the contents of this section and Organization in the applications.

In evaluating the applications in the area of Technical Capability, the Board ranked applicants by considering the following factors:

- Strength of the applicant's internal technical capability. A strong and diverse internal technical capability is considered by the Board to be a desirable feature where the resources are specifically identified, committed, and readily available.
- Strength of the proposed technical team in relevant areas and the clarity of their project roles, including the role of any third-parties. Where the utilization of third-parties is proposed, it is advantageous to identify who they are and what their specific role is.
- Level of experience in similar projects and activities in terms of technical complexity, geography, regulatory process, etc.
- Evidence of solid internal business practices.
- Thoroughness of assessing the technical challenges associated with achieving the required capacity and reliability of the line and the proposed measures to address these challenges.

The more of these characteristics which a proponent demonstrated through its application, the higher the Board ranked the proponent. Below, the Board sets out the proponents in ranked order for Technical Capability and provides a brief discussion of the main characteristics of each application.

UCT (6)

UCT provided details of its strong internal technical capability in the various project functions. For the most part, UCT is proposing to utilize internal resources in all phases

of the project, supported by third-party consultants as needed. UCT identified its proposed key technical team members, provided their detailed resumés and described their specific project roles. The proposed technical team demonstrates strong and diverse technical skills with significant relevant project experience. UCT also indicated that its partner NextEra will take the lead role in the operation and maintenance phase of the project. UCT provided information regarding its partners' experience with relevant projects and activities. It also provided many examples where its partners have been recognized by third parties for significant achievements in key business areas. It also described an internal approach to project management consistent with best practices, including work breakdown structure, risk management, and overall project controls. UCT identified what it perceives as potential technical challenges in this project and described its plan for addressing them.

AltaLink (5)

As described under Organization, AltaLink indicated that project planning and development as well as engineering, procurement and construction management services will be provided by SNC Lavalin. Third party contractors are expected to be used in project construction. In addition, local contractors will be used for operation and maintenance under AltaLink's General Manager's direction. AltaLink provided details of its technical capability in the various project functions, mostly from SNC Lavalin, including names, role, and brief descriptions of experience for each of the proposed key technical team personnel. Although the resumés of the team members were not sufficiently detailed to assess the individuals' specific project experience, the proposed team demonstrates good collective relevant experience. Altalink also provided information regarding its (SNC Lavalin's) extensive experience with projects of similar complexity (e.g. in Alberta). It also provided examples of business practices (standards and management systems) in various project areas that it considers to be consistent with good utility practices. It provided a comprehensive list of what it perceives as potential technical challenges in this project and described its plan for addressing them.

EWT LP (4)

EWT LP indicated that it plans to utilize third-party consultants and contractors for significant portions of the work in this project under EWT LP's management and

oversight (e.g. engineering, environmental assessment work, land rights acquisition, public engagement, procurement, and construction). It identified many of the consultants and contractors that it plans to utilize and described their areas of expertise. EWT LP also proposes to contract HONI to provide operating services, and may also outsource ongoing maintenance. A list of external technical team members was provided, but their specific project roles were not identified. Also, the internal list was primarily for its proposed management team (see Organization section) as opposed to the key technical team personnel. Information regarding its team's experience with relevant projects and activities was also provided. EWT LP also provided some examples of its partners' business practices in various areas that it considers to be consistent with good utility practices. EWT LP also identified some potential technical challenges and plans to address them.

Iccon/TPT (3)

As described under Organization, Iccon/TPT proposed to contract the engineering, procurement, and construction management (EPC) functions of the project to Isolux Ingenieria, with some contribution from local sub-consultants, under the direction of its General Manager. It also plans to outsource operation and maintenance to one or two companies. Iccon/TPT provided a "preliminary" list of its technical team members, without identifying their specific project roles. A description of its extensive experience with large transmission projects was provided, but did not explain how this experience was relevant to this project in terms of the specific technical challenges. Iccon/TPT provided examples of business practices in various areas that it considers to be consistent with good utility practices. It also provided a short description of what it perceives as potential technical challenges in this project and described its plan for addressing them.

CNPI (2)

CNPI intends to use a mix of internal and external resources in this project. Among the functions to be contracted out partially or fully are engineering/design, construction, operation and maintenance, project management, environmental and regulatory approvals, and community and stakeholder relations. CNPI identified a list of key technical internal (Fortis) and external team personnel and described their areas of

expertise, but it was not clear what the specific project role would be for some of them. There also appeared to be some overlap in these roles between internal staff and external consultants. Also, some of the proposed technical team members seem to have limited direct experience with similar projects. CNPI described some of the relevant project experience of Fortis and its other partners, and provided detailed examples of Fortis's business practices in various areas that it considers to be consistent with good utility practices. CNPI also identified, in general terms, what it perceives as potential technical challenges in this project and described its plan for addressing them.

RES (1)

RES intends to use a mix of internal and external resources in this project. Although RES indicated that the vast majority of the work will be done by external resources (approximately 80% of the development budget) with the internal team essentially limited to an oversight role, it was non-committal in terms of who it plans to use. It identified some of the potential external resources that it may utilize in the various project components and described their areas of expertise, but indicated that the actual determination of the specific external service providers will happen at the "appropriate time". RES is proposing that critical roles such as the owner's engineer and EPC contractor will be contracted using a competitive process. RES's significant experience with similar projects was described in detail.

Financial Capacity

Information was required from the applicants to demonstrate that the applicants have the financial capability necessary to develop, construct, operate and maintain the line. The information included capital resources, credit ratings, financing plan, and experience in financing similar projects.

The Board concludes that all the applicants provided information to substantiate that they have solid financial backing and, therefore, financial capacity was not a distinguishing factor among the applicants. All applicants were given the same ranking.

Proposed Design

The applicants were required to provide an overview of some of the characteristics of their proposed design to the extent known at the time of their applications. The Board, in the information it provided to potential applicants, identified a "Reference Option", which was based on the preferred option identified by the OPA and the reference case analyzed by the IESO. The applicants were required to indicate whether their plan for the line was based on the Reference Option, and if not, to describe the differences and to provide a feasibility study for their plan performed by the IESO, or performed to IESO standards. The applicants were also required to highlight the strengths of their plan in terms of innovation, reduction of ratepayer risk, lower cost, local benefits, and enhanced grid reliability.

In this evaluation, the Board will not make determinations on specific technical design issues. Making technical determinations at this point is premature since part of the project development process is to further investigate design options for the purpose of preparing a definitive proposal in the form of a leave to construct application. However, the Board notes the submissions of the IESO and the OPA regarding design, and will consider the adequacy of the design in meeting the need identified by the OPA at the time of the leave to construct proceeding.

Each applicant confirmed that its proposed design meets or exceeds existing reliability standards and the minimum technical requirements for the project, so these factors are not addressed in the following sections. In evaluating the applications in the area of Proposed Design, the Board ranked applicants by considering the following factors:

- Have any innovative alternatives or special design features been proposed, and how significant are their potential benefits?
- Have the proposed design and any alternatives been supported on a preliminary basis and is there an appropriate plan to assess the proposed design and alternatives during development?

The better the approach to these factors which a proponent demonstrated through its application, the higher the Board ranked the proponent. Below, the Board sets out the

proponents in ranked order for Proposed Design and provides a brief discussion of the main characteristics of each application.

RES (6)

RES presented two design options: a Reference Design and a Preferred Design. The Preferred Design involves the use of single-circuit transmission line with a combination of single-circuit tubular steel H-Frame structures and single-circuit steel-lattice structures. RES provided a comprehensive comparison of the two designs and indicated that, compared to the Reference Design, the Preferred Design would have superior electrical attributes, lower construction cost (about $80 million), and shorter construction schedule . RES also suggested that a staged installation of transfer capacity with the Recommended Design could result in a significant cost reduction to the ratepayers (approximately $62.5 million). Two feasibility studies, prepared by the IESO for the Reference Design and Preferred Design, were provided.

UCT (6)

UCT evaluated a number of different technology, routing, and structural options. Its Recommended Plan is based on the Reference Option with one major exception which is the use of Guyed-Y towers instead of self-supported steel-lattice towers. UCT stated that the Guyed-Y towers have better lightning performance, a smaller footprint, and a potential cost saving of about $33 million relative to the conventional self-supported steel-lattice towers. The IESO confirmed that the recommended structural change will not impact the existing Reference Plan feasibility study and that a new feasibility study is not required at this time. UCT indicated that Guyed-Y towers are used in several locations in British Columbia, Manitoba, and Quebec. Although these installations are for single-circuit designs, UCT indicated that the double-circuit application has been well researched and will be subject to further testing during the development phase. UCT also provided a consultant's assessment of, among other things, the proposed use of Guyed-Y structures for its Recommended Plan.

EWT LP (4)

EWT LP's proposed design is based on the Reference Option with one exception (40m right-of-way instead of 50m). It also presented three alternative designs; a modified double-circuit reference based design, a single-circuit design, and a single-circuit design with guyed cross-rope suspension type structures. EWT LP has not assessed these alternatives, but indicated that it plans, early in the development phase, to test the key assumptions underlying the Reference-based design and undertake the studies necessary to determine whether a different design can be adopted at a lower cost. EWT LP estimated that these alternative designs have the potential of reducing the project's capital cost by $47 million to $116 million.

AltaLink (3)

Altalink's plan proposed to use the Reference Option, but with some features aimed at reducing the project cost and environmental footprint. One of the main features to be considered is the use of a mix of H-Frame wood pole structures (2 single-circuit structures) in place of double-circuit steel-lattice towers along various parts of the right-of-way. This feature was presented to the IESO and it agreed that no new feasibility study is required. Other features suggested by AltaLink included the use of screw pile foundations for steel-lattice towers (used throughout Alberta according to AltaLink), off-site assembly yards, helicopter erection techniques, sequencing of construction work, and alternatives for cost recovery. AltaLink's plan was not specific, however, in terms of how some of these concepts (e.g. H-Frames) will be assessed.

Iccon/TPT (2)

Iccon/TPT's plan is based on the Reference Option. Iccon/TPT identified a number of possible innovative measures to be explored during the development phase including the design and testing of a new tower family specifically engineered for this project, the use of different materials, reducing the number of "dead ends", and designing lattice towers that span above the tree tops. Iccon/TPT presented limited supporting information or analysis for these proposals.

CNPI (1)

CNPI's plan is based on the Reference Option. CNPI has not identified any proposed design innovations or cost reduction measures.

Schedule

The applicants were required to provide an overall project execution chart showing major milestones for both the development and construction phases of the project. They were also asked to provide detailed schedules for both phases with estimated completion dates, as well as the proposed consequences for failure to meet key milestone dates. In addition, they were required to provide a description of major risks associated with meeting these schedules, and their plan to mitigate these risks. Evidence of past schedule performance in similar projects, as well as any proposed innovative practices to meet or accelerate the project development and construction were also requested. For proper comparison of dates and durations, the duration of the development phase of the project is defined as the period from the designation decision to the leave to construct application. It should be noted that the applicants were not ranked higher or lower based on their proposed project durations. The proposed construction phase schedules are only indicative at this stage and do not constitute a commitment on the part of the applicants. As for the development phase schedules, there is no specific benchmark as to what an appropriate duration may be. However, the Board notes that for the more aggressive schedules, the applicants would still be required to complete all the necessary work for purposes of completing the Environmental Assessment and leave to construct processes (including consultation) in an appropriate manner and would be at risk for any additional costs which result from schedule delays.

In evaluating the applications for the criterion of Schedule, the Board considered the following factors:

- Level of detail and clarity of the project execution chart and schedules.
- Demonstrated ability to identify the major risks impacting these schedules and a description of how these risks will be mitigated.
- The planned approach to achieving the proposed completion dates.

- Level of commitment to the proposed schedules, proposed reporting requirements, and proposed consequences for failure to meet key milestones.
- Past schedule performance for similar projects. It should be noted that the applicants were asked in interrogatory #32 to provide more specific information about past schedule performance for large transmission projects (greater than 100 km in length) over the past 10 years. This information is factored into the following evaluation. The Board's assessment of past schedule performance was qualitative in nature considering the fact that there were variations among the applicants in terms of when the project schedules were established and the reasons for the variances.

The Board's ranking was based on how well the proponents demonstrated the above characteristics. Below, the Board sets out the proponents in ranked order for Schedule and provides a brief discussion of the main characteristics of each application.

UCT (6)

UCT provided a clear, detailed schedule for both phases of the project with key milestones. Its proposed completion date for the development phase is October 2014, assuming designation by May 2013 (i.e. duration of approximately 18 months). The proposed in-service date is December 2017. UCT explained that its proposed overall schedule (development and construction) can be accomplished using parallel work streams and other measures. A comprehensive list of what UCT considers to be major schedule risks and mitigating measures was provided. UCT proposed a monthly progress reporting process. Although UCT did not propose specific consequences for failure to meet major milestones, it did suggest a process for notifying the Board of potential milestone delays and mitigating measures before they occur. UCT provided a description of past performance in a number of projects which showed very good schedule performance as most of the cited projects were completed on or ahead of schedule.

EWT LP (5)

EWT LP provided a high level schedule for the overall project and a more detailed schedule for the development phase with key milestones. Its proposed completion date

for the development phase is March 2016, assuming designation by August 2013 (i.e. duration of approximately 32 months). The proposed in-service date is November 2018. A comprehensive list of what EWT LP considers to be major schedule risks and mitigating measures was provided. EWT LP proposed a bi-annual progress reporting process which is likely insufficient. It also proposed possible ultimate consequences for failure to meet major milestones in the development phase which would only be warranted for the "most egregious failures". EWT LP provided a description of past performance in a number of projects which showed average schedule performance.

Iccon/TPT (4)

Iccon/TPT provided a high level schedule for both the development and construction phases as well as a more detailed schedule for the development phase. Its proposed completion date for the development phase is February 2015, assuming designation by July 2013 (i.e. duration of approximately 18 months). Iccon/TPT indicated that its relatively short development schedule is achievable subject to meeting certain milestones for items which are beyond its control such as regulatory approvals. The proposed in-service date is October 2018. A detailed list (risk register) of what Iccon/TPT considers to be major schedule risks and mitigating measures was provided for the overall project. Iccon/TPT did not provide any detail about progress reporting or potential consequences for missing major schedule milestones. Iccon/TPT provided a description of past performance in a number of projects showing schedule performance by quarter. Iccon/TPT in its answer to interrogatory #32 provided additional information for major transmission projects which showed average schedule performance.

AltaLink (3)

AltaLink provided a high level schedule for both the development and construction phases as well as a more detailed schedule for the development phase. Its proposed completion date for the development phase is June 2014, assuming designation by April 2013 (i.e. duration of approximately 14 months). The proposed in-service date is November 2018. AltaLink's proposed development schedule seems to be on the optimistic side which, according to AltaLink, is achievable given what it described as a significant amount of "pre-development work" completed before submitting its application. A short list of what AltaLink considers to be major schedule risks and

mitigating measures was provided for the overall project. AltaLink proposed a bi-monthly progress reporting process but did not provide details about potential consequences for missing major schedule milestones. AltaLink provided a description of past schedule performance in a number of projects which did not show good performance. In the original application, AltaLink stated that, for projects completed in 2010, it came within one month of the estimated preliminary in-service date 20% of the time. For the four projects listed in response to interrogatory #32, two are in the construction stage and are on schedule and the other two are significantly (11 to 26 months) behind schedule.

CNPI (2)

CNPI provided a high level schedule for the construction phase of the project as well a more detailed table for the development phase with key milestones. Its proposed completion date for the development phase is May 2015, assuming designation by April 2013 (i.e. duration of approximately 25 months). The proposed in-service date is December 2019. A list of what CNPI considers to be major schedule risks and mitigating measures was provided. CNPI proposed a quarterly progress reporting process with a limited level of detail which is likely insufficient. It also proposed potential consequences for missing major milestones involving extreme cases of negligence. CNPI also mentioned that a bonus/penalty scheme for contractors could be considered during the construction phase. CNPI initially provided a description of past schedule performance in a number of projects which showed good performance. However, the additional information provided by CNPI in response to interrogatory #32 showed average schedule performance.

RES (1)

RES provided a high level schedule for both the development and construction phases as well as a more detailed schedule for the development phase. Its proposed completion date for the development phase is June 2015, assuming designation by June 2013 (i.e. duration of approximately 25 months). The proposed in-service date is December 2018. A list of what RES considers to be major schedule risks and mitigating measures was provided for the overall project. RES proposed various progress reporting intervals and detail level (weekly, monthly, and quarterly). RES also provided

a description of past schedule performance in a number of projects which did not show good performance. Three projects were listed in response to interrogatory #32, all of which were significantly late (12 to 32 months).

Cost

The applicants were required to provide estimated costs for the development, construction, and operation and maintenance phases of the project. Further details were required for development costs including a cost breakdown, assumptions used, expenditure schedule, as well as risk assessment, mitigation and allocation. The construction cost estimate could be expressed as a range. The applicants were also required to provide information regarding risk and mitigation measures for the construction phase, information on cost performance for past projects, and proposals for how construction cost risk could be allocated between ratepayers and the applicant. For the operation and maintenance phase, the applicants were required to provide their estimated average annual cost, which could also be expressed as a range.

In order to facilitate cost comparison among applicants, they were asked in an interrogatory to provide the three cost estimates (development, construction, and operation and maintenance) broken down in certain common components, and to be expressed in 2012 dollars. This was intended to assist the Board in comparing the cost estimates on an equivalent basis, particularly the development phase budget. They were also required to provide more specific information about past cost performance for large transmission projects (greater than 100 km in length) over the past 10 years.

By designating one of the applicants, the Board will be approving the development costs, up to the budgeted amount, for recovery. The School Energy Coalition submitted that there is insufficient information for the Board to determine that the development costs are just and reasonable. The Board does not agree. The Board has had the benefit of six competitive proposals to undertake development work. In the Board's opinion, the competitive process drives the applicants to be efficient and diligent in the preparation of their proposals. With the exception of Iccon/TPT, the development cost proposals ranged from $18.2 million to $24.0 million which is relatively narrow given the overall size of the project. Therefore, the Board finds that the development costs for the

designated transmitter are reasonable, and will be recoverable subject to certain conditions.

In evaluating the applications in the area of Cost, the Board ranked applicants by considering the following factors:

Development Cost

- Rank order of the cost estimate.
- Clarity and completeness of the cost estimate.
- Thoroughness of the risk assessment and mitigation strategy.
- Any proposal for allocation of the development cost risk which could benefit ratepayers.

Construction Cost

- Clarity and completeness of the cost estimate.
- Thoroughness of the risk assessment and mitigation strategy.
- Any proposal for allocation of the construction cost risk which could benefit ratepayers.
- Past cost performance for similar projects.

Operation and Maintenance Cost

- Clarity and completeness of the cost estimate.

The Board's ranking was based on how thoroughly the proponents demonstrated the above characteristics. Below, the Board sets out the proponents in ranked order for Cost and provides a brief discussion of the main characteristics of each application.

Unless stated otherwise, all cost estimates presented in this section are in 2012 dollars. The cost estimates are provided below to the nearest $0.1 million for the development cost, $1 million for the construction cost, and $0.1 million for the operation and maintenance cost.

AltaLink (6)

AltaLink's development cost estimate is $18.2 million (the lowest among the applicants). Its construction cost estimate is $454 million and its estimated annual operation and maintenance cost is $1.7 million. AltaLink did not provide an expenditure schedule for the development cost. It provided a combined risk list and mitigation measures for the project's cost and schedule. AltaLink suggested two alternatives for dealing with development cost variances; the first is to seek recovery of incurred cost subject to prudence review, and the second is a risk/reward model where variances of up to 10% are shared 50/50, and variances above or below 10% are subject to prudence review. It also presented three alternatives for construction cost recovery; a traditional cost of service model, a negotiated target price with 50/50 risk/reward sharing up to a pre-determined cap (e.g. 10%) with costs in excess of the cap subject to prudence review, and a lump sum fixed price. AltaLink provided a general description of past performance in a number of projects, but the level of granularity was insufficient to make a definitive assessment (i.e. AltaLink indicated that the collective cost performance of 112 projects was within 10% of the total estimate but did not provide specific individual project information).

UCT (6)

UCT's development cost estimate is $22.2 million (third lowest among the applicants) which is the same for the Reference Plan and Recommended Plan. Its construction cost estimate is $409 million for the Reference Plan and $378 million for the Recommended Plan. Its estimated annual operation and maintenance cost is $4.4 million. UCT provided an expenditure schedule for the development costs as well as a detailed description of associated risks and mitigating measures. UCT proposed that the project's development phase be treated as a cost of service case whereby any expenditure in excess of the approved budget would be recoverable, subject to a prudence review. UCT's construction cost estimate is the mid-point of anticipated range of costs. The only cost difference between the Reference Plan and the Recommended Plan is the use of Guyed-Y steel-lattice towers instead of self-supported steel-lattice towers. UCT presented a detailed description of the risks associated with the construction phase and its plan to mitigate these risks. UCT indicated that, at the project's leave to construct stage, it will present to the Board a proposal for

performance-based ratemaking for the project's construction phase. UCT provided a description of past performance in a number of projects which showed average cost performance.

RES (4)

RES's development cost estimate is $21.4 million which is essentially the same for the Reference Design and the Preferred Design (second lowest among the applicants). As stated in its application, its construction cost estimate is $472 million ($2013) for the Reference Option / Preliminary Preferred Route and $392 million ($2013 according to its application and $2012 according to its response to interrogatory #26) for the Preferred Design / Preliminary Preferred Route. However, the submission from HONI suggested that the amounts estimated for the cost of work necessary at HONI's stations was not developed in consultation with HONI. RES' estimated annual operation and maintenance cost is $2.2 million for the Preferred Design and $2.8 million for the Reference Design (the latter not included in the original application). RES provided an expenditure schedule for the development cost as well as a description of associated risks and mitigating measures. RES stated in its application that it is prepared to offer a firm development and construction price of $413 million ($2013) for the preferred design / preferred route option or $494 million ($2013) for the reference design / preferred route option, based on an incentive bonus / penalty methodology. RES presented a description of the risks associated with the construction phase and its plan to mitigate these risks. RES also provided a description of past performance in a number of projects which showed average cost performance.

EWT LP (3)

In EWT LP's application, the development cost estimate was $22.1 million and the construction cost estimate was $427 million for the double circuit option. It was not clear whether these cost estimates were escalated or not. EWT LP indicated in its application that the accuracy of it estimates is ±8% and ±22% for the development and construction costs, respectively. In response to interrogatory #26, EWT LP increased its development cost estimate to $23.7 million in $2012 (third highest among the applicants) and also increased the construction cost estimate for the double circuit option to $490 million in $2012. It also provided a construction cost estimate for the

single circuit option ($350 million in $2012), but the submission from HONI suggested that the amounts estimated for the cost of work necessary at HONI's stations was not developed in consultation with HONI. EWT LP's estimated annual operation and maintenance cost is $7.1 million. EWT LP explained in its application that this estimate includes $1.9 million for "Administration and General" which, if excluded with its share of the contingency, would bring their estimate down to $4.9 million/year. EWT LP provided an expenditure schedule for the development cost as well as a detailed description of associated risks and mitigating measures. EWT LP did not propose any risk sharing arrangements with benefits for ratepayers. EWT LP also presented a detailed description of the risks associated with the construction phase and its plan to mitigate these risks. EWT LP provided a description of past performance in a number of projects which showed below average cost performance.

CNPI (2)

CNPI's development cost estimate is $24.0 million (second highest among the applicants) and its construction cost estimate is $527 million. In its application, CNPI's estimated annual operation and maintenance cost was approximately $1.0 million, but was increased to $1.7 million in response to interrogatory #26 to account for administration and regulatory costs that CNPI indicated were not included in the initial estimate. CNPI provided an expenditure schedule for the development cost as well as a brief description of associated risks and mitigating measures. CNPI did not propose any risk sharing arrangements with benefits for ratepayers. CNPI presented a brief description of the risks associated with the construction phase and its plan to mitigate these risks. CNPI provided a description of past performance in a number of Fortis projects which showed average cost performance.

Iccon/TPT (1)

In Iccon/TPT's application, the estimated development cost was $45.5 million (highest among the applicants). It was not clear in the application whether this cost estimate was escalated or not. This estimate was reduced by Iccon/TPT in response to interrogatory #26 to $30.7 million. Iccon/TPT explained that, in addition to de-escalation, the difference is due to the fact that the earlier estimate included post leave to construct activities. Iccon/TPT's construction cost estimate is $487 million and its

estimated annual operation and maintenance cost is $4.9 million. Iccon/TPT provided an expenditure schedule for the development cost as well as a combined risk register for both the development and construction phases. For development costs, Iccon/TPT did not propose any risk sharing arrangements with benefits for ratepayers. To reduce construction cost risk, Iccon/TPT intends to enter into a fixed fee EPC contract with Isolux Ingenieria. Iccon/TPT provided a description of past performance in a number of projects which showed average cost performance.

Landowner, Municipal, and Community Consultation

The applicants were required to demonstrate their ability to conduct successful consultations with landowners, municipalities and local communities, and to provide a consultation plan including potential significant issues and mitigating measures. Additional details such as an overview of land rights acquisition activities and a description of any proposed route, or plan for identifying a route, were also requested.

In evaluating the applications in this area, the Board ranked applicants by considering the following factors:

- Clarity of the consultation plan, including methodology and schedule.
- The breadth and scope of potential significant stakeholder issues identified and the suitability of proposed mitigating measures.
- Adequacy of the description of the line route (or alternatives) and demonstrated appreciation of challenges involved in the route(s).

The more of these characteristics which a proponent demonstrated through its application, the higher the Board ranked the proponent. Below, the Board sets out the proponents in ranked order for this criterion and provides a brief discussion of the main characteristics of each application.

EWT LP (6)

EWT LP provided a comprehensive consultation plan as part of the description of its proposed environmental assessment process, which included a description of key elements and a list of stakeholders. The plan conveyed a clear picture as to how

consultations would be conducted and how the communities would be approached. Details regarding land use rights acquisition approach by category, potential issues and proposed mitigation were provided. For the purposes of the application, EWT LP assumed a route adjacent to the existing line but indicated that the final route will be based on consultation with landowners, municipalities and communities. A detailed study of potential routes was provided where potential route options were identified and described, including the evaluation criteria, process, and a proposed schedule for route selection.

RES (5)

RES provided a consultation plan that included a schedule, issue identification and resolution strategy. The plan provided for the formation of a Municipal Advisory Group, if appropriate. RES provided an overview of the required land use rights and a two-phase plan for acquiring these rights (pre and post leave to construct). A detailed land valuation and acquisition plan was provided. Potential significant issues and mitigating measures were also identified. RES identified a preliminary preferred route and stated that some route refinements may be required as a result of stakeholder consultation.

UCT (5)

UCT provided a consultation plan which included a list of stakeholders, consultation activities and schedule. UCT also provided a mitigation strategy to deal with significant issues. It also provided a land acquisition plan which included methodology for various types of land rights as well as an approach to compensation and mitigation. One of the mitigating measures is to identify three route variances to the proposed route as contingencies. UCT identified a 3-stage approach to route determination; conceptual (already completed), preliminary, and final.

AltaLink (3)

A consultation plan was provided as part of AltaLink's draft environmental assessment terms of reference, including methods and schedules. AltaLink provided a list of required land use rights for the various project phases and a plan to obtain these rights, including compensation principles. Some issues associated with obtaining these rights

were identified and a plan to address them was provided based on AltaLink's experience in Alberta. Altalink's plans were generic in nature rather than specific to this project. AltaLink identified a proposed route and some of the environmental constraints associated with it, subject to detailed design, environmental assessment, and stakeholder input.

CNPI (2)

A brief consultation plan was provided for the different project phases, including potential issues and mitigation. CNPI provided a brief description of the various categories of right-of-way and land use rights and its plan for obtaining these rights. A short list of potential issues associated with land acquisition and permitting was provided and mitigating measures proposed. Although the proposed route has been identified, CNPI is prepared to consider an alternate route.

Iccon/TPT (1)

A description of the proposed consultation plan was provided which was generic and brief. Iccon/TPT provided an overview of the required land use rights in the various project phases and a plan for acquiring these rights. A brief description of associated risks and mitigating measures was also provided. Iccon/TPT has not identified a planned route for the line at this time, but has conducted a routing analysis and identified several potential routing corridors. A methodology and decision criteria were described which will be used to evaluate these routing options during the development of the terms of reference for the environmental assessment.

First Nations and Métis Consultation

The duty to consult, as described in the Supreme Court decision *Haida Nation* v. *British Columbia (Minister of Forests)*[2], arises where the Crown has knowledge, real or constructive, of the potential existence of Aboriginal right or title and contemplates conduct that might adversely affect it. In some cases, the duty to consult may lead to a duty to accommodate. The precise extent of the duty to consult and, possibly, accommodate will vary depending on the facts of each situation. The Crown can

[2] [2004] 3 S.C.R. 511

delegate certain aspects of consultation to a project proponent. The Deputy Minister of Energy issued a letter on November 26, 2012 stating the Ministry's expectation that the designated transmitter will enter into a Memorandum of Understanding with the Ministry that will set out the respective roles and responsibilities of the Crown and the transmitter in consultation. None of the applicants objected to this requirement.

The applicants were required to demonstrate their ability to conduct successful First Nation and Métis consultations and to provide a consultation plan including a list of affected First Nations and Métis communities. They were also required to describe their engagement approach as well as potential significant issues and mitigating measures.

In evaluating the applications in this area, the Board ranked proponents by considering the following factors:

- Clarity and comprehensiveness of the proposed consultation plan, including methodology and schedule.
- Identification of potential significant issues and proposed mitigating measures.
- Relevant successful past experience.

The Board's ranking is based on how well the proponents demonstrated the above characteristics. Below, the Board sets out the proponents in ranked order for this criterion and provides a brief discussion of the main characteristics of each application.

UCT (6)

UCT provided a comprehensive consultation plan for all project phases (pre-designation to operation). A record of actual communication (letters, phone calls) with the 18 affected communities was provided as well as a list of potential key issues and proposed mitigation. UCT referenced NextEra's First Nations and Métis Relationship Policy and Enbridge's Aboriginal and Native American Policy as the basis for its plan. UCT described existing relationships with a number of First Nations and Métis communities who would be engaged as part of this project. UCT also described its relevant past experience with a number of projects involving the engagement, consultation and economic participation of First Nations and Métis communities.

EWT LP (5)

EWT LP provided a comprehensive consultation and communication plan and stated that it will commence consultation upon designation. A comprehensive list of expected issues was provided and mitigating measures were suggested. Relevant past experience with consultation activities was described which involved EWT LP's partners and consultants. EWT LP indicated that the consultation process would be facilitated by BLP. Having some of the affected First Nations lead the consultation process with other affected First Nations and Métis communities on behalf of the owners may give rise to fairness concerns which would need to be addressed.

AltaLink (5)

Altalink provided a preliminary consultation plan including steps and milestones and indicated that the final plan will be developed and agreed to jointly with each of the communities. It also provided a plan for the Traditional Ecological Knowledge and Traditional Land Use studies for the project. AltaLink indicated that all 18 affected communities were contacted in 2012, and that it met with 12 of them (excluding the 6 involved with BLP). A short list of potential issues was provided as well as a general description of possible mitigation. AltaLink described its longstanding relationship and engagement approach with the Aboriginal communities in Alberta as well as SNC Lavalin's experience in Ontario and Manitoba.

RES (3)

RES provided a detailed but generic consultation plan and identified potentially affected First Nations and Métis communities which included the previously identified 18 communities plus others. RES contacted all 18 plus one more, met with three of them and received correspondence from two others. RES identified a short list of potential issues and a plan to deal with these issues. RES described its experience with similar consultation in a number of projects in Canada and the U.S.A.

Iccon/TPT (2)

Iccon/TPT provided a general engagement plan as well as a record of actual communication with some of the affected First Nations and Métis communities. A list of potential significant issues and a preliminary plan to address them were also provided. Iccon/TPT indicated that it plans to contract with TransCanada's Aboriginal and Stakeholder Engagement Group to lead its First Nations and Métis Consultation process in this project. Iccon/TPT's plan was less comprehensive than plans filed by other applicants and, as mentioned earlier, does not effectively distinguish between participation and consultation.

CNPI (1)

CNPI indicated that some contacts have been made with affected communities (the 2 involved in LHATC plus 6 others), but that all 18 affected communities will be included in the consultation process. CNPI stated that an Aboriginal Consultation and Engagement Plan will be developed at the start of the environmental assessment process. The application included only a very high level summary consultation plan identifying some potential issues and possible generic mitigating measures. The plan lacked the detail contained in the plans of other applicants. Relevant recent experience was described with some Fortis projects and other related activities.

CONCLUSION

Based on the evaluation methodology described earlier, and the ranking given to each applicant for the various decision criteria, the Board has determined the total score and the resulting overall ranking of the applicants, as shown below. Note that the maximum possible score is 540:

1. UCT (455)
2. EWT LP (385)
3. AltaLink (385)
4. RES (280)
5. CNPI (200)
6. Iccon/TPT (185)

Therefore, the Board has decided that the designated transmitter for the development phase of the proposed East-West Tie line is UCT. UCT either ranked first or was tied for first in 7 of the 9 decision criteria. AltaLink and EWT LP are tied. EWT LP stated that it is not willing to be named runner-up, and the Board names AltaLink as the runner-up.

The Board finds that the development costs budgeted by UCT of $22,187,022 (in $2012) are reasonable. The Board will establish a deferral account in which UCT is to record the actual costs of development. The Board expects that UCT, at the time it applies for leave to construct the East-West Tie line, will file a proposal for the disposition of the development cost account.

The licence of UCT will be amended to have an effective date and to include special conditions regarding reporting to the Board. The Board notes that per Section 3.1.1. of the Reporting and Record-keeping Requirements, UCT will be required to report balances in the deferral account to the Board on a quarterly basis.

UCT proposed certain milestones at page 100 of its application, and at page 59 of its argument in chief indicated that the milestones proposed by Board staff at page 4 of its Phase 2 submission were directionally appropriate. The Board requires UCT to prepare a revised schedule of development milestones including those from its application, as well as the milestones proposed by Board staff. In addition, UCT shall include proposed milestones related to: the development and finalization of its First Nations and Métis participation plan; progress on landowner, municipal and community consultation; progress on First Nations and Métis consultation; and progress towards finalization of structure engineering work and final choice of structure design. If any of these milestones are, for UCT's development plan, impractical or not demonstrative of progress, UCT may omit or rephrase the milestone and provide an explanation for the proposed change.

As part of the schedule of milestones, UCT must also indicate what filing, form or other document could be offered as proof of completion of the milestone if the Board so required. For example, UCT proposed the milestone "Substantial Land / Right-of-Way Rights Acquired". What could be filed with the Board if the Board called upon UCT to

demonstrate successful completion of that milestone? The schedule of milestones should be provided in the following format:

Milestone	Proof of Completion	Target Date

A consequence of this designation decision is that, if it meets its obligations, UCT will be able to recover the costs of project development (up to the budgeted amount) from transmission ratepayers, even if the final assessment of need indicates that the line is no longer required. The Board therefore believes that it is important to limit the risk to ratepayers from unnecessary development work. The Board recognizes that the OPA reaffirmed the continuing need for the East-West Tie line in its Phase 2 submission, but also notes that the OPA offered to provide a more detailed need assessment after the designation decision. The Board will require the OPA to file a schedule for the production of an early detailed need update (for example, 60 days from the date of this decision) and a further need update at the approximate mid-point of the development work. The Board recognizes that a final need assessment will also form part of the leave to construct application. The OPA's proposed schedule should be developed in consultation with UCT to co-ordinate with the development schedule.

The Board therefore orders that:

1. The licence of UCT is amended to have an effective date of August 7, 2013, with a term of 20 years.

2. The following special conditions will be included in the licence:

    a) UCT shall report to the Board on a monthly basis, beginning no more than 60 days from the date of this decision and ending when a leave to construct application is filed for the East-West Tie line, on the following matters:

        i. Overall project progress: An executive summary of work progress, cost and schedule status, and any emerging issues/risks and proposed mitigation.
        ii. Cost: Actual cost and cost variance relative to the original project budget, as well as an updated budget forecast projected

out to a leave to construct application. A description of the reasons for any projected variances and mitigating measures should be provided. The report must also indicate the percentage of budgeted development costs spent as at the time of the report.

iii. Schedule: The milestones completed and the status of milestones in-progress. For milestones that are overdue or delayed, the reasons for the delay, the magnitude and impact of the delay on the broader development schedule and cost, and any mitigating steps that have or will be taken to complete the task.

iv. Risks and Issues Log: An assessment of the risks and issues, potential impact on schedule, cost or scope, as well as potential options for mitigating or eliminating the risk or issue.

b) UCT shall advise the Board immediately of any change to its governance, or any change in its financial status, that adversely affects or is likely to adversely affect the completion of the East-West Tie line.

3. UCT shall, within 21 days of the date of this decision, file for review and approval of the Board a revised development schedule, identifying milestones, proposed proofs of completion and target completion dates as described above. The time span for the activities in the schedule must be consistent with the schedule filed in UCT's application, taking into account the actual date of this decision.

4. A deferral account is established for UCT in which the actual costs of development of the East-West Tie line are to be recorded, from the date of this decision up to the filing of a leave to construct application, or such other time as the Board may order. The account shall include sub-accounts for the development activities listed in Attachment 1 to UCT's response to interrogatory 26 in this proceeding.

5. UCT shall, within 21 days of the date of this decision, file for review and approval of the Board a draft accounting order for the account and sub-accounts described

in paragraph 4, with detailed descriptions of the account and sub-accounts and how they will be used.

The Board further orders that:

1. The OPA shall, within 21 days of the date of this decision, file with the Board a schedule for the production of an early detailed need update and a further need update at the approximate mid-point of development work, as described above.

The Board further orders that:

1. The cost awards to eligible intervenors and the Board's own costs will be recovered from licensed transmitters whose revenue requirements are presently recovered through the Ontario Uniform Transmission Rate (and the costs will be apportioned among the transmitters based on their respective transmission revenues).

2. Eligible parties shall submit their cost claims for Phase 2 of the designation proceeding by August 28, 2013. A copy of the cost claim must be filed with the Board and one copy is to be served on each of Canadian Niagara Power Inc., Five Nations Energy Inc., Great Lakes Power Transmission LP and Hydro One Networks Inc.

3. Canadian Niagara Power Inc., First Nations Energy Inc., Great Lakes Power Transmission LP and Hydro One Networks Inc. will have until September 16, 2013 to object to any aspect of the costs claimed. A copy of the objection must be filed with the Board and one copy must be served on the party against whose claim the objection is being made.

4. The party whose cost claim was objected to will have until September 25, 2013 to make a reply submission as to why its cost claim should be allowed. A copy of the submission must be filed with the Board and one copy must be served on the party who objected to the claim.

DATED at Toronto, August 7, 2013
ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

Ministry of Energy

Office of the Minister

4th Floor, Hearst Block
900 Bay Street
Toronto ON M7A 2E1
Tel.: 416-327-6758
Fax: 416-327-6754

Ministère de l'Énergie

Bureau du ministre

4e étage, édifice Hearst
900, rue Bay
Toronto ON M7A 2E1
Tél. : 416 327-6758
Téléc. : 416 327-6754

Ontario

MC-2016-569

MAR 10 2016

Ms Rosemarie LeClair
Chair and Chief Executive Officer
Ontario Energy Board
PO Box 2319
2300 Yonge Street
Toronto ON M4P 1E4

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

Ontario
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 0 2 2016
Date

_____
Administrator of the Government

O.C./Décret 326/2016

Ontario Energy Board

EB-2010-0059

Board Policy:

Framework for Transmission Project Development Plans

August 26, 2010

Table of Contents

1 Introduction

1.1 Purpose

This document sets out the policy of the Ontario Energy Board for a framework for new transmission investment in Ontario, in particular with regard to transmission project development planning. The policy describes how project development planning will work in conjunction with existing Board processes for licensed transmitters.

This policy is the end result of a consultation on facilitation of the timely and cost effective development of major transmission facilities that may be required to connect renewable generation in Ontario. The goal is the implementation of a process that provides, among other things, greater regulatory predictability in relation to cost recovery for development work. The Board believes that this policy will:

- allow transmitters to move ahead on development work in a timely manner;
- encourage new entrants to transmission in Ontario bringing additional resources for project development; and
- support competition in transmission in Ontario to drive economic efficiency for the benefit of ratepayers.

This introduction includes a background of the issue and history of the consultation. Section 2 of this paper describes principles and goals that the Board used to evaluate staff's proposal and the stakeholder comments in order to devise the final policy. Section 3 outlines the licensing process for transmitters intending to participate in the Board designation process. Section 4 outlines the process to be followed in designating a transmitter to undertake development work on enabler facilities and network expansions including: the method for identification of eligible projects; the trigger for the process; the decision criteria for designation and the filing requirements intended to solicit the information; and the implications of approval of a plan.

The Filing Requirements for Transmission Project Development Planning are published under separate cover on the Board's website[1].

[1] http://www.oeb.gov.on.ca/OEB/Industry/Rules+and+Requirements/Rules+Codes+Guidelines+and+Forms

1.2 Background

As a consequence of the passage of the *Green Energy and Green Economy Act, 2009* ("GEA"), there has been enormous interest in connecting renewable generation to both distribution and transmission systems. However, the ability of existing or approved transmission facilities in Ontario to accommodate more generation is limited. Based in part on the number of applications for contracts under the Feed-in Tariff ("FIT") program, the Board understands that significant investment in transmission infrastructure will be required to accommodate current FIT applicants as well as any future renewable generation projects.

Advance knowledge of the location and timing of new infrastructure should allow developers to site prospective generation projects along anticipated transmission corridors in order to reduce overall connection costs. Developers should be able to anticipate development of the system and plan its construction schedule to coincide with economic connection.

Board staff met with licensed transmitters to discuss how the transmission planning process might work. Transmitters have indicated the need for a clear process, including an articulation of the overall transmission planning, approval and rate recovery framework.

On April 19, 2010, the Board released a staff Discussion Paper[2] for comment by stakeholders. Board staff's proposals built on earlier work by the Board with respect to transmission connection cost responsibility and in particular on the process that the Board has developed for "enabler" transmission facilities. Staff's proposals focused specifically on development work for projects identified by the Ontario Power Authority ("OPA") as it assesses transmission investments associated with the connection of generation under the FIT program.

The Board received 27 comments[3] on staff's proposals from entities representing a variety of stakeholder groups: current Ontario transmitters and those who would be new to Ontario; generator groups; ratepayer groups; special interest groups; one distributor; the IESO and the OPA.

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[2] http://www.oeb.gov.on.ca/OEB/_Documents/EB-2010-0059/Staff_paper_Tx_Project_Dev_20100419.pdf
[3] Complete text of stakeholder comments is available at the Board's website at: http://www.oeb.gov.on.ca/OEB/Industry/Regulatory+Proceedings/Policy+Initiatives+and+Consultations/Transmission+Project+Development+Planning/Transmission+Project+Development+Planning

2 Board Principles

The Board's goal in developing a policy for transmission project development planning is to facilitate the timely development of the transmission system to accommodate renewable generation.

In developing this policy, the Board is guided by its objectives in relation to the electricity sector under the *Ontario Energy Board Act, 1998* (the "OEB Act"). Of particular relevance in this instance are the objectives of protecting the interests of consumers with respect to price, quality and reliability of electricity supply and facilitating economic efficiency in the development of the transmission system including the maintenance of a financially viable electricity industry. Also important in this instance is the new objective of the Board to promote the use of energy from renewable generation sources.

The Board has previously identified the principles it uses in fulfilling its objectives in transmission policy[4]: economic efficiency; regulatory predictability; and administrative efficiency. The Board has reviewed the staff proposal and the stakeholder comments with the goal of fulfilling its objectives and promoting these principles.

Within the context of transmission investment policy, economic efficiency can be understood to mean achieving the expansion of the transmission system in a cost effective and timely manner to accommodate the connection of renewable energy sources. The Board believes that economic efficiency will be best pursued by introducing competition in transmission service to the extent possible within the current regulatory and market system.

Regulatory predictability allows proponents to understand how and on what basis regulatory decisions are likely to be made. The Board achieves this through policy statements and guidance to the industry and through transparent processes leading to consistency in the determinations it makes and the orders that it issues. Transmission planning is an ongoing procedure. The Board intends to put in place a transmission investment policy and project development planning process that is robust enough to provide consistency of process through many cycles of planning.

Administrative efficiency relates to the level of effort required from the perspective of proponents and other interested parties for effective participation in processes. In

[4] Most recently in the Staff Discussion Paper: Generation Connections for Transmission Connection Cost Responsibility Review (EB-2008-0003) available at: http://www.oeb.gov.on.ca/OEB/_Documents/EB-2008-0003/Staff_Discussion_Paper_20080708.pdf

devising this process, the Board has sought to avoid duplication and unnecessary effort for transmitters, Board staff and other stakeholders.

Taken together, regulatory predictability and administrative efficiency should facilitate investment, planning and decision-making by transmission proponents and should help them to manage business risks.

These aims are consistent with broader movements in energy regulation around the world. In particular, the United Kingdom and the United States are both currently consulting on policy changes along similar lines.

Ofgem in the U.K. is proposing[5] to evolve its regulatory framework to the RIIO model: Revenue set to deliver strong Incentives, Innovation and Outputs. Ofgem acknowledges that changes are needed to "meet the demands of moving to a low carbon economy…whilst maintaining safe, secure and reliable energy supplies"[6]. Ofgem's new proposed framework to deliver long-term value for money for network services includes involving third parties in design, build, operation and ownership of large, separable enhancement projects. Third party participation is to be considered where long-term benefits, especially for new technologies, new delivery solutions and new financing arrangements, are expected to exceed long-term costs. Ofgem would be responsible for any competitive process.

FERC in the U.S. released a Notice of Proposed Rulemaking on June 17, 2010.

> "With respect to transmission planning, the proposed rule would (1) provide that local regional transmission planning processes account for transmission needs driven by public policy requirements established by state or federal laws or regulations; (2) improve coordination between neighbouring transmission planning regions with respect to interregional facilities ; and (3) remove from Commission-approved tariffs or agreements a right of first refusal created by those documents that provides an incumbent transmission provider with an undue advantage over a nonincumbent transmission developer."[7]

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[5] "Regulating energy networks for the future: RPI-X@20 Recommendations" available at: http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?file=RPI-X@Recommendations.pdf&refer=Networks/rpix20/ConsultDocs

[6] Ibid: Executive Summary.

[7] The Notice of Proposed Rulemaking: Transmission Planning and Cost Allocation By Transmission Owning and Operating Public Utilities (Docket No. RM10-23-000) by the Federal Energy Regulatory Commission, pg 1. available at: http://www.ferc.gov/whats-new/comm-meet/2010/061710/E-9.pdf .

The Board sees this proposal to improve interstate planning and align it with state and federal policy drivers (particularly clean energy requirements) and to level the playing field between incumbent and nonincumbent transmitters to be analogous to its own goals for transmission in Ontario.

3 Licensing

Section 57 of the OEB Act prohibits persons from undertaking various activities in the electricity industry in Ontario, including owning or operating a transmission system, unless they are licensed to do so by the Board.

In the Discussion Paper, Board staff proposed that new entrant transmitters who want to participate in the designation process should be licensed by the Board as transmitters. Board staff stated that the licensing process could be used to ensure that a new entrant transmitter meets certain minimum requirements in relation to both financial and technical capability, and that this would provide comfort that the new entrant transmitter is both qualified and committed to doing business in Ontario should it be designated.

Many stakeholders, including the existing transmitters and most of the new entrant transmitters, agreed with Board staff's proposal. Others suggested that the licensing process was a barrier to entry by being onerous, time-consuming or expensive and suggested a separate, rigorous pre-qualification stage before any designation process. Some stakeholders noted that certain provisions of the transmitter licence, such as the Affiliates Relationship Code or the legislative provisions pertaining to the planning requirement or smart grid development, were too burdensome on a prospective basis. The IESO suggested that new entrants could have a more general form of licence.

The Board considers it reasonable to require that new entrant transmitters be licensed in order to participate in the designation process. The licensing process will allow the Board to evaluate the financial viability and technical capabilities of the new entrant transmitters. The Board would need to evaluate these items regardless of whether it was done in a licensing process or another type of pre-qualification process. The Board's licensing process is neither unduly onerous nor time consuming.

Licence applications to the Board are usually handled through a written process and may involve interrogatories from Board staff to clarify information. Other parties may intervene in the application. Licences are generally issued within 90 days of a complete

application being received by the Board. An application form and sample licence is available on the Board's website[8].

The Board notes that some of the requirements in the transmission licence may not apply unless a transmitter has assets in Ontario. If a new entrant transmitter feels that there are particular requirements that should not apply to them, it may raise those issues as part of its application process.

Existing transmitters that are already licensed by the Board can participate in the designation process under their existing licence. No additional requirements or actions are needed.

Board Policy on Transmission Licensing

Transmitters will need a transmission licence from the Board to participate in the designation process.

Existing transmitters that are already licensed by the Board will participate in the designation process under their existing licence.

New entrant transmitters will need to apply for, and obtain, a transmission licence before being able to participate in the designation process.

4 Hearing to Designate a Transmitter

4.1 Identification of Facilities Requiring Designation

The staff Discussion Paper noted that one of the legislated objectives of the OPA is to conduct independent planning for electricity generation, demand management, conservation and transmission and to develop integrated power system plans[9] (the "IPSP"). By regulation, an IPSP is to be filed with the Board every three years. The Board's role is to review and either approve the IPSP or to refer it back to the OPA for further consideration.

In addition, the OPA intends to assess transmission investments that in its view are required and economically justified to connect the FIT applications whose projects

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8 http://www.oeb.gov.on.ca/OEB/Industry/Licences/Apply+for+a+Licence/Apply+for+a+Licence+-+Electricity+Transmission

9 *The Electricity Act, 1998* section 25.2(1)(b)

cannot be accommodated by existing transmission capacity i.e. those in the FIT production line and FIT reserve. The OPA's assessment process is known as the Economic Connection Test ("ECT") and is expected to be completed every six months.

Further, the Board is aware that on May 7, 2010[10], the Minister of Energy and Infrastructure (as it was then known) asked the OPA to provide an updated transmission plan considering the sequencing necessary to meet the needs of the FIT program and the Korean Consortium.

The staff Discussion Paper proposed to use the results of the ECT as the inputs for a Board initiated process whereby interested transmitters would be designated to develop the enabler facilities and network expansions identified in the ECT. Staff proposed that the results of the ECT be accepted without prejudice and that a final determination of need for each project be deferred until the leave to construct hearing.

While most stakeholders accepted the ECT as a starting point, one ratepayer group noted that development funds would be spent by transmitters and recovered from ratepayers for projects that were subsequently found to be unnecessary or uneconomical. It argued that no approval should be given for any costs to be recovered from ratepayers until the economic feasibility of the projects could be fully tested, including the value of the energy being enabled. Some stakeholders suggested that the ECT must be fully tested in the designation process and others insisted that the only valid starting point is an IPSP.

The need for transmission projects may emerge in a number of different ways. New transmission is meant to achieve several purposes: increasing supply to new and existing load customers; facilitating interconnections; ensuring security, reliability and robustness of the system; and facilitating connection of FIT, non-FIT renewable, and non-renewable generation. The Board recognizes that, to the extent that the OPA's various planning tools and reports address differing combinations of these purposes, there is a hierarchy to the reports. An IPSP that considers all uses for transmission and all inputs from economic planning is preferable as a base for provincial transmission planning. However, an approved IPSP is not expected before the later half of 2011. The Board believes that waiting for an approved IPSP would be inconsistent with its statutory objective to promote timely expansion of the transmission system to facilitate connection of renewable generation. And while the hearing to approve an IPSP will be a thorough and comprehensive process, the evidence is not

[10] The letter from the Minister can be found at: http://www.powerauthority.on.ca/Storage/118/16599_MEI_Directive_to_update_H1_09_instruction_May_7_10.pdf

expected to be detailed enough over the three year planning cycle to allow final determination of need for any particular transmission project.

The Board agrees that the starting point for transmission project development planning should be an informed, effective plan from the province's transmission planner, the OPA. The Board believes that the ECT fits that description and is, therefore also a valid starting point for the process. Since the staff Discussion Paper was issued, the OPA has made progress in developing the process and substance of the ECT such as the announcement that the objective is 5% congestion of the system and an economic threshold of $500 of anticipated project cost per kW of new generation enabled[11].

The designation process is intended to be a preliminary stage in an increasingly disciplined process. The ECT is expected to provide a preliminary analysis of need sufficient for approving funding of preliminary development budgets. As budgetary and technical information becomes available, the Board will test need and prudence with increasing vigor. The Board considers that ensuring recovery of development costs before a final determination of need will advance the development of projects compared to the current process. In this way, it will promote the timely expansion of the transmission system and the use of energy from renewable sources.

While the ECT is focused on two of the many purposes of transmission, designation is simply the beginning of the development process and the Board expects the selected transmitter to consult with the OPA and IESO regarding the purposes of the project in order to bring a full justification of need to a leave to construct hearing. Therefore testing of the more detailed information developed after designation will take place in the next stage of the process, likely a leave to construct hearing.

One stakeholder objected to the enabler screening criteria described in clause 3A of the Transmission System Code being replaced by the ECT. The Board sees no conflict as the OPA has used the requirement of the Transmission System Code (the "TSC") in defining and scoping enabler facilities within the ECT. The Board notes that the staff Discussion Paper clarified that the proposal dealt specifically with enablers identified by the OPA through the ECT but the process could also apply to enabler facilities identified in the other two ways set out in the TSC. i.e. a renewable resource cluster is identified in an IPSP or the enabler facility and associated renewable resource cluster is the subject of a direction by the Minister to the OPA. The Board agrees.

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[11] A presentation by the OPA on the ECT can be found here: http://fit.powerauthority.on.ca/Page.asp?PageID=122&ContentID=10630&SiteNodeID=1137&BL_ExpandID=272

A few stakeholders commented that the Board's proposed approach presumes the approval of the IPSP in relation to transmission and, as such, the approach pre-empts the due process of an IPSP proceeding and aboriginal consultation and accommodation requirements. The same argument was made in the consultation on transmission connection cost responsibility, in which the Board stated that:

> "The Board is not, through this process, determining whether [transmission] facilities will be identified in an IPSP, nor what those facilities might be nor when or on what conditions the Board might approval the IPSP once it has been re-filed with the Board. Any aboriginal consultation and accommodation requirements associated with the IPSP and/or with the siting and construction of any [transmission] facilities remain unaffected by the Board's proposals…"[12]

The Board maintains the view set out above and reiterates that the OPA remains responsible for independent transmission planning in Ontario. The Board's mandate is restricted to those review and approval authorities given in the legislation. Further, the Board notes that legislation grants to the Minister of Energy the authority to direct the OPA to implement procedures for consulting aboriginal peoples (among others) in relation to the planning and development of transmission systems and to establish measures to facilitate the participation of aboriginal peoples in the development of renewable generation facilities and transmission systems.

Board policy on project identification

When the Board receives the results of an ECT from the OPA, it will begin a process on its own motion to designate a transmitter to undertake development work on any incremental enabler facilities or network expansions identified. If a recently approved IPSP is available, its transmission recommendations may be used for the designation process.

4.2 Notice and Invitation to File a Plan

Under section 70 (2.1) of the OEB Act, every transmitter's license is deemed to have as a condition that the licensee is required to prepare plans, in the manner and at the times required by the Board regarding expansion or reinforcement of the system to accommodate the connection of renewable generation. Plans may also be required for the development of the smart grid in relation to the licensee's system.

[12] Notice of Revised Proposal to Amend a Code dated April 15, 2009: http://www.oeb.gov.on.ca/OEB/_Documents/EB-2008-0003/Notice_REVISED_Proposed_Amendments_TCCRR_20090415b.pdf

In order to promote the connection of renewable generation, the Board will use the planning provision to ensure that needed transmission projects are being actively developed. As existing transmitters undertake capital planning as part of their normal business operations and the Board already has the authority to require transmitters to build projects for reliability purposes, the Board does not, at this time, anticipate requiring general "Green Energy Plans" under this section. There may be a future requirement for smart grid plans, either specifically or as part of cost of service rate filings.

The staff Discussion Paper anticipated that the ECT would identify four types of projects.

1. Capacity enhancements;
2. Network reinforcement;
3. Enabler facilities; and
4. Network expansions.

Staff proposed that the Board give Notice of a Hearing (a "Notice") on its own motion to designate a transmitter to develop projects of types 3 and 4. Staff proposed that the incumbent transmitter be directed and other licensed transmitters be invited to file plans in three months from the date of the Notice.

Several of the transmission companies pointed out that clarification was required with respect to the definition of network expansions, specifically if new lines in existing or widened transmission corridors were expansions or reinforcements. One transmitter noted that new entrants might harm the existing relationships between incumbent transmitters and landowners along corridors.

The Board notes that transmission corridors typically have multiple uses and therefore multiple companies have landowner agreements. The rights of way for most transmission corridors belong to the provincial government through the Ontario Realty Corporation[13] and should not be considered a part of existing infrastructure or a transmission asset. The Board believes that introducing competition in transmission development will improve economic efficiency and lead to better outcomes for the consumer. It is, therefore, in the public interest to keep the definition of network

[13] Pursuant to Part IX.1 of the *Electricity Act, 1998*, ownership of corridor land was transferred from Hydro One Inc. (and its subsidiaries) to Her Majesty in right of Ontario in 2002.

expansion as broad as possible and to classify new lines on existing or widened corridors as expansions subject to designation.

Several stakeholders requested clarification as to whether all transmitters who file a plan and/or the designated transmitter will be permitted to recover the costs of preparing plans. In addition some stakeholders commented that the ability of the incumbent transmitter to recover the cost of preparing the plan as directed by the Board could provide an unfair advantage for the incumbent.

The Board agrees and, similar to the situation regarding corridors above, the Board sees benefit in keeping the process as open and unbiased[14] as possible. Also the Board does not consider it appropriate for consumers to fund a transmitter's efforts to expand its commercial business through preparation of a plan seeking designation.

Therefore, when the Board receives an ECT report from the OPA and issues Notice of a designation hearing, the Board will invite all licensed transmitters to submit plans in the form mandated by the filing requirements. The incumbent transmitter is not obligated to file a plan at this point. Only the transmitter that is successful in being designated will be able recover the costs of preparing a plan. This is comparable to the more usual business model in which proponents prepare proposals or bids at their own cost and own risk. In this way, the Board seeks to ensure that all transmitters will be on equal footing when submitting plans and ratepayers will not pay for multiple plan preparation.

If there are no plans filed for a particular project, the Board will direct the incumbent to file a plan. The incumbent will then be able to recover the costs of plan preparation.

The staff Discussion Paper asked for comment on the period of time between a Notice and the filing deadline for plans. The paper gave examples of the Ofgem and Texas PUC contracting processes that allowed three months for an apparently similar stage of information. Some stakeholders questioned the comparison of plan preparation with either the Qualification to Tender for Ofgem or the statement of intent for Texas PUC. While many stakeholders felt that three months was an appropriate period for some projects depending on the level of detail expected in plans, some stated that larger or more complex projects would require more time to prepare adequately.

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[14] The Notice of Proposed Rulemaking: Transmission Planning and Cost Allocation By Transmission Owning and Operating Public Utilities (Docket No. RM10-23-000) by the Federal Energy Regulatory Commission states that neither incumbent nor nonincumbent transmission facility developers should…receive different treatment in a regional transmission planning process. http://www.ferc.gov/whats-new/comm-meet/2010/061710/E-9.pdf .

The Board agrees. Therefore, the Notice will specify a deadline for filing of plans: the default period will be three months but will be as long as six months for some projects at the Board's discretion.

Some stakeholders also felt that the knowledge advantage of the incumbent transmitter with respect to the technical configuration of connections points created an unfair advantage and suggested that the Board create rules regarding the timing and information that must be provided to proponents. The TSC primarily references requirements for the incumbent transmitter to provide connection information to customers (loads); the IESO; and neighbouring transmitters and primarily for the purposes of connection impact assessments, system operations or third party design. The Board agrees that the incumbent could frustrate other transmitters by delay in providing technical information on the relevant potential connection points and thus gain a competitive advantage. The Board therefore intends to begin a process to amend the TSC in order to provide specific instruction to incumbent transmitters on the level and timing of information to be provided. Comment on these issues will be received in the Notice and Comment process for those TSC amendments.

Board policy on notice and invitation to file

Definitions

Enabler facilities (subject to designation and plan approval process): As defined in Board's Transmission System Code, these are transmitter-owned connection facilities designed to connect clusters of renewable resources to the existing network; and

Network expansions (subject to designation and plan approval process): Transmission work undertaken to expand the transmission network, in particular the major bulk transmission system, through construction of new network facilities. For clarity, this includes greenfield projects and new lines in existing or expanded transmission corridors.

When the Board receives an ECT report from the OPA, it will issue a Notice of a hearing to designate development of any enabler facilities and network expansions identified in the ECT report. In the Notice, the Board will invite all licensed transmitters to submit plans in the form mandated by the filing requirements. Only the transmitter that is successful in being designated will be able recover its costs of preparing a plan.

If no plans are submitted for a particular project, the Board will require the incumbent transmitter to file a plan.

The Notice will specify a deadline for filing of plans. The period will be at least three months but may be as long as six months for larger or more complex projects.

4.3 Decision Criteria

In the Discussion Paper, Board staff had suggested project decision criteria that built on the general threshold of licensing to look at specific project related issues: organization and experience; technical capability; schedule; costs; financing; and landowner and other consultations. Staff asked for comments on the proposed criteria and prospective weightings for each one.

Many stakeholders commented that the criteria were appropriate. A few stakeholders suggested that organization, technical capability and financial capacity should be threshold (pass/fail) criteria and that cost, schedule and consultation should be evaluated. Most stakeholders suggested that the Board should balance the criteria at their discretion on a case by case basis. Others suggested that cost or consultation should be the most important.

The Board agrees that it would be irresponsible to risk the ratepayers' money with an entity (either a single transmitter or an identified consortium) that does not have the ability to see a project through to completion and that the criteria of organization, technical capability and financial capacity are crucial. However, the Board's process is not the same as a procurement process. The Board's hearing process does not lend itself to threshold tests nor is the Board convinced that it will be possible to examine those three criteria without substantial reference to the evidence regarding cost, scheduling, and consultation plans for the project.

The decision criteria and filing requirements are in regard to a specific project and are all critical to the successful construction of the project. However, the Board acknowledges that depending on the size, complexity and location of a particular line, some criteria will be relatively more important than the others. Therefore, the criteria will be weighted by the Board, based on the evidence in the proceeding, taking into account the individual circumstances of the project.

In fact, a few stakeholders suggested that socio-economic benefits (local employment or First Nation ownership) or environmental sustainability interests should be included as specific criteria. The IESO suggested that by focusing only on the rate-regulated model of transmission, the Board was excluding other models such as merchant generation.

The Board notes that, while the environmental assessment is a separate process, the criteria listed were meant to emphasize the Board's priorities, not to be exclusive. The filing requirements include an allowance for "any other information that [the applicant] considers relevant to its plan." It is here that a transmitter could include information on local employment, community partnerships, innovative models, etc. Where projects were otherwise equivalent or close in the other factors, this information could prove

decisive. In particular, financial models that do not put the risk on ratepayers or increase rates would be of interest to the Board, although it is hard to see how these might arise in the context of FIT-associated transmission.

Board policy regarding decision criteria

Organization; technical capability; financial capacity; schedule; costs; landowner and other consultations; and other factors will be weighted by the Board, based on the evidence in the proceeding, taking into account the individual circumstances of the project.

4.4 Filing Requirements

Stakeholders were generally supportive of the filing requirements proposed by Board staff. Some suggested that they should be high level as befits the level of information available before development of a project begins. Others suggested that they should be as specific as possible to avoid ambiguity and wasted effort by the transmitters.

Where specific suggestions were made regarding the Filing Requirements, the Board has generally incorporated them. The general question regarding major risks and mitigation strategies has been bolstered by specific inquiries regarding permitting and consultations. The Board acknowledges that major projects may be in a very preliminary stage of plan development and has allowed transmitters to identify alternatives with a method for subsequent selection.

In addition, the Board has removed a question that implied that transmitters must undertake consultation as part of plan preparation.

The Filing Requirements published as G-2010-0059[15] are adopted by the Board as the manner required for transmitters filing plans seeking designation for a project identified in a Notice by the Board. The Board considers them appropriate until it has gained more experience with the practice of transmission plans and the amount of information available.

The Board reminds prospective participants in the process that filing requirements are the starting point for the public record and additional information may be required as the hearing progresses.

[15] Available on the Board's website at:
http://www.oeb.gov.on.ca/OEB/Industry/Rules+and+Requirements/Rules+Codes+Guidelines+and+Forms

In fact, the Board emphasizes that the designation hearing is an open, public process. Information that the transmitter considers to be commercially sensitive should be identified as such and confidentiality requested according to the Board's "Practice Direction on Confidential Filings"[16]. The Board will then make a determination of the degree of confidentiality to be provided to balance the competing interests of private intellectual property and commercially sensitive information with the public interest in a transparent process. Potential solutions include redacted evidence, *in camera* proceedings, and undertakings by counsel to maintain confidentiality.

4.5 Implications of Plan Approval

The staff Discussion Paper recommended that the budgeted development costs of the designated transmitter be determined to be recoverable in a future rate proceeding. Most stakeholders supported the recovery of budgeted development costs for the designated transmitter provided that normal Board practices apply, including material overages being at risk until subsequently approved. Some stakeholders requested greater clarity as to what costs are considered "development costs".

The Board accepts the premise that designation should carry with it the assurance of recovery of the budgeted amount for project development. When subsequent analysis by the OPA suggests that a project has ceased to be needed or economically viable (e.g. FIT applications have dropped out of the reserve such that the project falls below the economic threshold), the transmitter is entitled to amounts expended and reasonable wind-up costs. Threshold materiality for amounts beyond the approved budget could be established in the order and would likely be in relation to the total budget.

From the Board's perspective, the objective of the development phase is to bring a project to the point where there is sufficient information for the transmitter to submit a leave to construct application. Therefore development costs begin when a transmitter is designated and end when a leave to construct application is submitted. The Board expects, therefore, the development budget to include route planning, engineering, site/environmental reports and some (but not all) consultation.

Where a leave to construct is not required for a designated project[17], the end point is when costs begin to be capitalized against the project.

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[16] Available on the Board's website at: http://www.oeb.gov.on.ca/documents/practice_direction-confidentiality_161106.pdf

[17] Ontario Regulation 161/99 clause 6.2 lists situations where Subsection 92(1) of the OEB Act does not apply. http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_990161_e.htm

In recent rate cases, Hydro One Networks Inc. (EB-2009-0416)) and Great Lakes Power Transmission LP ("GLPT") (EB-2009-0409) received approval of deferral accounts for IPSP and other long term projects' preliminary planning costs and GEA related planning expenses, respectively.

In its Decision and Order in each case, the Board stated that each company "is cautioned that this approval does not provide any assurance, either explicit or implicit, that the amounts recorded in the account will be recovered from ratepayers. No finding of prudence is being made at this time….A full test of prudence will be undertaken when [the company] applies for disposition of the account[s]."

The staff Discussion Paper also suggested that the Board's order for designation might have conditions such as milestones or reporting requirements. The purpose of establishing the designation process is to promote timely expansion of the transmission system for connection of renewable generation by ensuring that identified projects are being developed. If a designated transmitter is failing to make progress on developing the project and is not making progress toward bringing a leave to construct application, the Board needs the ability to rescind the designation both to limit the exposure of the ratepayer and to allow a different transmitter to be designated. Therefore, the Board order of designation will have conditions such as performance milestones (in particular, a deadline for application for leave to construct) and reporting requirements on progress and spending that, if not met, will result in the designation being rescinded and will put further expenditures at risk. Designated transmitters who are having trouble meeting the milestones for any reason, but intend to carry through with the work may apply to the Board for an amended schedule.

In the Discussion Paper, Board staff asked for comments on the potential of two transmitters being designated to develop the same project. Some stakeholders did not feel that it would ever be appropriate to allow ratepayers to fund development of two projects when only one will need to be constructed. Others felt that there may be extra-ordinary conditions where it might be justified.

The Board agrees with stakeholders that designation of two transmitters should be an exceptional circumstance where the Board is persuaded that:

- Two proposed projects to meet the same need cannot be directly compared since they are so significantly different
    - as to route, or
    - as to technology to be employed; or
- The amount saved on construction cost could be more than the cost added by the funding of a second development project.

The staff Discussion Paper also noted limitations on the Board's ability to guarantee a transmitter the ability to construct and operate a particular project. Many stakeholders expressed concern over this issue and looked for further assurance that the successful transmitter would be able to construct and operate the facilities.

The designation process of the Board is not a procurement process where the end result is a contract. Neither the Board, the OPA, nor the IESO has statutory authority to procure transmission. Under normal circumstances, the Board would expect that the transmitter who is designated would construct and operate the facilities. There are two instances where this might not be the case.

One circumstance is where the designated transmitter makes arrangements to assign the project to another transmitter. A project designation, particularly once a leave to construct has been issued, could have commercial value. The Board would not preclude this option but would have to grant permission to assign the project and be assured that there was no adverse ratepayer impact of the transaction and that the assignee was also licensed and equally qualified to undertake the work.

The other possibility is that another transmitter brings a leave to construct application for a different project that meets the same need in a better way. The Board cannot prevent any person from submitting an application for any matter under its jurisdiction. However, the undesignated transmitter would have undertaken development at its own cost which would not be recoverable from ratepayers. The transmitter would also need to adequately explain why it had not taken part in the designation process. Once a leave to construct is granted, the Board would not grant another transmitter approval for duplicative facilities.

Board Policy regarding implications of plan approval

The transmitter designated for a particular project will be assured of recovery of the budgeted amount for project development. Material overages will be at risk until a future prudence review. Threshold materiality for amounts beyond the approved budget could be established in the designation order and would likely be in relation to the total budget. When subsequent analysis by the OPA suggests that the project has ceased to be needed or is no longer economically viable, the transmitter will be entitled to appropriate wind-up costs.

The Board order of designation will have conditions such as performance milestones based on the project schedules (in particular, a deadline for application for leave to construct) and reporting requirements on progress and spending that, if not met, will result in the designation being rescinded and will put further expenditures at risk.

Under exceptional circumstances, the Board may designate two transmitters to proceed to the development phase where the Board is persuaded that:

- Two proposed projects to meet the same need cannot be directly compared since they are so significantly different
    - as to route, or
    - as to technology to be employed; or
- The amount saved on construction cost could be more than the cost added by the funding of a second development project.

Final project selection will take place after application for leave to construct.

5 Hearing for Leave to Construct

Section 92 of the OEB Act prohibits any person from constructing, expanding or reinforcing a transmission line without an order of the Board granting leave. Clause 92(2) and Ontario Regulation 161/99 provide exceptions to this requirement including relocation or reconstruction of a line without new land requirements; lines that are less than 2 km in length; and interconnections between two adjacent transmission systems. Section 96 specifies the issues that the Board may consider in finding that proposed work is in the public interest. The GEA amended the OEB Act to include as one of those issues the use of energy from renewable resources, where applicable and in a manner consistent with the policies of the Government of Ontario.

A designated transmitter is ensured recovery of development costs with the objective of submitting a leave to construct application. The requirements of a leave to construct application are described in the Board's existing Filing Requirements for Transmission and Distribution Applications[18].

The staff Discussion Paper included an illustrative flow chart of the Board's processes. One stakeholder stated that it did not show the Environmental Assessment approval process. Stakeholders should note that it does not include any stages of a project that are not under the Board's jurisdiction, such as the System Impact Assessment from the IESO that must be filed as part of the leave to construct application or the Connection Impact Assessment that must be completed by any transmitter to which the new project will connect.

The flow chart has been updated to show the Board's policy.

[18] http://www.oeb.gov.on.ca/documents/minfilingrequirements_report_141106.pdf

The following is an illustrative flow chart of the OEB designation and transmission project plan approval process, and where it fits with leave to construct and rate proceedings. For convenience, the chart shows the recovery of cost flowing from a cost of service rate hearing. However, a rate rider could be approved at other points in the process.

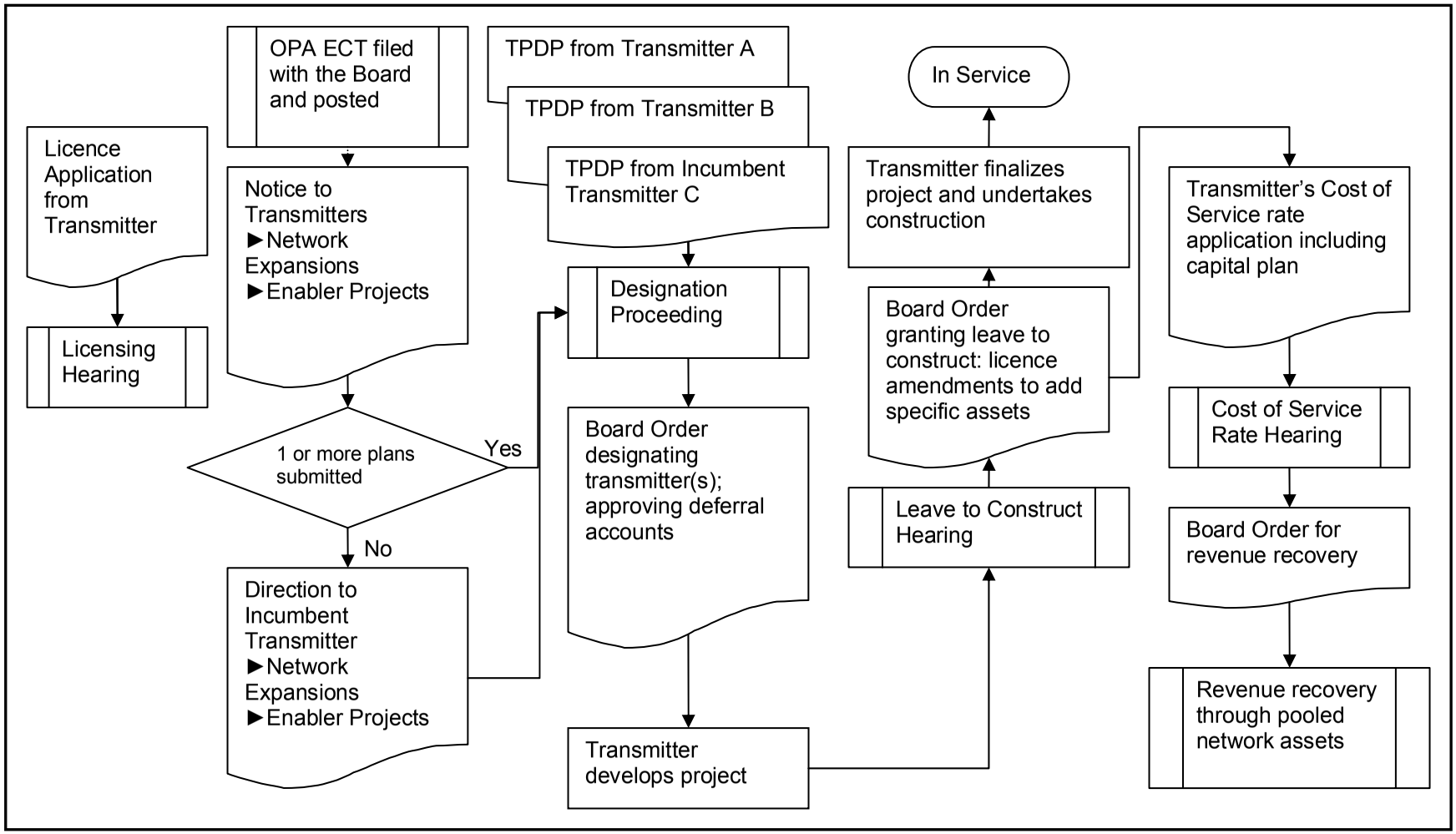


Figure 1: OEB Process for Transmitter Designation and Transmission Project Development Plan Approval

The ECT focuses on transmission needed to accommodate FIT applications and the projects of the Korean Consortium. As mentioned above, transmission serves other needs as well. The Board expects that during the development phase, the designated transmitter will consult with the OPA and the IESO regarding capacity, configuration and final routing that would support those other needs.

The Board expects that the OPA will support transmitters in preparing evidence of need for a transmission project.

There are two types of projects that could be identified in the ECT that would not be subject to designation: capacity enhancements and network reinforcements. As these types of projects are work on the incumbent transmitter's system, the incumbent will undertake them directly. It is highly likely that network reinforcements will require a leave to construct. The incumbent transmitter should develop these projects and prepare a leave to construct under the assurance that reasonable development costs will be recoverable from ratepayers at a future proceeding by reference to the ECT results. The Board expects that the OPA will support proof of need at this time.

6 Hearing for Rate Recovery

In the staff Discussion Paper, Board staff suggested that development costs by both incumbents and new entrants could be recovered through the Uniform Transmission Rates of Ontario (the "UTR"). Several stakeholders requested clarification of the workings of the Uniform Transmission Rate.

Section 78.(1) of the OEB Act prohibits a transmitter from charging for transmission of electricity except in accordance with an order of the Board. The UTR is a Board ordered schedule of tariffs charged to all transmission customers. There are 5 currently licensed transmitters that are rate regulated. Each one has a periodic hearing to determine its cost of service revenue requirement. After each Hydro One Networks Inc. hearing,[19] these revenue requirements are summed to determine the total transmission revenue requirement in Ontario. This revenue requirement is then spread over the total transmission service in the province to determine appropriate postage stamp transmission rates. The IESO is tasked with charging out this rate, collecting it from transmission customers and then paying it out to the transmitters. The payments to

[19] The most recent proceeding to set and allocate the Uniform Transmission Rate resulted in an Order released January 21, 2010 (EB-2008-0272). It is expected that the current Hydro One Networks Inc. case (EB-2010-0002), will result in a revised UTR.

transmitters are according to an allocation that has been predetermined by the Board based on each transmitter's percentage of the total transmission revenue requirement.

If a designated transmitter had development costs but did not construct the facilities[20], those costs could be converted into a regulatory asset for rate recovery. The regulatory asset would create a revenue requirement that would be added to the total provincial transmission revenue requirement and included in the calculation of the UTR. Then, the IESO would bill all transmission customers, collect the revenues and remit the appropriate amount to the designated transmitter.

Construction budgets would be part of the capital budget for a transmitter's cost of service rate hearing. Alternative mechanisms as set out in the "Report of the Board: The Regulatory Treatment of Infrastructure Investment in Connection with the Rate-regulated Activities of Distributors and Transmitters in Ontario" (EB-2009-0152)[21] could be requested.

Some network reinforcement and many capacity enhancement projects (not subject to designation) may not require a leave to construct. The incumbent transmitter should proceed to develop the projects and include them in the capital budget for the appropriate cost of service application. The project's inclusion in an ECT is sufficient support for recovery of reasonable development costs. Approval of construction budgets is subject to a determination of need for the capital budget. The Board expects that the OPA will support proof of need at that time.

[20] E.g. the facilities were ultimately determined to be not necessary.
[21] Available on the Board's website at http://www.oeb.gov.on.ca/OEB/_Documents/EB-2009-0152/Board_Report_Infrastructure_Investment_20100115.pdf

Ontario Energy Board

Filing Requirements
For
Electricity Transmission Applications

Chapter 4

Applications under Section 92
of the Ontario Energy Board Act

July 31, 2014

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 Act[1].

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.

- 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.

- 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 application[8]. 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 issues[9].

[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.

Ministry of Energy

Office of the Minister

4th Floor, Hearst Block
900 Bay Street
Toronto ON M7A 2E1
Tel.: 416-327-6758
Fax: 416-327-6754

Ministère de l'Énergie

Bureau du ministre

4e étage, édifice Hearst
900, rue Bay
Toronto ON M7A 2E1
Tél. : 416 327-6758
Téléc. : 416 327-6754

Ontario

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

AUG 0 4 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

Ministry of Energy

Office of the Minister

4th Floor, Hearst Block
900 Bay Street
Toronto ON M7A 2E1
Tel.: 416-327-6758
Fax: 416-327-6754

Ministère de l'Énergie

Bureau du ministre

4e étage, édifice Hearst
900, rue Bay
Toronto ON M7A 2E1
Tél. : 416 327-6758
Téléc. : 416 327-6754

Ontario

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

MC-2017-2125

DEC 04 2017

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

Dear Mr. Gregg: Peter,

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

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

TABLE OF CONTENTS

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 lnninuwug, 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

Apportioning Project Costs & Risks

The capital cost to complete the Lake Superior Link Project is $636.2 million. The cost of the work detailed through Section 1.0 below allows for the schedule provided in **Exhibit B, Tab 11, Schedule 1**.

This Application results in significant benefits for Ontario customers. These include:

i) substantially lower costs to complete the Project
   - capital savings of $120 million [1]
   - ongoing annual OM&A savings of $3.2 million – the equivalent of approximately $55 million of capital expenditures from a net present value perspective[2];

ii) a narrower corridor along the route of the line,

iii) reduced environmental impact and physical disturbance; and

iv) reduced risk to ratepayers by Hydro One assuming certain risks on the delivery of the Project.

1.0 PROJECT COST

The Lake Superior Link Project's cost is summarized as follows:

Table 1: Total Project Costs ($000s)	
Development Cost[3]	12,215
Construction Cost[4]	623,946
Total Project Cost	$636,161

[1] Hydro One's total costs of $636,161 as provided in Table 1 of Exhibit B, Tab 7, Schedule 1 relative to the NextBridge construction costs of $736,971 as provided in EB-2017-0182 Exhibit B, Tab 9, Schedule 1 Table 1 plus the incremental development costs incurred since designation as provided EB-2015-0216 NextBridge EWT Monthly Report – October 23, 2017 – Page 8, Table 1.

[2] Please refer to Exhibit B, Tab 9, Schedule 1 for further details.

[3] Based on forecast cost until October 2018 - OEB forecast approval date.

[4] Forecast construction cost contingent upon an October 2018 OEB approval of this Application.

1.1 Development Costs

As mentioned previously, once this Application is filed with the OEB, Hydro One will commence its consultation process with impacted parties.

Hydro One understands that the OEB's designation policy, *OEB Policy: Framework for Transmission Project Development Plans,* contemplates development cost recovery from ratepayers by the designated transmitter only. However, the policy also says that if customer benefits outweigh costs, the cost should be allowed for recovery.

> *The Board agrees with stakeholders that designation of two transmitters should be an exceptional circumstance where the Board is persuaded that:*
>
> - *Two proposed projects to meet the same need cannot be directly compared since they are so significantly different*
>   - *as to route, or*
>   - *as to technology to be employed; or*
> - *The amount saved on construction cost could be more than the cost added by the funding of a second development project.* [5]

Both Hydro One's capital and OM&A costs are significantly less than those proposed by NextBridge. In comparing the two leave to construct applications currently before the Board, Hydro One's proposal **will save ratepayers approximately $175 million** in capital equivalency (representing approximately $120 million in capital costs[6] and $3.2 million lower ongoing annual OM&A costs[7]). As discussed in **Exhibit B, Tab 9, Schedule 1**, this is expected to have a ratepayer benefit of approximately $13 million annually in reduced revenue requirement.

[5] EB-2010-0059 - OEB Policy: Framework for Transmission Project Development Plans – August 26, 2010 – Page 16

[6] EB-2017-0182 – Exhibit B, Tab 9, Schedule 1 – Table 4 – NextBridge Construction Costs of $736,971K plus incremental Development Costs of $17,812K relative to Hydro One's Construction Costs of $636.2M (not including the $22.& million approved as part of the designation process)

[7] The difference in annual ongoing OM&A expenditures carries a capital equivalency NPV of over $50 million as described in Exhibit B, Tab 9, Schedule 1.

The significant ongoing savings to ratepayers outweighs the projected one-time $12 million development costs to be incurred prior to OEB approval. Hydro One submits that, as contemplated by the aforementioned policy, the development costs documented in **Table 2** of this Exhibit should be eligible for recovery in rate base if Hydro One is selected to construct this Project.

Table 2: Development Costs ($000s)	
Real Estate	4,267
Engineering and Design	2,277
Environmental Approval[8]	2,181
Regulatory & Legal	1,995
First Nations & Métis Consultations	1,101
Project Management	154
Other Consultations	240
Total Development Cost	**$ 12,215**

These development costs include consultation activities (with affected Indigenous Communities and impacted stakeholders), preliminary engineering and design work, real estate acquisition, plus other costs expected to be incurred prior to OEB approval.

In order to complete the Project at the cost and schedule provided in this Application, Hydro One will utilize the existing development work as contemplated and already approved in the Designation Proceeding[9].

[8] 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 as discussed in Exhibit C, Tab 1, Schedule 2.
[9] EB-2011-0140

1.2 Construction Costs

Hydro One's construction cost to complete this Project is $623 million. Hydro One has partnered with SNC-Lavalin, one of the leading engineering and construction groups in the world, and has brought forward innovative project management to construct the Lake Superior Link Project resulting in the significant cost savings as shown herein. Hydro One and SNC-Lavalin have agreed to enter into a fixed price contract, providing further assurance on meeting the delivery price and mitigating the risk to ratepayers.

Table 3: Construction Costs ($000s)	
Construction	354,030
Site Clearing, Preparation & Site Remediation [10]	104,339
Material[11]	58,713
Project Management	5,802
Other Costs[12]	9,451
Construction Management, Engineering, Design & Procurement	17,828
Real Estate	9,798
First Nations & Métis Consultations	1,133
Environmental Approval	819
Other Consultations	160
Contingency[13]	10,775
Interest During Construction("IDC")[14]	42,596
Overhead[15]	8,502
Total Construction Cost	**$623,946**

1

[10] Includes an allowance for labour cost unit rate increases until Dec 2021.
[11] Includes an allowance for cost increases in commodities (steel, zinc, aluminum) and Foreign Exchange until November 2018.
[12] Other Costs include insurance, contract securities, other approval costs (various crossings, dewatering, etc.)
[13] In addition to contingency carried by SNC-L
[14] IDC is calculated using the OEB's approved interest rate methodology (EB-2006-0117) to the projects' forecast monthly cash flow and carrying forward closing balance from the preceding month.
[15] Overhead costs allocated to the project are for corporate services costs. These costs are charged to capital projects through an overhead capitalization rate in compliance with the Affiliate Relationship Code. As such they are considered "Indirect Overheads". Hydro One does not allocate any project activity to "Direct Overheads" but rather charges all other costs directly to the project.

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 transmitter[16], 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.

Table 4			
Description	**Likelihood**	**Impact**	**Mitigation**
Ability to reach agreement with First Nations and Métis in a timely manner	Medium	Delay in construction start Potential Cost Increase	▪ Hydro One has engaged with all impacted communities ▪ Hydro One has terms of agreement from other projects that are fair, equitable and tested (e.g., B2M LP) ▪ SNC-L also has extensive experience working with Indigenous communities ▪ Consultation activities will start in February 2018
Community consultation for approval of route results in delays to completing EA	Medium	Schedule Delay Potential Cost Increase	▪ Commence consultations in February 2018 ▪ Route differences limited to use of existing corridor through Park; significant reduction in environmental impact should be favourably viewed by public
Land acquisition and expropriation (if required) not completed in time for construction	Medium	Schedule Delay Potential Cost Increase	▪ Hydro One's experienced team with voluntary agreements ▪ Land Acquisition Compensations Principles that encourage voluntary settlement through incentives ▪ Early notification and proactive discussions with land owners commencing March 2018 ▪ Early identification of the need for expropriation through an accelerated land acquisition program in conjunction with the opportunity to stage construction pending final results of expropriation
Scheduled 15-days continuous double-circuit outage to replace towers in Pukaskwa National Park delayed	Low	Potential Cost Increase	▪ Obtain outage plan approval from all stakeholders early in the process

Inability to undertake an approved regulatory process to meet EA obligations in a timely manner	Medium-High	Schedule Delay Potential Cost Increase	▪ Consultations with MOECC began in late 2017; regulatory measure is possible if Project is compelling to Province
Substantive unforeseen conditions imposed on EA Approvals	Low-Medium	Potential Schedule Delay Potential Cost Increase	▪ Any conditions imposed would be the same for Hydro One and NextBridge in shared route areas; Hydro One's route changes expected to result in reduced environmental impacts and therefore reduced mitigation measures
OEB approval not received by October 2018	Medium	Potential Schedule Delay Potential Cost Increase	▪ Respond timely to all scheduled timelines
Archaeology findings delaying construction work more than 2 weeks/per instance	Medium	Potential Schedule Delay Potential Cost Increase	▪ Accelerate work schedules ▪ Parallel existing route and only 10% of the route is greenfield.

Based on the Monte Carlo results, and given the terms of the fixed-price contract between Hydro One and SNC-Lavalin, SNC-Lavalin carrying its own contingency, and Hydro One's past experience, Hydro One is carrying a much smaller contingency ($10.8 million) than is typical for a capital project of this size.

The contingency includes allowances to cover the following potential risks which will not impact rate payers:

- Commodity price fluctuations and foreign exchange variations (until November 2018)
- Accumulated funds used during construction interest rate variations (other than those required by OEB through the statutory regulatory process)
- Material delivery delay due to procurement or vendor issues.

v. RISKS ELEMENTS NOT INCLUDED IN THE HYDRO ONE PRICE

No contingencies have been made for the following unlikely events and reasonable price adjustments would be submitted to OEB for prudency review only after all other recourses have been exhausted:

- Labour disputes;
- Safety or environmental incidents not covered by the insurance program of Hydro One;
- Significant changes in costs of materials, commodity rates and/or exchange rates post-October 2018) (NB: the dollar amount subject to these risks is less than 8 percent of total project costs);
- Any conditions imposed by regulatory bodies or Governmental agencies;
- Force Majeure events.

vi. COSTS OF COMPARABLE PROJECTS

A comparable project constructed by Hydro One would be the Niagara Reinforcement Project as it will also be a new 230 kV line upon completion. Due to the unique construction arrangement for the Lake Superior Link, two similar high-voltage projects completed by SNC-Lavalin have also been included in **Table 5**. Lastly, for ease of reference, Hydro One has also included the NextBridge East West Tie Line Project submission for comparative purposes.

EB-2017-0364: HYDRO ONE ADDITIONAL EVIDENCE

INTRODUCTION & SUMMARY

The following information is provided to the Ontario Energy Board in response to Procedural Order No. 1 in the above-mentioned proceeding.

Hydro One's s. 92 Leave to Construct application to build the Lake Superior Link is the first made by Hydro One pursuant to the OEB's EB-2010-0059 Policy: Framework for Transmission Project Development Plans ("the Designation Policy"), which is provided as Attachment 1.

The Policy was initiated to reduce transmission costs, based on the belief that competition in transmission in Ontario would drive economic efficiency for the benefit of customers. In the matter of the tie line that is the subject of the two s. 92 applications now before the OEB, the OEB did not limit the competition aspect to the development phase of the Project: rather, the competition also included the construction and ownership phase. In its Decision in phase 2 of the Competitive Designation proceeding[1], the OEB wrote:

> *"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."*

As a result of the developer designation proceeding, NextBridge was designated to complete the development component of the project based on NextBridge's forecast cost of $22.2M in development costs and $378-409 million construction costs.

Both Hydro One and NextBridge have filed s. 92 applications to build the line, but there are two main differences between the applications.

I. Project Capital and OM&A Cost

Hydro One has submitted an application to construct the project with a capital cost of $636.2 million. NextBridge has filed an application that will have a capital cost in excess of $779.7 million[2], which is nearly double what NextBridge originally provided to the OEB and the value considered by the OEB in making its decision to award the development phase designation.

Hydro One has submitted an application for a project that will have ongoing OM&A costs of approximately $1.3 million/year. NextBridge has filed an application for a project that will have ongoing OM&A costs of $4.7 million/year[3].

[1] EB-2011-0140 – Decision and Order – August 7, 2013
[2] Includes $737 million in construction costs provided in EB-2017-0182 Exhibit B, Tab 9, 1, and NextBridge's Extended Development Period Budget cost estimate of $42.7 million provided in EB-2015-0216 on Page 8 – July 24, 2017.
[3] EB-2017-0182 –I.B.NextBridge.Staff30 – January 25, 2018

- Work protection issues must be addressed. Unless there is one Controlling Authority[19] (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 report[20] 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

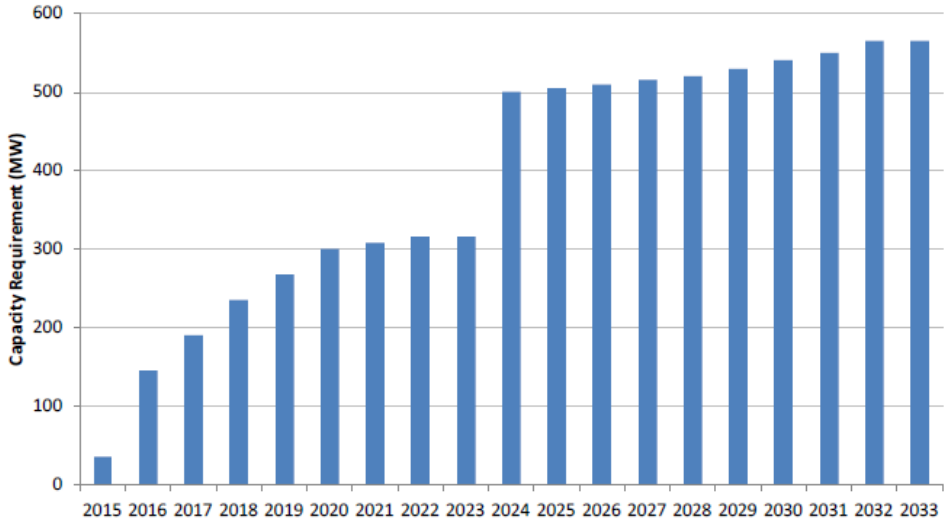
[19] Controlling Authority definition - The person(s) who occupies a position responsible for the control of specific equipment and devices. This includes the responsibility for performing, directing or authorizing changes in the conditions or in the position of the equipment or devices.
[20] IESO Updated 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, 2015[21], 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 schedule[22]. 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 report[23] 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:

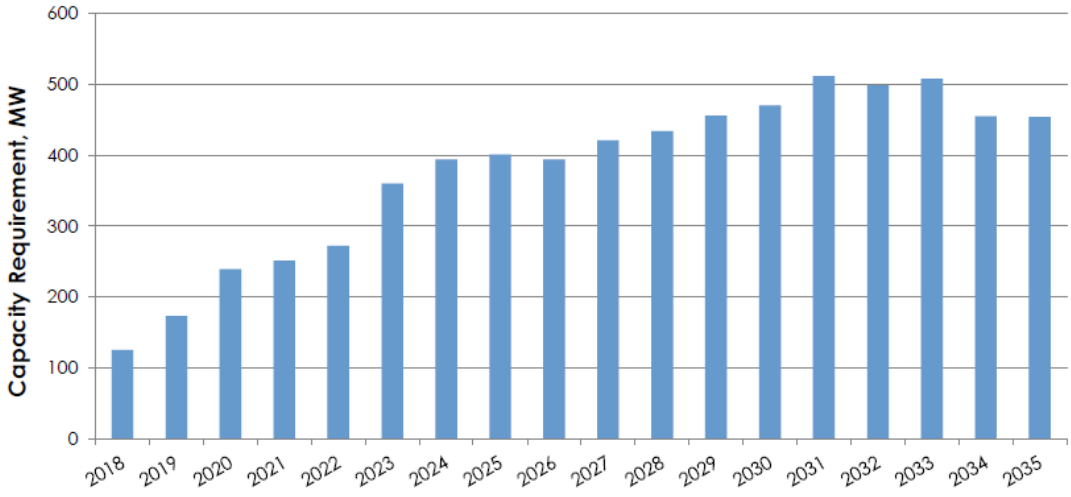
a) Approximately 740 MW demand in the Northwest (Fig 2 of the 2017 IESO report)
b) No import from Manitoba and Minnesota
c) Loss of both circuits of the existing EWT line

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



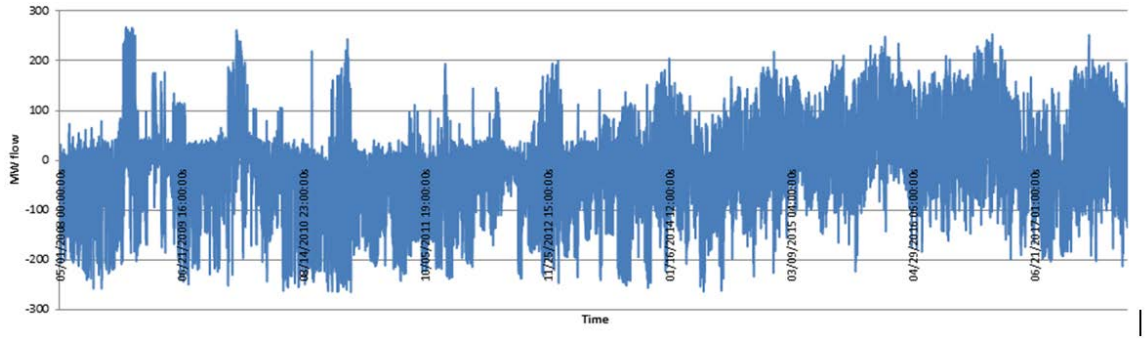
iv. Probability of capacity shortfall is low, and the risk is manageable.

[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.

Hydro One Networks Inc.
7th Floor, South Tower
483 Bay Street
Toronto, Ontario M5G 2P5
www.HydroOne.com

Tel: (416) 345-5680
Cell: (416) 568-5534
frank.dandrea@HydroOne.com

Frank D'Andrea
Vice President
Regulatory Affairs & Chief Risk Officer

BY COURIER

September 22, 2017

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
Suite 2700, 2300 Yonge Street
P.O. Box 2319
Toronto, ON M4P 1E4

Dear Ms. Walli:

Hydro One Networks' Letter of Intent to file Leave to Construct Application - East West Tie Line

This letter is to inform the Ontario Energy Board of Hydro One's intention to file an Application pursuant to Section 92 of the *Ontario Energy Board Act, 1998* for an Order granting leave to construct the East West Tie Lines project.

Hydro One believes it can deliver a cost-effective transmission solution to meet the energy needs and ensure reliable and adequate supply of electricity to Ontario's northwest. Our efforts will result in a timely and beneficial project; for the Province, the electricity system and the homes and businesses of Northern Ontario.

Dependent upon the IESO's updated needs assessment, Hydro One is prepared to submit a Leave to Construct application, which will include a not-to-exceed price, by December of this year. We believe we are uniquely positioned to provide a cost-effective alternative while substantively meeting the timeline needs for the East-West Tie transmission line. Hydro One's East West Tie Station Project (EB-2017-0194) will still be required.

An electronic copy of this letter has been filed through the Ontario Energy Board's Regulatory Electronic Submission System (RESS).

Sincerely,

ORIGINAL SIGNED BY FRANK D'ANDREA

Frank D'Andrea
cc. Miriam Heinz, IESO

UNDERTAKING – JT 2.18

Undertaking

Hydro One to provide copies of correspondence with NextBridge where they informed them about planning to file the application for LSL.

Response

Please see Attachment 1.

RICHARDSON Joanne

From: Edith Chin <Edith.Chin@enbridge.com>
Sent: Friday, March 31, 2017 4:16 PM
To: RICHARDSON Joanne
Cc: Jennifer.Tidmarsh@nexteraenergy.com; maia.chase@ieso.ca; SCARLETT James; Krista Hughes
Subject: RE: IESO E-W Tie Evidence - DRAFT

Thanks Joanne.
This confirms receipt of your email.
Since our meeting is on Monday morning, we will not have the time to have a fulsome review of the evidence to be shared. May I suggest we discuss the following two topics at our meeting:

1. We request that Hydro One and IESO assist NextBridge in describing the existing transmission facilities as part of our Project Overview (Filing Requirements 4.3.2.2).
2. We request Hydro One assist NextBridge in completing the section on Network Reinforcement Requirements (4.3.2.10)

Many thanks.
Looking forward to our meeting.
Edith

Edith Chin
Tel: 416 753 7872

From: Joanne.RICHARDSON@HydroOne.com [mailto:Joanne.RICHARDSON@HydroOne.com]
Sent: Friday, March 31, 2017 3:51 PM
To: Edith Chin
Cc: Jennifer.Tidmarsh@nexteraenergy.com; maia.chase@ieso.ca; JScarlett@HydroOne.com
Subject: FW: IESO E-W Tie Evidence - DRAFT

Hi Edith,

Thanks for your email and attachments sent out earlier today. I have not opened, read, nor forwarded the attached document to my team, as I have been instructed by our EVP and CLO, copied above, that Hydro One should not receive or accept any information from a competitor that might be confidential or proprietary and is not strictly required under our scope of work for the East West Tie Station Project. Accordingly, I have deleted your note and attachments and would ask that you edit and resend these materials to remove unnecessary information or material you consider of a competitive nature.

I will forward you copies of Hydro One's evidence shortly.

Please confirm receipt of this email.

Joanne

From: Edith Chin [mailto:Edith.Chin@enbridge.com]
Sent: Friday, March 31, 2017 12:05 PM
To: Maia Chase; RICHARDSON Joanne

Cc: Jennifer.Tidmarsh@nexteraenergy.com
Subject: RE: IESO E-W Tie Evidence - DRAFT

Many thanks Maia.
Attached please find excerpts from NextBridge's draft evidence intended for discussion at our April 3rd meeting. This is a confidential draft and is subject to change. It does not have the benefit of information from the evidence which Maia sent us a couple days ago.
We look forward to seeing everyone on Monday. One of our regulatory team, Krista Hughes, plans to join us by phone. Do you intend to set up a line? I can either set something up, or if Krista is the only one calling, we can call her. Please advise what is the best arrangement.
Many thanks.
Edith

Edith Chin
Tel: 416 753 7872

From: Maia Chase [mailto:maia.chase@ieso.ca]
Sent: Thursday, March 30, 2017 7:56 AM
To: Joanne.RICHARDSON@HydroOne.com; Edith Chin
Cc: Jennifer.Tidmarsh@nexteraenergy.com
Subject: IESO E-W Tie Evidence - DRAFT

Attached is the IESO's revised evidence for discussion at Monday's meeting. This is a draft that has not yet been subject to all internal reviews.

If you have any questions, let me know.

Thanks

Maia

Maia Chase| Senior Analyst- Regulatory Affairs, IESO| Station A, Box 4474, Toronto, Ontario, M5W 4E5| T: 905.403.6906 C: 905.301.6179 |Email: maia.chase@ieso.ca| Web: www.ieso.ca

Ontario Energy Board

Commission de l'Énergie de l'Ontario

Ontario

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

DECISON

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. 013[2] (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 or 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 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.

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[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

Hryniak v. Mauldin, [2014] 1 SCR 87, 2014 SCC 7 (CanLII)

Date: 2014-01-23
File number: 34641
Other citations: 366 DLR (4th) 641; 453 NR 51; 314 OAC 1; [2014] EXP 319; 21 BLR (5th) 248; 12 CCEL (4th) 1; AZ-51036908; [2014] CarswellOnt 640; JE 2014-162; [2014] SCJ No 7 (QL); 37 RPR (5th) 1; [2014] ACS no 7; 27 CLR (4th) 1
Citation: Hryniak v. Mauldin, [2014] 1 SCR 87, 2014 SCC 7 (CanLII), <http://canlii.ca/t/g2s18>, retrieved on 2018-06-01

SUPREME COURT OF CANADA

CITATION: Hryniak *v.* Mauldin, 2014 SCC 7, [2014] 1 S.C.R. 87

DATE: 20140123
DOCKET: 34641

BETWEEN:

Robert Hryniak
Appellant
and
Fred Mauldin, Dan Myers, Robert Blomberg, Theodore Landkammer, Lloyd Chelli, Stephen Yee, Marvin Cleair, Carolyn Cleair, Richard Hanna, Douglas Laird, Charles Ivans, Lyn White and Athena Smith
Respondents
- and -
Ontario Trial Lawyers Association and Canadian Bar Association
Interveners

CORAM: McLachlin C.J. and LeBel, Abella, Rothstein, Cromwell, Karakatsanis and Wagner JJ.

REASONS FOR JUDGMENT: (paras. 1 to 96) Karakatsanis J. (McLachlin C.J. and LeBel, Abella, Rothstein, Cromwell and Wagner JJ. concurring)

Hryniak *v.* Mauldin, 2014 CSC 7, [2014] 1 R.C.S. 87

Robert Hryniak *Appellant*

v.

Fred Mauldin, Dan Myers, Robert Blomberg, Theodore Landkammer, Lloyd Chelli, Stephen Yee, Marvin Cleair, Carolyn Cleair, Richard Hanna, Douglas Laird, Charles Ivans, Lyn White and Athena Smith *Respondents*

and

Ontario Trial Lawyers Association and Canadian Bar Association *Interveners*

Indexed as: Hryniak *v.* Mauldin

2014 SCC 7

File No.: 34641.

2013: March 26; 2014: January 23.

Present: McLachlin C.J. and LeBel, Abella, Rothstein, Cromwell, Karakatsanis and Wagner JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Civil procedure — Summary judgment — Investors bringing action in civil fraud and subsequently bringing a motion for summary judgment — Motion judge granting summary judgment — Purpose of summary judgment motions — Access to justice — Proportionality — Interpretation of recent amendments to Ontario Rules of Civil Procedure — Trial management orders — Standard of review for summary judgment motions — Whether motion judge erred in granting summary judgment — Rules of Civil Procedure, R.R.O. 1990, Reg. 194, Rule 20.

In June 2001, two representatives of a group of American investors met with H and others to discuss an investment opportunity. The group wired US$1.2 million, which was pooled with other funds and transferred to H's company, Tropos. A few months later, Tropos forwarded more than US$10 million to an offshore bank and the money disappeared. The investors brought an action for civil fraud against H and others and subsequently brought a motion for summary judgment. The motion judge used his powers under Rule 20.04(2.1) of the Ontario *Rules of Civil Procedure* (amended in 2010) to weigh the evidence, evaluate credibility, and draw inferences. He concluded that a trial was not required against H. Despite concluding that this case was not an appropriate candidate for summary judgment, the Court of Appeal was satisfied that the record supported the finding that H had committed the tort of civil fraud against the investors, and therefore dismissed H's appeal.

Held: The appeal should be dismissed.

Our civil justice system is premised upon the value that the process of adjudication must be fair and just. This cannot be compromised. However, undue process and protracted trials, with unnecessary expense and delay, can prevent the fair and just resolution of disputes. If the process is disproportionate to the nature of the dispute and the interests involved, then it will not achieve a fair and just result.

A shift in culture is required. The proportionality principle is now reflected in many of the provinces' rules and can act as a touchstone for access to civil justice. The proportionality principle means that the best forum for resolving a dispute is not always that with the most painstaking procedure. Summary judgment motions provide an opportunity to simplify pre-trial procedures and move the emphasis away from the conventional trial in favour of proportional procedures tailored to the needs of the particular case. Summary judgment rules must be interpreted broadly, favouring proportionality and fair access to the affordable, timely and just adjudication of claims.

Rule 20 was amended in 2010 to improve access to justice. These reforms embody the evolution of summary judgment rules from highly restricted tools used to weed out clearly unmeritorious claims or defences to their current status as a legitimate alternative means for adjudicating and resolving legal disputes. They offer significant new tools to judges, which allow them to adjudicate more cases through summary judgment motions and attenuate the risks when such motions do not resolve the entire case. The new powers in Rules 20.04(2.1) and (2.2) expand the number of cases in which there will be no genuine issue requiring a trial by permitting motion judges to weigh evidence, evaluate credibility and draw reasonable inferences.

Summary judgment motions must be granted whenever there is no genuine issue requiring a trial. There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.

The new fact-finding powers granted to motion judges in Rule 20.04 may be employed on a motion for summary judgment unless it is in the interest of justice for them to be exercised only at trial. When the use of the new powers would enable a judge to fairly and justly adjudicate a claim, it will generally not be against the interest of justice to do so. The power to hear oral evidence should be employed when it allows the judge to reach a fair and just adjudication on the merits and it is the proportionate course of action. While this is more likely to be the case when the oral evidence required is limited, there will be cases where extensive oral evidence can be heard. Where a party seeks to lead oral evidence, it should be prepared to demonstrate why such evidence would assist the motion judge and to provide a description of the proposed evidence so that the judge will have a basis for setting the scope of the oral evidence.

On a motion for summary judgment under Rule 20.04, the judge should first determine if there is a genuine issue requiring trial based only on the evidence before her, *without* using the new fact-finding powers. There will be no genuine issue requiring a trial if the summary judgment process provides her with the evidence required to fairly and justly adjudicate the dispute and is a timely, affordable and proportionate procedure, under Rule 20.04(2)(a). If there appears to be a genuine issue requiring a trial, she should then determine if the need for a trial can be avoided by using the new powers under Rules 20.04(2.1) and (2.2). Their use will not be against the interest of justice if they will lead to a fair and just result and will serve the goals of timeliness, affordability and proportionality in light of the litigation as a whole.

Failed, or even partially successful, summary judgment motions add to costs and delay. This risk can be attenuated by a judge who makes use of the trial management powers provided in Rule 20.05 and the court's inherent jurisdiction. These powers allow the judge to use the insight she gained from hearing the summary judgment motion to craft a trial procedure that will resolve the dispute in a way that is sensitive to the complexity and importance of the issue, the amount involved in the case, and the effort expended on the failed motion. Where a motion judge dismisses a motion for summary judgment, in the absence of compelling reasons to the contrary, she should also seize herself of the matter as the trial judge.

Absent an error of law, the exercise of powers under the new summary judgment rule attracts deference. When the motion judge exercises her new fact-finding powers under Rule 20.04(2.1) and determines whether there is a genuine issue requiring a trial, this is a question of mixed fact and law which should not be overturned, absent palpable and overriding error. Similarly, the determination of whether it is in the interest of justice for the motion judge to exercise the new fact-finding powers provided by Rule 20.04(2.1) is also a question of mixed fact and law which attracts deference.

The motion judge did not err in granting summary judgment in the present case. The tort of civil fraud has four elements, which must be proven on a balance of probabilities: (1) a false

representation by the defendant; (2) some level of knowledge of the falsehood of the representation on the part of the defendant (whether knowledge or recklessness); (3) the false representation caused the plaintiff to act; (4) the plaintiff's actions resulted in a loss. In granting summary judgment to the group against H, the motion judge did not explicitly address the correct test for civil fraud but his findings are sufficient to make out the cause of action. The motion judge found no credible evidence to support H's claim that he was a legitimate trader, and the outcome was therefore clear, so the motion judge concluded there was no issue requiring a trial. It was neither against the interest of justice for the motion judge to use his fact-finding powers nor was his discretionary decision to do so tainted with error.

Cases Cited

Referred to: *Bruno Appliance and Furniture, Inc. v. Hryniak*, 2014 SCC 8 (CanLII), [2014] 1 S.C.R. 126; *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, 1999 CanLII 653 (SCC), [1999] 3 S.C.R. 46; *Medicine Shoppe Canada Inc. v. Devchand*, 2012 ABQB 375 (CanLII), 541 A.R. 312; *Saturley v. CIBC World Markets Inc.*, 2011 NSSC 4 (CanLII), 297 N.S.R. (2d) 371; *Szeto v. Dwyer*, 2010 NLCA 36 (CanLII), 297 Nfld. & P.E.I.R. 311; *Bal Global Finance Canada Corp. v. Aliments Breton (Canada) inc.*, 2010 QCCS 325 (CanLII); *Vaughan v. Warner Communications, Inc.* (1986), 1986 CanLII 2533 (ON SC), 56 O.R. (2d) 242; *Canada (Attorney General) v. Lameman*, 2008 SCC 14 (CanLII), [2008] 1 S.C.R. 372; *Aguonie v. Galion Solid Waste Material Inc.* (1998), 1998 CanLII 954 (ON CA), 38 O.R. (3d) 161; *Dawson v. Rexcraft Storage and Warehouse Inc.* (1998), 1998 CanLII 4831 (ON CA), 164 D.L.R. (4th) 257; *Housen v. Nikolaisen*, 2002 SCC 33 (CanLII), [2002] 2 S.C.R. 235.

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APPEAL from a judgment of the Ontario Court of Appeal (Winkler C.J.O. and Laskin, Sharpe, Armstrong and Rouleau JJ.A.), 2011 ONCA 764 (CanLII), 108 O.R. (3d) 1, 286 O.A.C. 3, 97 C.C.E.L. (3d) 25, 14 C.P.C. (7th) 242, 13 R.P.R. (5th) 167, 93 B.L.R. (4th) 1, 344 D.L.R. (4th) 193, 10 C.L.R. (4th) 17, [2011] O.J. No. 5431 (QL), 2011 CarswellOnt 13515 (*sub nom. Combined Air Mechanical Services Inc. v. Flesch*), affirming a decision of Grace J., 2010 ONSC 5490 (CanLII), [2010] O.J. No. 4661 (QL), 2010 CarswellOnt 8325. Appeal dismissed.

Sarit E. Batner, *Brandon Kain* and *Moya J. Graham*, for the appellant.

Javad Heydary, *Jeffrey D. Landmann*, *David K. Alderson*, *Michelle Jackson* and *Jonathan A. Odumeru*, for the respondents.

Allan Rouben and *Ronald P. Bohm*, for the intervener the Ontario Trial Lawyers Association.

Paul R. Sweeny and *David Sterns*, for the intervener the Canadian Bar Association.

The judgment of the Court was delivered by

[1] KARAKATSANIS J. — Ensuring access to justice is the greatest challenge to the rule of law in Canada today. Trials have become increasingly expensive and protracted. Most Canadians cannot afford to sue when they are wronged or defend themselves when they are sued, and cannot afford to go to trial. Without an effective and accessible means of enforcing rights, the rule of law is threatened. Without public adjudication of civil cases, the development of the common law is stunted.

[2] Increasingly, there is recognition that a culture shift is required in order to create an environment promoting timely and affordable access to the civil justice system. This shift entails simplifying pre-trial procedures and moving the emphasis away from the conventional trial in favour of proportional procedures tailored to the needs of the particular case. The balance between procedure and access struck by our justice system must come to reflect modern reality and recognize that new models of adjudication can be fair and just.

[3] Summary judgment motions provide one such opportunity. Following the *Civil Justice Reform Project: Summary of Findings and Recommendations* (2007) (the Osborne Report), Ontario amended the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 (Ontario *Rules* or Rules) to increase access to justice. This appeal, and its companion, *Bruno Appliance and Furniture, Inc. v. Hryniak*, 2014 SCC 8 (CanLII), [2014] 1 S.C.R. 126, address the proper interpretation of the amended Rule 20 (summary judgment motion).

[4] In interpreting these provisions, the Ontario Court of Appeal placed too high a premium on the "full appreciation" of evidence that can be gained at a conventional trial, given that such a trial is not a realistic alternative for most litigants. In my view, a trial is not required if a summary judgment motion can achieve a fair and just adjudication, if it provides a process that

allows the judge to make the necessary findings of fact, apply the law to those facts, and is a proportionate, more expeditious and less expensive means to achieve a just result than going to trial.

[5] To that end, I conclude that summary judgment rules must be interpreted broadly, favouring proportionality and fair access to the affordable, timely and just adjudication of claims.

[6] As the Court of Appeal observed, the inappropriate use of summary judgment motions creates its own costs and delays. However, judges can mitigate such risks by making use of their powers to manage and focus the process and, where possible, remain seized of the proceedings.

[7] While I differ in part on the interpretation of Rule 20, I agree with the Court of Appeal's disposition of the matter and would dismiss the appeal.

I. Facts

[8] More than a decade ago, a group of American investors, led by Fred Mauldin (the Mauldin Group), placed their money in the hands of Canadian "traders". Robert Hryniak was the principal of the company Tropos Capital Inc., which traded in bonds and debt instruments; Gregory Peebles, is a corporate-commercial lawyer (formerly of Cassels Brock & Blackwell) who acted for Hryniak, Tropos and Robert Cranston, formerly a principal of a Panamanian company, Frontline Investments Inc.

[9] In June 2001, two members of the Mauldin Group met with Cranston, Peebles, and Hryniak, to discuss an investment opportunity.

[10] At the end of June 2001, the Mauldin Group wired US$1.2 million to Cassels Brock, which was pooled with other funds and transferred to Tropos. A few months later, Tropos forwarded more than US$10 million to an offshore bank, and the money disappeared. Hryniak claims that at this point, Tropos' funds, including the funds contributed by the Mauldin Group, were stolen.

[11] Beyond a small payment of US$9,600 in February 2002, the Mauldin Group lost its investment.

II. Judicial History

A. *Ontario Superior Court of Justice, 2010 ONSC 5490 (CanLII)*

[12] The Mauldin Group joined with Bruno Appliance and Furniture, Inc. (the appellants in the companion appeal) in an action for civil fraud against Hryniak, Peebles and Cassels Brock. They brought motions for summary judgment, which were heard together.

[13] In hearing the motions, the judge used his powers under the new Rule 20.04(2.1) to weigh the evidence, evaluate credibility, and draw inferences. He found that the Mauldin Group's money was disbursed by Cassels Brock to Hryniak's company, Tropos, but that there was no evidence to suggest that Tropos had ever set up a trading program. Contrary to the investment strategy that Hryniak had described to the investors, the Mauldin Group's money was placed in an account with the offshore New Savings Bank, and then disappeared. He rejected Hryniak's claim that members of the New Savings Bank had stolen the Mauldin Group's money.

[14] The motion judge concluded that a trial was not required against Hryniak. However, he dismissed the Mauldin Group's motion for summary judgment against Peebles, because that claim involved factual issues, particularly with respect to Peebles' credibility and involvement in a key meeting, which required a trial. Consequently, he also dismissed the motion for summary judgment against Cassels Brock, as those claims were based on the theory that the firm was vicariously liable for Peebles' conduct.

B. *Court of Appeal for Ontario, 2011 ONCA 764 (CanLII), 108 O.R. (3d) 1*

[15] The Court of Appeal simultaneously heard Hryniak's appeal of this matter, the companion *Bruno Appliance* appeal, and three other matters which are not before this Court. This was the first occasion on which the Court of Appeal considered the new Rule 20.

[16] The Court of Appeal set out a threshold test for when a motion judge could employ the new evidentiary powers available under Rule 20.04(2.1) to grant summary judgment under Rule 20.04(2)(a). Under this test, the "interest of justice" requires that the new powers be exercised only at trial, unless a motion judge can achieve the "full appreciation" of the evidence and issues required to make dispositive findings on a motion for summary judgment. The motion judge should assess whether the benefits of the trial process, including the opportunity to hear and observe witnesses, to have the evidence presented by way of a trial narrative, and to experience the fact-finding process first-hand, are necessary to fully appreciate the evidence in the case.

[17] The Court of Appeal suggested that cases requiring multiple factual findings, based on conflicting evidence from a number of witnesses, and involving an extensive record, are generally not fit for determination in this manner. Conversely, cases driven by documents, with few witnesses, and limited contentious factual issues are appropriate candidates for summary judgment.

[18] The Court of Appeal advised motion judges to make use of the power to hear oral evidence, under Rule 20.04(2.2), to hear only from a limited number of witnesses on discrete issues that are determinative of the case.

[19] The Court of Appeal concluded that, given its factual complexity and voluminous record, the Mauldin Group's action was the type of action for which a trial is generally required. There were numerous witnesses, various theories of liability against multiple defendants, serious credibility issues, and an absence of reliable documentary evidence. Moreover, since Hryniak and Peebles had cross-claimed against each other and a trial would nonetheless be required against the

other defendants, summary judgment would not serve the values of better access to justice, proportionality, and cost savings.

[20] Despite concluding that this case was not an appropriate candidate for summary judgment, the Court of Appeal was satisfied that the record supported the finding that Hryniak had committed the tort of civil fraud against the Mauldin Group, and therefore dismissed Hryniak's appeal.

III. Outline

[21] In determining the general principles to be followed with respect to summary judgment, I will begin with the values underlying timely, affordable and fair access to justice. Next, I will turn to the role of summary judgment motions generally and the interpretation of Rule 20 in particular. I will then address specific judicial tools for managing the risks of summary judgment motions.

[22] Finally, I will consider the appropriate standard of review and whether summary judgment should have been granted to the respondents.

IV. Analysis

A. *Access to Civil Justice: A Necessary Culture Shift*

[23] This appeal concerns the values and choices underlying our civil justice system, and the ability of ordinary Canadians to access that justice. Our civil justice system is premised upon the value that the process of adjudication must be fair and just. This cannot be compromised.

[24] However, undue process and protracted trials, with unnecessary expense and delay, can *prevent* the fair and just resolution of disputes. The full trial has become largely illusory because, except where government funding is available,[1] ordinary Canadians cannot afford to access the adjudication of civil disputes.[2] The cost and delay associated with the traditional process means that, as counsel for the intervener the Advocates' Society (in *Bruno Appliance*) stated at the hearing of this appeal, the trial process denies ordinary people the opportunity to have adjudication. And while going to trial has long been seen as a last resort, other dispute resolution mechanisms such as mediation and settlement are more likely to produce fair and just results when adjudication remains a realistic alternative.

[25] Prompt judicial resolution of legal disputes allows individuals to get on with their lives. But, when court costs and delays become too great, people look for alternatives or simply give up on justice. Sometimes, they choose to represent themselves, often creating further problems due to their lack of familiarity with the law.

[26] In some circles, private arbitration is increasingly seen as an alternative to a slow judicial process. But private arbitration is not the solution since, without an accessible public forum for the adjudication of disputes, the rule of law is threatened and the development of the common law undermined.

[27] There is growing support for alternative adjudication of disputes and a developing consensus that the traditional balance struck by extensive pre-trial processes and the conventional trial no longer reflects the modern reality and needs to be re-adjusted. A proper balance requires simplified and proportionate procedures for adjudication, and impacts the role of counsel and judges. This balance must recognize that a process can be fair and just, without the expense and delay of a trial, and that alternative models of adjudication are no less legitimate than the conventional trial.

[28] This requires a shift in culture. The principal goal remains the same: a fair process that results in a just adjudication of disputes. A fair and just process must permit a judge to find the facts necessary to resolve the dispute and to apply the relevant legal principles to the facts as found. However, that process is illusory unless it is also accessible — proportionate, timely and affordable. The proportionality principle means that the best forum for resolving a dispute is not always that with the most painstaking procedure.

[29] There is, of course, always some tension between accessibility and the truth-seeking function but, much as one would not expect a jury trial over a contested parking ticket, the procedures used to adjudicate civil disputes must fit the nature of the claim. If the process is disproportionate to the nature of the dispute and the interests involved, then it will not achieve a fair and just result.

[30] The proportionality principle is now reflected in many of the provinces' rules and can act as a touchstone for access to civil justice.[3] For example, Ontario Rules 1.04(1) and (1.1) provide:

> **1.04** (1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.
>
> (1.1) In applying these rules, the court shall make orders and give directions that are proportionate to the importance and complexity of the issues, and to the amount involved, in the proceeding.

[31] Even where proportionality is not specifically codified, applying rules of court that involve discretion "includes . . . an underlying principle of proportionality which means taking account of the appropriateness of the procedure, its cost and impact on the litigation, and its timeliness, given the nature and complexity of the litigation": *Szeto v. Dwyer*, 2010 NLCA 36 (CanLII), 297 Nfld. & P.E.I.R. 311, at para. 53.

[32] This culture shift requires judges to actively manage the legal process in line with the principle of proportionality. While summary judgment motions can save time and resources, like

most pre-trial procedures, they can also slow down the proceedings if used inappropriately. While judges can and should play a role in controlling such risks, counsel must, in accordance with the traditions of their profession, act in a way that facilitates rather than frustrates access to justice. Lawyers should consider their client's limited means and the nature of their case and fashion proportionate means to achieve a fair and just result.

[33] A complex claim may involve an extensive record and a significant commitment of time and expense. However, proportionality is inevitably comparative; even slow and expensive procedures can be proportionate when they are the fastest and most efficient alternative. The question is whether the added expense and delay of fact finding at trial is necessary to a fair process and just adjudication.

B. *Summary Judgment Motions*

[34] The summary judgment motion is an important tool for enhancing access to justice because it can provide a cheaper, faster alternative to a full trial. With the exception of Quebec, all provinces feature a summary judgment mechanism in their respective rules of civil procedure.[4] Generally, summary judgment is available where there is no genuine issue for trial.

[35] Rule 20 is Ontario's summary judgment procedure, under which a party may move for summary judgment to grant or dismiss all or part of a claim. While Ontario's Rule 20 in some ways goes further than other rules throughout the country, the values and principles underlying its interpretation are of general application.

[36] Rule 20 was amended in 2010, following the recommendations of the Osborne Report, to improve access to justice. These reforms embody the evolution of summary judgment rules from highly restricted tools used to weed out clearly unmeritorious claims or defences to their current status as a legitimate alternative means for adjudicating and resolving legal disputes.

[37] Early summary judgment rules were quite limited in scope and were available only to plaintiffs with claims based on debt or liquidated damages, where no real defence existed.[5] Summary judgment existed to avoid the waste of a full trial in a clear case.

[38] In 1985, the then new Rule 20 extended the availability of summary judgement to both plaintiffs and defendants and broadened the scope of cases that could be disposed of on such a motion. The rules were initially interpreted expansively, in line with the purposes of the rule changes.[6] However, appellate jurisprudence limited the powers of judges and effectively narrowed the purpose of motions for summary judgment to merely ensuring that: "claims that have no chance of success [are] weeded out at an early stage".[7]

[39] The Ontario Government commissioned former Ontario Associate Chief Justice Coulter Osborne, Q.C., to consider reforms to make the Ontario civil justice system more accessible and affordable, leading to the report of the Civil Justice Reform Project. The Osborne Report concluded that few summary judgment motions were being brought and, if the summary judgment

rule was to work as intended, the appellate jurisprudence that had narrowed the scope and utility of the rule had to be reversed (p. 35). Among other things, it recommended that summary judgment be made more widely available, that judges be given the power to weigh evidence on summary judgment motions, and that judges be given discretion to direct that oral evidence be presented (pp. 35-36).

[40] The report also recommended the adoption of a summary trial procedure similar to that employed in British Columbia (p. 37). This particular recommendation was not adopted, and the legislature made the choice to maintain summary judgment as the accessible procedure.

[41] Many of the Osborne Report's recommendations were taken up and implemented in 2010. As noted above, the amendments codify the proportionality principle and provide for efficient adjudication when a conventional trial is not required. They offer significant new tools to judges, which allow them to adjudicate more cases through summary judgment motions and attenuate the risks when such motions do not resolve the entire case.

[42] Rule 20.04 now reads in part:[8]

> **20.04** . . .
>
> (2) [General] 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; or
>
> (b) the parties agree to have all or part of the claim determined by a summary judgment and the court is satisfied that it is appropriate to grant summary judgment.
>
> (2.1) [Powers] In determining under clause (2)(a) whether there is a genuine issue requiring a trial, the court shall consider the evidence submitted by the parties and, if the determination is being made by a judge, the judge may exercise any of the following powers for the purpose, unless it is in the interest of justice for such powers to be exercised only at a trial:
>
> 1. Weighing the evidence.
>
> 2. Evaluating the credibility of a deponent.
>
> 3. Drawing any reasonable inference from the evidence.
>
> (2.2) [Oral Evidence (Mini-Trial)] A judge may, for the purposes of exercising any of the powers set out in subrule (2.1), order that oral evidence be presented by one or more parties, with or without time limits on its presentation.

[43] The Ontario amendments changed the test for summary judgment from asking whether the case presents "a genuine issue for trial" to asking whether there is a "genuine issue requiring a

trial". The new rule, with its enhanced fact-finding powers, demonstrates that a trial is not the default procedure. Further, it eliminated the presumption of substantial indemnity costs against a party that brought an unsuccessful motion for summary judgment, in order to avoid deterring the use of the procedure.

[44] The new powers in Rules 20.04(2.1) and (2.2) expand the number of cases in which there will be no genuine issue requiring a trial by permitting motion judges to weigh evidence, evaluate credibility and draw reasonable inferences.[9]

[45] These new fact-finding powers are discretionary and are presumptively available; they may be exercised *unless* it is in the interest of justice for them to be exercised only at a trial; Rule 20.04(2.1). Thus, the amendments are designed to transform Rule 20 from a means to weed out unmeritorious claims to a significant alternative model of adjudication.

[46] I will first consider when summary judgment can be granted on the basis that there is "no genuine issue requiring a trial" (Rule 20.04(2)(a)). Second, I will discuss when it is against the "interest of justice" for the new fact-finding powers in Rule 20.04(2.1) to be used on a summary judgment motion. Third, I will consider the power to call oral evidence and, finally, I will lay out the process to be followed on a motion for summary judgment.

(1) When Is There No Genuine Issue Requiring a Trial?

[47] Summary judgment motions must be granted whenever there is no genuine issue requiring a trial (Rule 20.04(2)(a)). In outlining how to determine whether there is such an issue, I focus on the goals and principles that underlie whether to grant motions for summary judgment. Such an approach allows the application of the rule to evolve organically, lest categories of cases be taken as rules or preconditions which may hinder the system's transformation by discouraging the use of summary judgment.

[48] The Court of Appeal did not explicitly focus upon when there is a genuine issue requiring a trial. However, in considering whether it is against the interest of justice to use the new fact-finding powers, the court suggested that summary judgment would most often be appropriate when cases were document driven, with few witnesses and limited contentious factual issues, or when the record could be supplemented by oral evidence on discrete points. These are helpful observations but, as the court itself recognized, should not be taken as delineating firm categories of cases where summary judgment is and is not appropriate. For example, while this case is complex, with a voluminous record, the Court of Appeal ultimately agreed that there was no genuine issue requiring a trial.

[49] There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.

[50] These principles are interconnected and all speak to whether summary judgment will provide a fair and just adjudication. When a summary judgment motion allows the judge to find the necessary facts and resolve the dispute, proceeding to trial would generally not be proportionate, timely or cost effective. Similarly, a process that does not give a judge confidence in her conclusions can never be the proportionate way to resolve a dispute. It bears reiterating that the standard for fairness is not whether the procedure is as exhaustive as a trial, but whether it gives the judge confidence that she can find the necessary facts and apply the relevant legal principles so as to resolve the dispute.

[51] Often, concerns about credibility or clarification of the evidence can be addressed by calling oral evidence on the motion itself. However, there may be cases where, given the nature of the issues and the evidence required, the judge cannot make the necessary findings of fact, or apply the legal principles to reach a just and fair determination.

(2) The Interest of Justice

[52] The enhanced fact-finding powers granted to motion judges in Rule 20.04(2.1) may be employed on a motion for summary judgment unless it is in the "interest of justice" for them to be exercised only at trial. The "interest of justice" is not defined in the Rules.

[53] To determine whether the interest of justice allowed the motion judge to use her new powers, the Court of Appeal required a motion judge to ask herself "can the full appreciation of the evidence and issues that is required to make dispositive findings be achieved by way of summary judgment, or can this full appreciation only be achieved by way of a trial?" (para. 50).

[54] The Court of Appeal identified the benefits of a trial that contribute to this full appreciation of the evidence: the narrative that counsel can build through trial, the ability of witnesses to speak in their own words, and the assistance of counsel in sifting through the evidence (para. 54).

[55] The respondents, as well as the interveners, the Canadian Bar Association, the Attorney General of Ontario and the Advocates' Society, submit that the Court of Appeal's emphasis on the virtues of the traditional trial is misplaced and unduly restrictive. Further, some of these interveners submit that this approach may result in the creation of categories of cases inappropriate for summary judgment, and this will limit the development of the summary judgment vehicle.

[56] While I agree that a motion judge must have an appreciation of the evidence necessary to make dispositive findings, such an appreciation is not only available at trial. Focussing on how much and what kind of evidence could be adduced at a trial, as opposed to whether a trial is "requir[ed]" as the Rule directs, is likely to lead to the bar being set too high. The interest of justice cannot be limited to the advantageous features of a conventional trial, and must account for proportionality, timeliness and affordability. Otherwise, the adjudication permitted with the new powers — and the purpose of the amendments — would be frustrated.

[57] On a summary judgment motion, the evidence need not be equivalent to that at trial, but must be such that the judge is confident that she can fairly resolve the dispute. A documentary record, particularly when supplemented by the new fact-finding tools, including ordering oral testimony, is often sufficient to resolve material issues fairly and justly. The powers provided in Rules 20.04(2.1) and (2.2) can provide an equally valid, if less extensive, manner of fact finding.

[58] This inquiry into the interest of justice is, by its nature, comparative. Proportionality is assessed in relation to the full trial. It may require the motion judge to assess the relative efficiencies of proceeding by way of summary judgment, as opposed to trial. This would involve a comparison of, among other things, the cost and speed of both procedures. (Although summary judgment may be expensive and time consuming, as in this case, a trial may be even more expensive and slower.) It may also involve a comparison of the evidence that will be available at trial and on the motion as well as the opportunity to fairly evaluate it. (Even if the evidence available on the motion is limited, there may be no reason to think better evidence would be available at trial.)

[59] In practice, whether it is against the "interest of justice" to use the new fact-finding powers will often coincide with whether there is a "genuine issue requiring a trial". It is logical that, when the use of the new powers would enable a judge to fairly and justly adjudicate a claim, it will generally not be against the interest of justice to do so. What is fair and just turns on the nature of the issues, the nature and strength of the evidence and what is the proportional procedure.

[60] The "interest of justice" inquiry goes further, and also considers the consequences of the motion in the context of the litigation as a whole. For example, if some of the claims against some of the parties will proceed to trial in any event, it may not be in the interest of justice to use the new fact-finding powers to grant summary judgment against a single defendant. Such partial summary judgment may run the risk of duplicative proceedings or inconsistent findings of fact and therefore the use of the powers may not be in the interest of justice. On the other hand, the resolution of an important claim against a key party could significantly advance access to justice, and be the most proportionate, timely and cost effective approach.

(3) The Power to Hear Oral Evidence

[61] Under Rule 20.04(2.2), the motion judge is given the power to hear oral evidence to assist her in making findings under Rule 20.04(2.1). The decision to allow oral evidence rests with the motion judge since, as the Court of Appeal noted, "it is the motion judge, not counsel, who maintains control over the extent of the evidence to be led and the issues to which the evidence is to be directed" (para. 60).

[62] The Court of Appeal suggested the motion judge should only exercise this power when

(1) oral evidence can be obtained from a small number of witnesses and gathered in a manageable period of time;

(2) any issue to be dealt with by presenting oral evidence is likely to have a significant impact on whether the summary judgment motion is granted; and

(3) any such issue is narrow and discrete — *i.e.*, the issue can be separately decided and is not enmeshed with other issues on the motion. [para. 103]

This is useful guidance to ensure that the hearing of oral evidence does not become unmanageable; however, as the Court of Appeal recognized, these are not absolute rules.

[63] This power should be employed when it allows the judge to reach a fair and just adjudication on the merits and it is the proportionate course of action. While this is more likely to be the case when the oral evidence required is limited, there will be cases where extensive oral evidence can be heard on the motion for summary judgment, avoiding the need for a longer, more complex trial and without compromising the fairness of the procedure.

[64] Where a party seeks to lead oral evidence, it should be prepared to demonstrate why such evidence would assist the motion judge in weighing the evidence, assessing credibility, or drawing inferences and to provide a "will say" statement or other description of the proposed evidence so that the judge will have a basis for setting the scope of the oral evidence.

[65] Thus, the power to call oral evidence should be used to promote the fair and just resolution of the dispute in light of principles of proportionality, timeliness and affordability. In tailoring the nature and extent of oral evidence that will be heard, the motion judge should be guided by these principles, and remember that the process is not a full trial on the merits but is designed to determine if there is a genuine issue requiring a trial.

(4) The Roadmap/Approach to a Motion for Summary Judgment

[66] On a motion for summary judgment under Rule 20.04, the judge should first determine if there is a genuine issue requiring trial based only on the evidence before her, *without* using the new fact-finding powers. There will be no genuine issue requiring a trial if the summary judgment process provides her with the evidence required to fairly and justly adjudicate the dispute and is a timely, affordable and proportionate procedure, under Rule 20.04(2)(a). If there appears to be a genuine issue requiring a trial, she should then determine if the need for a trial can be avoided by using the new powers under Rules 20.04(2.1) and (2.2). She may, at her discretion, use those powers, provided that their use is not against the interest of justice. Their use will not be against the interest of justice if they will lead to a fair and just result and will serve the goals of timeliness, affordability and proportionality in light of the litigation as a whole.

[67] Inquiring first as to whether the use of the powers under Rule 20.04(2.1) will allow the dispute to be resolved by way of summary judgment, before asking whether the interest of justice requires that those powers be exercised only at trial, emphasizes that these powers are presumptively available, rather than exceptional, in line with the goal of proportionate, cost-effective and timely dispute resolution. As well, by first determining the consequences of using the new powers, the benefit of their use is clearer. This will assist in determining whether it is in the interest of justice that they be exercised only at trial.

[68] While summary judgment *must* be granted if there is no genuine issue requiring a trial, [10] the decision to use either the expanded fact-finding powers or to call oral evidence is discretionary.[11] The discretionary nature of this power gives the judge some flexibility in deciding the appropriate course of action. This discretion can act as a safety valve in cases where the use of such powers would clearly be inappropriate. There is always the risk that clearly unmeritorious motions for summary judgment could be abused and used tactically to add time and expense. In such cases, the motion judge may choose to decline to exercise her discretion to use those powers and dismiss the motion for summary judgment, without engaging in the full inquiry delineated above.

C. *Tools to Maximize the Efficiency of a Summary Judgment Motion*

(1) Controlling the Scope of a Summary Judgment Motion

[69] The Ontario *Rules* and a superior court's inherent jurisdiction permit a motion judge to be involved early in the life of a motion, in order to control the size of the record, and to remain active in the event the motion does not resolve the entire action.

[70] The Rules provide for early judicial involvement, through Rule 1.05, which allows for a motion for directions, to manage the time and cost of the summary judgment motion. This allows a judge to provide directions with regard to the timelines for filing affidavits, the length of cross-examination, and the nature and amount of evidence that will be filed. However, motion judges must also be cautious not to impose administrative measures that add an unnecessary layer of cost.

[71] Not all motions for summary judgment will require a motion for directions. However, failure to bring such a motion where it was evident that the record would be complex or voluminous may be considered when dealing with costs consequences under Rule 20.06(a). In line with the principle of proportionality, the judge hearing the motion for directions should generally be seized of the summary judgment motion itself, ensuring the knowledge she has developed about the case does not go to waste.

[72] I agree with the Court of Appeal (at paras. 58 and 258) that a motion for directions also provides the responding party with the opportunity to seek an order to stay or dismiss a premature or improper motion for summary judgment. This may be appropriate to challenge lengthy, complex motions, particularly on the basis that they would not sufficiently advance the litigation, or serve the principles of proportionality, timeliness and affordability.

[73] A motion for summary judgment will not always be the most proportionate way to dispose of an action. For example, an early date may be available for a short trial, or the parties may be prepared to proceed with a summary trial. Counsel should always be mindful of the most proportionate procedure for their client and the case.

(2) Salvaging a Failed Summary Judgment Motion

[74] Failed, or even partially successful, summary judgment motions add — sometimes astronomically — to costs and delay. However, this risk can be attenuated by a judge who makes use of the trial management powers provided in Rule 20.05 and the court's inherent jurisdiction.

[75] Rules 20.05(1) and (2) provide in part:

> **20.05** (1) Where summary judgment is refused or is granted only in part, the court may make an order specifying what material facts are not in dispute and defining the issues to be tried, and order that the action proceed to trial expeditiously.
>
> (2) If an action is ordered to proceed to trial under subrule (1), the court may give such directions or impose such terms as are just . . . .

[76] Rules 20.05(2)(a) through (p) outline a number of specific trial management orders that may be appropriate. The court may: set a schedule; provide a restricted discovery plan; set a trial date; require payment into court of the claim; or order security for costs. The court may order that: the parties deliver a concise summary of their opening statement; the parties deliver a written summary of the anticipated evidence of a witness; any oral examination of a witness at trial will be subject to a time limit or; the evidence of a witness be given in whole or in part by affidavit.

[77] These powers allow the judge to use the insight she gained from hearing the summary judgment motion to craft a trial procedure that will resolve the dispute in a way that is sensitive to the complexity and importance of the issue, the amount involved in the case, and the effort expended on the failed motion. The motion judge should look to the summary trial as a model, particularly where affidavits filed could serve as the evidence of a witness, subject to time-limited examinations and cross-examinations. Although the Rules did not adopt the Osborne Report's recommendation of a summary trial model, this model already exists under the simplified rules or on consent. In my view, the summary trial model would also be available further to the broad powers granted to a judge under Rule 20.05(2).

[78] Where a motion judge dismisses a motion for summary judgment, in the absence of compelling reasons to the contrary, she should also seize herself of the matter as the trial judge. I agree with the Osborne Report that the involvement of a single judicial officer throughout

> saves judicial time since parties will not have to get a different judge up to speed each time an issue arises in the case. It may also have a calming effect on the conduct of litigious parties and counsel, as they will come to predict how the judicial official assigned to the case might rule on a given issue. [p. 88]

[79] While such an approach may complicate scheduling, to the extent that current scheduling practices prevent summary judgment motions being used in an efficient and cost effective manner, the courts should be prepared to change their practices in order to facilitate access to justice.

D. *Standard of Review*

[80] The Court of Appeal concluded that determining the appropriate test for summary judgment — whether there is a genuine issue requiring a trial — is a legal question, reviewable on a correctness standard, while any factual determinations made by the motion judge will attract deference.

[81] In my view, absent an error of law, the exercise of powers under the new summary judgment rule attracts deference. When the motion judge exercises her new fact-finding powers under Rule 20.04(2.1) and determines whether there is a genuine issue requiring a trial, this is a question of mixed fact and law. Where there is no extricable error in principle, findings of mixed fact and law should not be overturned absent palpable and overriding error: *Housen v. Nikolaisen*, 2002 SCC 33 (CanLII), [2002] 2 S.C.R. 235, at para. 36.

[82] Similarly, the question of whether it is in the "interest of justice" for the motion judge to exercise the new fact-finding powers provided by Rule 20.04(2.1) depends on the relative evidence available at the summary judgment motion and at trial, the nature, size, complexity and cost of the dispute and other contextual factors. Such a decision is also a question of mixed fact and law which attracts deference.

[83] Provided that it is not against the "interest of justice", a motion judge's decision to exercise the new powers is discretionary. Thus, unless the motion judge misdirected herself, or came to a decision that is so clearly wrong that it resulted in an injustice, her decision should not be disturbed.

[84] Of course, where the motion judge applies an incorrect principle of law, or errs with regard to a purely legal question, such as the elements that must be proved for the plaintiff to make out her cause of action, the decision will be reviewed on a correctness standard: *Housen*, at para. 8.

E. *Did the Motion Judge Err by Granting Summary Judgment?*

[85] The motion judge granted summary judgment in favour of the Mauldin Group. While the Court of Appeal found that the action should not have been decided by summary judgment, it nevertheless dismissed the appeal. Hryniak argues this constituted "prospective overruling" but, in light of my conclusion that the motion judge was entitled to proceed by summary judgment, I need not consider these submissions further. For the reasons that follow, I am satisfied that the motion judge did not err in granting summary judgment.

(1) The Tort of Civil Fraud

[86] The action underlying this motion for summary judgment was one for civil fraud brought against Hryniak, Peebles, and Cassels Brock.

[87] As discussed in the companion *Bruno Appliance* appeal, the tort of civil fraud has four elements, which must be proven on a balance of probabilities: (1) a false representation by the defendant; (2) some level of knowledge of the falsehood of the representation on the part of the defendant (whether knowledge or recklessness); (3) the false representation caused the plaintiff to act; (4) the plaintiff's actions resulted in a loss.

(2) Was There a Genuine Issue Requiring a Trial?

[88] In granting summary judgment to the Mauldin Group against Hryniak, the motion judge did not explicitly address the correct test for civil fraud but, like the Court of Appeal, I am satisfied that his findings support that result.

[89] The first element of civil fraud is a false representation by the defendant. The Court of Appeal agreed with the motion judge that "[u]nquestionably, the Mauldin group was induced to invest with Hryniak because of what Hryniak said to Fred Mauldin" at the meeting of June 19, 2001 (at para. 158), and this was not disputed in the appellant's factum.

[90] The motion judge found the requisite knowledge or recklessness as to the falsehood of the representation, the second element of civil fraud, based on Hryniak's lack of effort to ensure that the funds would be properly invested and failure to verify that the eventual end-point of the funds, New Savings Bank, was secure. The motion judge also rejected the defence that the funds were stolen, noting Hryniak's feeble efforts to recover the funds, waiting some 15 months to report the apparent theft of US$10.2 million.

[91] The motion judge also found an intention on the part of Hryniak that the Mauldin Group would act on his false representations, the third requirement of civil fraud. Hryniak secured a US$76,000 loan for Fred Mauldin and conducted a "test trade", actions which, in the motion judge's view, were "undertaken . . . for the purpose of dissuading the Mauldin group from demanding the return of its investment" (para. 113). Moreover, the motion judge detailed Hryniak's central role in the web of deception that caused the Mauldin Group to invest its funds and that dissuaded them from seeking their return for some time after they had been stolen.

[92] The final requirement of civil fraud, loss, is clearly present. The Mauldin Group invested US$1.2 million and, but for a small return of US$9,600 in February 2002, lost its investment.

[93] The motion judge found no credible evidence to support Hryniak's claim that he was a legitimate trader, and the outcome was therefore clear, so the motion judge concluded there was no issue requiring a trial. He made no palpable and overriding error in granting summary judgment.

(3) Did the Interest of Justice Preclude the Motion Judge From Using His Powers Under Rule 20.04?

[94] The motion judge did not err in exercising his fact-finding powers under Rule 20.04(2.1). He was prepared to sift through the detailed record, and was of the view that sufficient evidence had been presented on all relevant points to allow him to draw the inferences necessary to make dispositive findings under Rule 20. Further, while the amount involved is significant, the issues raised by Hryniak's defence were fairly straightforward. As the Court of Appeal noted, at root, the question turned on whether Hryniak had a legitimate trading program that went awry when the funds were stolen, or whether his program was a sham from the outset (para. 159). The plaintiffs are a group of elderly American investors and, at the return date of the motion, had been deprived of their funds for nearly a decade. The record was sufficient to make a fair and just determination and a timely resolution of the matter was called for. While the motion was complex and expensive, going to trial would have cost even more and taken even longer.

[95] Despite the fact that the Mauldin Group's claims against Peebles and Cassels Brock had to proceed to trial, there is little reason to believe that granting summary judgment against Hryniak would have a prejudicial impact on the trial of the remaining issues. While the extent of the other defendants' involvement in the fraud requires a trial, that matter is not predetermined by the conclusion that Hryniak clearly was *a* perpetrator of the fraud. The motion judge's findings speak specifically to Hryniak's involvement and neither rely upon, nor are inconsistent with, the liability of others. His findings were clearly supported by the evidence. It was neither against the interest of justice for the motion judge to use his fact-finding powers nor was his discretionary decision to do so tainted with error.

V. Conclusion

[96] Accordingly, I would dismiss the appeal, with costs to the respondents.

APPENDIX

Rules of Civil Procedure, R.R.O. 1990, Reg. 194

RULE 20 SUMMARY JUDGMENT

20.01 [Where Available] (1) [To Plaintiff] A plaintiff may, after the defendant has delivered a statement of defence or served a notice of motion, move with supporting affidavit material or other evidence for summary judgment on all or part of the claim in the statement of claim.

(2) The plaintiff may move, without notice, for leave to serve a notice of motion for summary judgment together with the statement of claim, and leave may be given where special urgency is shown, subject to such directions as are just.

(3) [To Defendant] A defendant may, after delivering a statement of defence, move with supporting affidavit material or other evidence for summary judgment dismissing all or part of the

claim in the statement of claim.

20.02 [Evidence on Motion] (1) An affidavit for use on a motion for summary judgment may be made on information and belief as provided in subrule 39.01(4), but, on the hearing of the motion, the court may, if appropriate, draw an adverse inference from the failure of a party to provide the evidence of any person having personal knowledge of contested facts.

(2) In response to affidavit material or other evidence supporting a motion for summary judgment, a responding party may not rest solely on the allegations or denials in the party's pleadings, but must set out, in affidavit material or other evidence, specific facts showing that there is a genuine issue requiring a trial.

20.03 [Factums Required] (1) On a motion for summary judgment, each party shall serve on every other party to the motion a factum consisting of a concise argument stating the facts and law relied on by the party.

(2) The moving party's factum shall be served and filed with proof of service in the court office where the motion is to be heard at least seven days before the hearing.

(3) The responding party's factum shall be served and filed with proof of service in the court office where the motion is to be heard at least four days before the hearing.

(4) Revoked.

20.04 [Disposition of Motion] (1) [General] Revoked.

(2) 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; or

(b) the parties agree to have all or part of the claim determined by a summary judgment and the court is satisfied that it is appropriate to grant summary judgment.

(2.1) [Powers] In determining under clause (2)(a) whether there is a genuine issue requiring a trial, the court shall consider the evidence submitted by the parties and, if the determination is being made by a judge, the judge may exercise any of the following powers for the purpose, unless it is in the interest of justice for such powers to be exercised only at a trial:

1. Weighing the evidence.

2. Evaluating the credibility of a deponent.

3. Drawing any reasonable inference from the evidence.

(2.2) [Oral Evidence (Mini-Trial)] A judge may, for the purposes of exercising any of the powers set out in subrule (2.1), order that oral evidence be presented by one or more parties, with or without time limits on its presentation.

(3) [Only Genuine Issue Is Amount] Where the court is satisfied that the only genuine issue is the amount to which the moving party is entitled, the court may order a trial of that issue or grant

judgment with a reference to determine the amount.

(4) [Only Genuine Issue Is Question Of Law] Where the court is satisfied that the only genuine issue is a question of law, the court may determine the question and grant judgment accordingly, but where the motion is made to a master, it shall be adjourned to be heard by a judge.

(5) [Only Claim Is For An Accounting] Where the plaintiff is the moving party and claims an accounting and the defendant fails to satisfy the court that there is a preliminary issue to be tried, the court may grant judgment on the claim with a reference to take the accounts.

20.05 [Where Trial Is Necessary] (1) [Powers of Court] Where summary judgment is refused or is granted only in part, the court may make an order specifying what material facts are not in dispute and defining the issues to be tried, and order that the action proceed to trial expeditiously.

(2) [Directions And Terms] If an action is ordered to proceed to trial under subrule (1), the court may give such directions or impose such terms as are just, including an order,

(a) that each party deliver, within a specified time, an affidavit of documents in accordance with the court's directions;

(b) that any motions be brought within a specified time;

(c) that a statement setting out what material facts are not in dispute be filed within a specified time;

(d) that examinations for discovery be conducted in accordance with a discovery plan established by the court, which may set a schedule for examinations and impose such limits on the right of discovery as are just, including a limit on the scope of discovery to matters not covered by the affidavits or any other evidence filed on the motion and any cross-examinations on them;

(e) that a discovery plan agreed to by the parties under Rule 29.1 (discovery plan) be amended;

(f) that the affidavits or any other evidence filed on the motion and any cross-examinations on them may be used at trial in the same manner as an examination for discovery;

(g) that any examination of a person under Rule 36 (taking evidence before trial) be subject to a time limit;

(h) that a party deliver, within a specified time, a written summary of the anticipated evidence of a witness;

(i) that any oral examination of a witness at trial be subject to a time limit;

(j) that the evidence of a witness be given in whole or in part by affidavit;

(k) that any experts engaged by or on behalf of the parties in relation to the action meet on a without prejudice basis in order to identify the issues on which the experts agree and the issues on which they do not agree, to attempt to clarify and resolve any issues that are the subject of disagreement and to prepare a joint statement setting out the areas of agreement and any areas of disagreement and the reasons for it if, in the opinion of the court, the cost or time savings or other benefits that may be achieved from the meeting are proportionate to the amounts at stake or the importance of the issues involved in the case and,

(i) there is a reasonable prospect for agreement on some or all of the issues, or

(ii) the rationale for opposing expert opinions is unknown and clarification on areas of disagreement would assist the parties or the court;

(l) that each of the parties deliver a concise summary of his or her opening statement;

(m) that the parties appear before the court by a specified date, at which appearance the court may make any order that may be made under this subrule;

(n) that the action be set down for trial on a particular date or on a particular trial list, subject to the direction of the regional senior judge;

(o) for payment into court of all or part of the claim; and

(p) for security for costs.

(3) [Specified Facts] At the trial, any facts specified under subrule (1) or clause (2)(c) shall be deemed to be established unless the trial judge orders otherwise to prevent injustice.

(4) [Order re Affidavit Evidence] In deciding whether to make an order under clause (2)(j), the fact that an adverse party may reasonably require the attendance of the deponent at trial for cross-examination is a relevant consideration.

(5) [Order re Experts, Costs] If an order is made under clause (2)(k), each party shall bear his or her own costs.

(6) [Failure To Comply With Order] Where a party fails to comply with an order under clause (2)(o) for payment into court or under clause (2)(p) for security for costs, the court on motion of the opposite party may dismiss the action, strike out the statement of defence or make such other order as is just.

(7) Where on a motion under subrule (6) the statement of defence is struck out, the defendant shall be deemed to be noted in default.

20.06 [Costs Sanctions For Improper Use Of Rule] The court may fix and order payment of the costs of a motion for summary judgment by a party on a substantial indemnity basis if,

(a) the party acted unreasonably by making or responding to the motion; or

(b) the party acted in bad faith for the purpose of delay.

20.07 [Effect Of Summary Judgment] A plaintiff who obtains summary judgment may proceed against the same defendant for any other relief.

20.08 [Stay Of Execution] Where it appears that the enforcement of a summary judgment ought to be stayed pending the determination of any other issue in the action or a counterclaim, crossclaim or third party claim, the court may so order on such terms as are just.

20.09 [Application To Counterclaims, Crossclaims And Third Party Claims] Rules 20.01 to 20.08 apply, with necessary modifications, to counterclaims, crossclaims and third party claims.

Appeal dismissed with costs.

Solicitors for the appellant: McCarthy Tétrault, Toronto.

Solicitors for the respondents: Heydary Hamilton, Toronto.

Solicitors for the intervener the Ontario Trial Lawyers Association: Allan Rouben, Toronto; SBMB Law, Richmond Hill, Ontario.

Solicitors for the intervener the Canadian Bar Association: Evans Sweeny Bordin, Hamilton; Sotos, Toronto.

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[1] For instance, state funding is available in the child welfare context under *G. (J.)* orders even where legal aid is not available (see *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, 1999 CanLII 653 (SCC), [1999] 3 S.C.R. 46), or for cases involving certain minority rights (see the Language Rights Support Program).

[2] In M. D. Agrast, J. C. Botero and A. Ponce, the 2011 *Rule of Law Index*, published by the World Justice Project, Canada ranked 9th among 12 European and North American countries in access to justice. Although Canada scored among the top 10 countries in the world in four rule of law categories (limited government powers, order and security, open government, and effective criminal justice), its lowest scores were in access to civil justice. This ranking is "partially explained by shortcomings in the affordability of legal advice and representation, and the lengthy duration of civil cases" (p. 23).

[3] This principle has been expressly codified in British Columbia, Ontario, and Quebec: *Supreme Court Civil Rules*, B.C. Reg. 168/2009, Rule 1-3(2); Ontario *Rules*, Rule 1.04(1.1); and *Code of Civil Procedure*, R.S.Q., c. C-25, art. 4.2. Aspects of Alberta's and Nova Scotia's rules of court have also been interpreted as reflecting proportionality: *Medicine Shoppe Canada Inc. v. Devchand*, 2012 ABQB 375 (CanLII), 541 A.R. 312, at para. 11; *Saturley v. CIBC World Markets Inc.*, 2011 NSSC 4 (CanLII), 297 N.S.R. (2d) 371, at para. 12.

[4] Quebec has a procedural device for disposing of abusive claims summarily: see arts. 54.1 *et seq.* of the *Code of Civil Procedure*. While this procedural device is narrower on its face, it has been likened to summary judgment: see *Bal Global Finance Canada Corp. v. Aliments Breton (Canada) inc.*, 2010 QCCS 325 (CanLII). Moreover, s. 165(4) of the *Code* provides that the defendant may ask for an action to be dismissed if the suit is "unfounded in law".

[5] For a thorough review of the history of summary judgment in Ontario, see T. Walsh and L. Posloski, "Establishing a Workable Test for Summary Judgment: Are We There Yet?", in T. L. Archibald and R. S. Echlin, eds., *Annual Review of Civil Litigation 2013* (2013), 419, at pp. 422-32.

[6] Walsh and Posloski, at p. 426; for example, see *Vaughan v. Warner Communications, Inc.* (1986), 1986 CanLII 2533 (ON SC), 56 O.R. (2d) 242 (H.C.J.).

[7] *Canada (Attorney General) v. Lameman*, 2008 SCC 14 (CanLII), [2008] 1 S.C.R. 372, at para. 10.

[8] The full text of Rule 20 is attached as an Appendix.

[9] As fully canvassed by the Court of Appeal, the powers in Rule 20.04(2.1) were designed specifically to overrule a number of long-standing appellate decisions that had dramatically restricted the use of the rule; *Aguonie v. Galion Solid Waste Material Inc.* (1998), 1998 CanLII 954 (ON CA), 38 O.R. (3d) 161 (C.A.); *Dawson v. Rexcraft Storage and Warehouse Inc.* (1998), 1998 CanLII 4831 (ON CA), 164 D.L.R. (4th) 257 (Ont. C.A.).

[10] Rule 20.04(2): "The court shall grant summary judgment if, (a) the court is satisfied that there is no genuine issue requiring a trial . . ."

[11] Rule 20.04(2.1): "In determining . . . whether there is a genuine issue requiring a trial . . . if the determination is being made by a judge, the judge may exercise any of the following powers . . . 1. Weighing the evidence. 2. Evaluating the credibility of a deponent. 3. Drawing any reasonable inference from the evidence." Rule 20.04(2.2): "A judge may . . . order that oral evidence be presented . . ."

UNDERTAKING JT1.16

UNDERTAKING

TR 1, page 90

To provide a response to CCC.8 in the 1082 proceeding and an updated project schedule.

RESPONSE

Attached is the response to CCC Interrogatory #8, found at I.B.NextBridge.CCC.8 filed on January 25, 2018 in EB-2017-0182 (Attachment 1). Also attached is the updated project schedule filed on May 3, 2018 in EB-2017-0182 in response to Procedural Order No. 3 (Attachment 2).

Ontario East West Tie Project

Table 2: Construction Cost Estimate

Line	Description	LTC
(a)	(b)	(c)
1	Engineering	$ 19,342,245
2	Materials & Equipment	89,408,231
3	Environmental	13,030,561
4	Land Rights	23,830,512
5	First Nation and Métis Participation	7,000,000
6	First Nation and Métis Consultation	13,211,000
7	Other Consultation	2,530,194
8	Site Clearing, Access	107,463,339
9	Construction	356,547,573
10	Site Remediation	13,898,699
11	Interest During Construction	31,003,000
12	Contingency	49,399,445
13	Regulatory	5,405,078
14	Project Management	4,900,644
15	**Total Construction Phase**	**$ 736,970,521**

Detailed Project Schedule for East West Tie in Response to OEB Procedural Order #3		
Activity	**Critical Milestone**	**Target Date**
Regulatory		
Submit Responses to OEB Procedural Order #3, dated April 27, 2018		3-May-2018
OEB Technical Conference		7-May-2018
Oral Hearing Start		4-Jun-2018
OEB LTC Decision and Order	Yes	July 2018
OEB approval of authority to expropriate	Yes	August 2019
Register approved Plan of Expropriation and issue relevant Expropriation Act Notices/Offers	Yes	October 2019
Obtain possession of expropriated lands for construction purposes	Yes	Q1 2020
Environmental		
Approval of the Amended EA	Yes	October 2018
Approval by MOECC of Permit to Take Water	Yes	October 2018
Approval by MOECC of Permit to Take Water - Camp Wells		October 2018
Approval by MOECC of ECA - Camp Wastewater		October 2018
Approval by MNRF of Water Crossing Permits	Yes	October 2018
Approval by MNRF of Endangered Species Permits (Bats)	Yes	October 2018
Approval by MNRF of Endangered Species Permits (Caribou)	Yes	October 2018
Approval by MNRF of Endangered Species Permits (Whip-poor-will)	Yes	October 2018
Approval of ECCC SARA Bat permits	Yes	October 2018
Approval of ECCC SARA Caribou permits	Yes	October 2018
Approval of MNRF Provincial Park & Conservation Reserve Amendments	Yes	October 2018

Detailed Project Schedule for East West Tie in Response to OEB Procedural Order #3		
Activity	**Critical Milestone**	**Target Date**
Lakehead Region Conservation Authority Permit	Yes	October 2018
Transport Canada Section 67 for Transport Canada Lands	Yes	October 2018
Transport Canada Navigation Protection Act Canada permit	Yes	October 2018
Fisheries and Oceans Canada Navigable Waters Permit	Yes	October 2018
Indigenous Service Canada Section 67 for Reserve Lands	Yes	October 2018
Infrastructure Ontario Class Environmental Assessment	Yes	October 2018
MTCS - Historical and Cultural Resources acceptance	Yes	October 2018
Land Acquisition		
Substantial completion of signing of option agreements		Q4 2018
Crown Land Disposition Application filed		Q2 2018
Third party Crossing agreements complete	Yes	October 2018
MNRF approval of Crown Lease/Land Use Permits	Yes	October 2018
MNRF approval of Crown Land Work Permits	Yes	October 2018
MTO approval of Land Use and Building Permits	Yes	October 2018
MTO approval of Entrance Permits	Yes	October 2018
MTO approval of Encroachment Permits	Yes	October 2018
Indigenous Relations		
INAC approval of Land Related Permits	Yes	October 2018
HONI - Related		
Submit HONI Longitudinal Access Application Version 3	Yes	18-May-2018
HONI approves Longitudinal Access	Yes	20-Jul-2018

Detailed Project Schedule for East West Tie in Response to OEB Procedural Order #3		
Activity	**Critical Milestone**	**Target Date**
HONI Approves Transmission Crossing Application	Yes	22-Jun-2018
HONI Substations commissioned (1)	Yes	November 2020
Engineering & Construction		
Segment A - Commence clearing & access		Q4 2018
Segment A - Commence Geotech and Foundations		Q3 2020
Segment A - Commence Towers Assembly		Q3 2020
Segment A - Commence Towers Erection		Q3 2020
Segment A - Commence Conductor Stringing	Yes	Q4 2020
Segment B - Commence clearing & access		Q4 2018
Segment B - Commence Geotech and Foundations	Yes	Q1 2020
Segment B - Commence Towers Assembly	Yes	Q1 2020
Segment B - Commence Towers Erection	Yes	Q2 2020
Segment B - Commence Conductor Stringing	Yes	Q3 2020
Note: Segment C contains caribou habitat - all activities are critical		
Segment C - Commence clearing & access	Yes	Q4 2018
Segment C - Commence Geotech and Foundations	Yes	Q1 2019
Segment C - Commence Towers Assembly	Yes	Q1 2019
Segment C - Commence Towers Erection	Yes	Q1 2019
Segment C - Commence Conductor Stringing	Yes	Q3 2019
Segment D - Commence clearing & access		Q2 2019
Segment D - Commence Geotech and Foundations		Q4 2019
Segment D - Commence Towers Assembly		Q4 2019
Segment D - Commence Towers Erection		Q4 2019
Segment D - Commence Conductor Stringing		Q1 2020

Detailed Project Schedule for East West Tie in Response to OEB Procedural Order #3		
Activity	**Critical Milestone**	**Target Date**
Segment E - Commence clearing & access		Q4 2018
Segment E - Commence Geotech and Foundations		Q1 2019
Segment E - Commence Towers Assembly		Q1 2019
Segment E - Commence Towers Erection		Q2 2019
Segment E - Commence Conductor Stringing		Q4 2019
Segment F - Commence clearing & access		Q4 2018
Segment F - Commence Geotech and Foundations		Q1 2019
Segment F - Commence Towers Assembly		Q1 2019
Segment F - Commence Towers Erection		Q1 2019
Segment F - Commence Conductor Stringing		Q3 2019
Project Construction Substantially Complete(2)	Yes	30-Nov-2020
Project Commissioning Commences	Yes	Q4 2020
Project Commissioning Complete - In Service	Yes	Q4 2020
Final acceptance and release of General Contractor		Q2 2021

(1) Per Exhibit B, Tab 11, Schedule 1 of Hydro One Station work LTC application
(2) Schedule Contingency for Project Substantial Completion (one month)

UNDERTAKING – JT 2.21

Undertaking

Hydro One to provide construction cost estimates for the route proposed by NextBridge in EB-2017-0182, using the same cost categories as in Table 2 in Hydro One's response to CCC8, both NextBridge route and preferred route. Also, to provide variance explanations for substantial differences.

Response

Hydro One would like to clarify that the reference Table is Nextbridge's response to CCC8 not Hydro One's response as the undertaking request currently reads. Hydro One notes that portions of the NextBridge response to CCC Interrogatory 8 in EB-2017-0182, filed March 21, 2018, were filed in confidence, specifically Table 3. Therefore, Hydro One has no line of sight to what detailed values NextBridge utilized to develop the costs provided in Table 2 of CCC Interrogatory 8. Consequently, a number of cost allocation assumptions have been made to align Hydro One's estimate, provided at Exhibit B, Tab 7, Schedule 1, Table 3 with the categories provided in CCC Interrogatory 8 Table 2.

Variance explanations have been provided for substantial differences between the NextBridge and Hydro One s.92 applications.

As requested, Hydro One has also provided the cost breakdown for the expected costs of the alternative of Hydro One following NextBridge's route in its entirety. Although the numbers vary, the variances explanations would not significantly differ for this alternative.

Category as per Exhibit I.B.NextBridge.CCC.8 - Table 2	**NxB S.92**	**HONI S.92**	**Variance Explanation**	**HONI - NextBridge "Bypass" Route**
Route length	443 km	403 km	Shorter route through Pukaskwa National Park	443 km
Engineering	$19,342,245	$17,828,000		$18,719,400
Materials & Equipment	$89,408,231	$58,713,000	34% cost reduction driven by optimized tower designs, shorter overall length and global purchasing power	$64,584,300
Environmental	$13,030,561	$9,819,000 (1)		$10,819,000
Land Rights	$23,830,512	$9,798,000	Hydro One is considering a number of instruments, including land use permits and believes it will reach voluntary settlements with the vast majority of property owners.	$9,798,000
First Nation and Métis Participation	$7,000,000	$18,450,000 (2)	Substantial economic participation included in Construction costs in the form of employment and FN&M contracting opportunities.	$20,664,000
First Nation and Métis Consultation	$13,211,000	$1,133,000	Lower due to the substantial amount of consultation completed to-date on the existing route	$1,627,000
Other Consultation	$2,530,194	$160,000		$160,000
Site Clearing, Access	$107,463,339	$66,339,000 (3)	The 38% variance is the result of a much smaller environmental footprint (50% less).	$75,379,680
Construction	$356,547,573	$363,481,000 (4)	Comparable total costs on a per unit basis.	$381,212,500
Site Remediation	$13,898,699	$10,550,000 (5)		$11,816,000

Interest During Construction	$31,003,000	$42,596,000	Consistent with the Board's decision in EB-2008-0408, interest during Construction is based upon the forecast of the embedded cost of debt used to finance the capital expenditures. It is impossible for Hydro One to compute NB's IDC without the monthly information to ascertain how a more expensive project has a lower IDC.	$44,838,161
Contingency	$49,339,445	$10,775,000	$10.8M of contingency is exclusive of the $54M of risk & contingency included within the fixed-price EPC contract.	$10,775,000
Regulatory	$5,405,078		All Hydro one regulatory costs are included in the development phase	
Project Management	$4,900,644	$5,802,000		$5,802,000
Overhead (new)		$8,502,000	Overheads shown separately as required by OEB Chapter 4 Filing Requirements Section 4.3.2.9.	$8,502,000
Total Construction Phase	**$736,970,521**	**$623,946,000**		**$664,697,041**

Notes:

1. This value differs from the $819k value depicted in Exhibit B, Tab 7, Schedule 1, Table 3 under Environmental Approval because environmental monitoring, permitting and mitigations costs which were included in Site Clearing, Preparation, & Site Remediation have been redistributed for the purposes of this comparison.
2. Though not explicitly identified in Exhibit B, Tab 7, Schedule 1, Table 3, First Nation and Metis Participation funding was accounted for in Site Clearing, Preparation, & Site Remediation. These funds have been redistributed for the purposes of this comparison.
3. This value has been reduced by $38M from what has been reflected in Exhibit B, Tab 7, Schedule 1 under Site Clearing, Preparation and Site Remediation to redistribute funds to Environmental, FN&M participation, and Site Remediation for the purposes of this comparison
4. This value is a combination of the Construction costs and Other costs identified in Exhibit B, Tab 7, Schedule 1.
5. Though not explicitly identified in Exhibit B, Tab 7, Schedule 1, Table 3, Site Remediation funding was accounted for in Site Clearing, Preparation, & Site Remediation. These funds have been redistributed for the purposes of this comparison.

UNDERTAKING JT1.17

UNDERTAKING

TR 1, page 106

To advise whether there is a risk-sharing agreement or whether all costs are inclusive in the contract.

RESPONSE

Upon reading the transcript, NextBridge has determined that the description of the undertaking JT1.17 does not reflect the intent of what was being requested. Based upon the discussion between VECC's counsel and NextBridge's witness and counsel at pages 103 to106, NextBridge believes that the undertaking given was to supplement Mr. Mayers' response as to what items (at a high level) would be required to ascertain whether Hydro One's cost estimate for the LSL project is accurate.

As Mr. Mayers explained, there are many cost-related details missing from Hydro One's evidence. If the case proceeds beyond the current motion, then it will be necessary for Hydro One to supplement and explain its evidence in support of costs. In this regard, at a high level NextBridge would recommend the following items should be provided:

- A cost breakdown similar to what NextBridge has provided in additional evidence provided in response to Procedural Order #3 and CCC INTERROGATORY #8, found at Exhibit I.B.NextBridge.CCC.8 in the EB-2017-0182 proceeding. This would include costs such as:
    - Cost to complete Individual Environmental Assessment and associated fieldwork
    - Land acquisition costs to negotiate option agreements with private landowners and obtain consent from Crown land interest holders
    - Costs regarding the clearing, reforestation, storage and handling of timber materials etc.
- A description of Hydro One's competitive process to select a general contractor ensuring the selection of the most cost and schedule effective bidder. If not competitively sourced, explain how Hydro One knows they are getting the best market costs for the customer.

- Confirm if Hydro One has executed a construction contract consistent with their estimate of costs, and to the extent a contract has not been executed, describe the basis for Hydro One's estimate and explain how Hydro One intends to enforce or hold any cost or schedule input provided by their contractor such that there are no changes once a contract has been executed.
- A breakdown of the general contractor's contract, including the extent of the negotiations, any risk sharing mechanisms and the mechanism(s) to adjust the fixed price for changes in scope.
- Provide the historical performance of Hydro-One and their selected Contractor to include: a) a description of the construction work their contractor self performs vs. subcontracts to others, b) the list of similar projects each have constructed in the past 10 years in North America, c) indicate the original vs. final project costs and % variance, d) original vs. final in-service dates and the variances in days.
- Identify where the SNC-Lavalin contingency is captured in Table 3, (Exhibit B, Tab 7, Schedule 1) and provide the amount of such contingency including a breakdown of the assessed risks totaling that contingency amount. Further, explain the contractual mechanism Hydro One will use to control if and how the SNC-Lavalin contingency is spent.
- Provide the Indigenous participation costs contained in the construction cost estimate which includes costs for participation agreement negotiations, employment and training initiatives and confirm all Indigenous sub-contracting participation is included in the Construction costs.
- A cost breakdown of development costs spent to date similar to what NextBridge has provided in additional evidence provided in the EB-2017-0182 proceeding.
- A labour estimate of all internal Hydro One employees who have worked or will work on the project including the number of hours each employee bills on the project and the total cost of those hours and describe Hydro One's internal protocols to ensure appropriate capture and accounting of the expenses spent on LSL such that some of these costs are not dispersed elsewhere in Hydro-One's rate base.
- To clarify and / or break down the increased development and construction costs in Board Staff IR #26 part b from HONI's original project estimate from the designation proceedings.
- Confirm the relocation(s) of the T1M line are included in Hydro One's LTC estimate of costs and scheduled in-service date and break out the cost and schedule associated with moving the T1M line, including engineering, construction, environmental assessment and Indigenous consultation costs.

- Estimate the alternative costs to cross the T1M line similar to NextBridge's plan using Hydro One's criteria similar to existing line crossings throughout Hydro One's system and explain why, in this case, this approach is not in the customer's interest.
- Potential implications to cost and schedule if Hydro One was not able to traverse Pukaskwa National Park, Michipicoten First Nations reserve, or Pays Plat First Nations reserve.
- Provide the system costs not included in Hydro One's estimate for the 15 day outage needed to construct through the Pukaskwa National Park. In addition, provide the potential implications to cost and in-service schedule if the potential outage of 15 days needed to be extended to 30 days while constructing through Pukaskwa National Park, including the system costs of the outage.
- A copy of the plan that will be presented to Parks Canada to seek approval to construct through Pukaskwa National Park, including a plan to mitigate any environmental risks.
- A breakdown of O&M costs, with an estimate of the usage of existing facilities and the potential increase to labour and infrastructure.
- Identify the appropriate AACE International classification and sub-characterization (-%/+%) of Hydro One's construction costs estimate, and if not a Class 1, when does Hydro One expect to be able to achieve a Class 1, the sub-characterization (-%/+%) of that Class 1, and what scope needs further definition to achieve that Class 1 estimate.
- Provide the dollar value of project costs subject to foreign exchange adjustments and amount of any Contingency included in the cost estimate that may have been allocated to this risk.
- Provide the dollar value of total project costs subject to commodity price variations.
- Explain how cost increases in commodities (steel, zinc, aluminum) and Foreign Exchange will be mitigated after November 2018 (HONI's Exhibit B, Tab 7, Schedule 1, Table 3, footnote #11).
- A description of which costs are subject to fixed cost arrangements and what are the relevant exceptions, as well as a description of which costs are not fixed.
- An estimate of the customer impacts (costs) associated with delaying the in-service date for the EWT project from December 2020 to December 2021.

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 pursing 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.	*Code of Practice: Preparing and Reviewing Environmental Assessments in Ontario,* January 2014
3.	*Code of Practice: Preparing and Reviewing Terms of Reference for Environmental Assessments in Ontario,* 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.

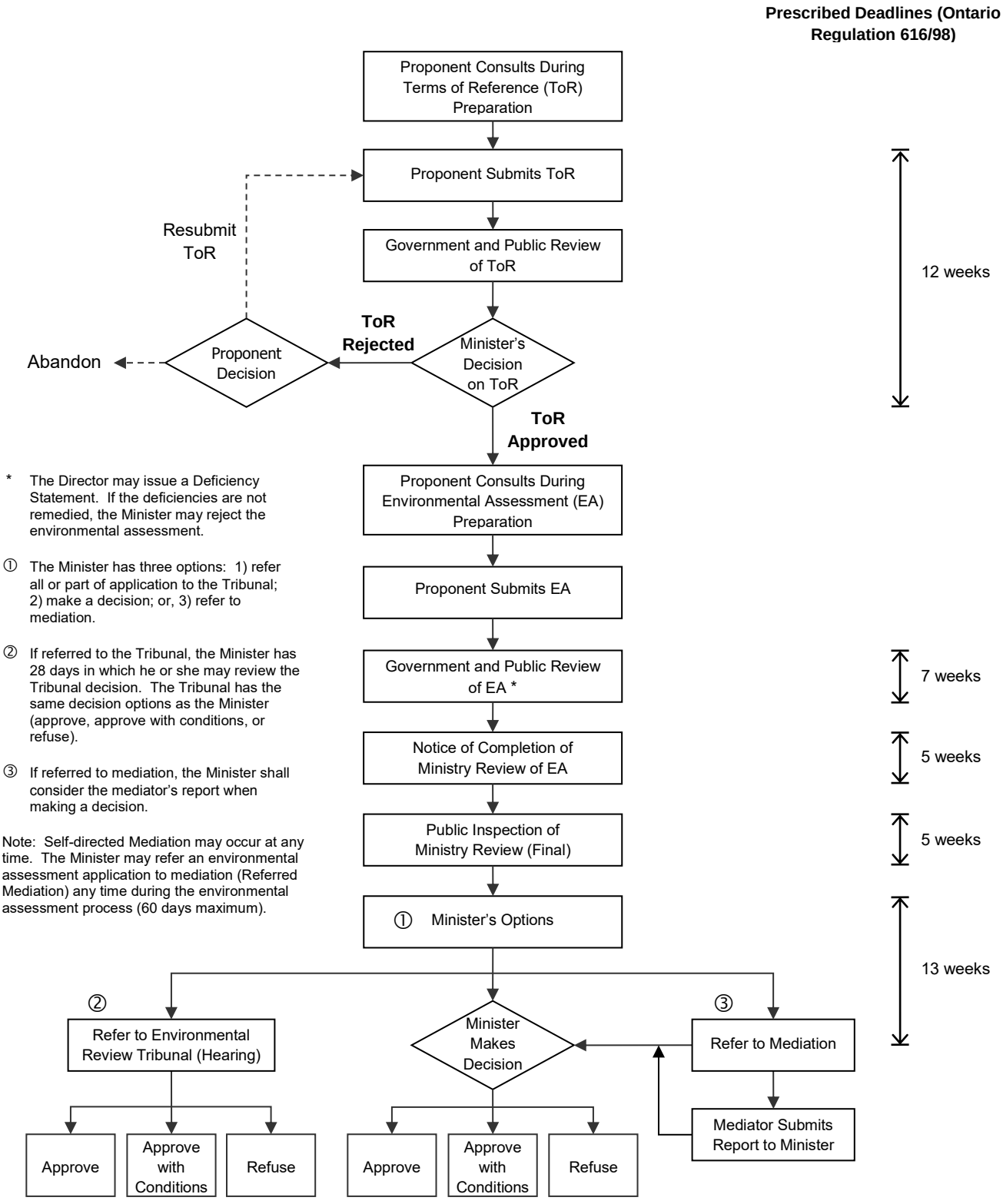
On February 16, 2018, NextBridge submitted an amended environmental assessment report for the East-West Tie project to MOECC. As part of the submission, there was a 30-day comment period. This comment period concluded on March 29, 2018.

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 A Environmental Assessment Process Timelines



UNDERTAKING JT1.2

UNDERTAKING

TR 1, page 34

NextBridge to provide risk assessment reports for the period from 2013 to 2017.

RESPONSE

NextBridge has not prepared standalone risk assessment reports. Attached is the Risk Matrix that NextBridge produced for internal purposes in 2016. The risk matrix identifies the items that could potentially impact project schedule and cost.

NextBridge Risk Register: Risks to completing the Project

Risk ID	Date Created	Phase	Risk Short Form	Risk Statement	Risk Sources (i.e. risk drivers, e.g. the reasons / rationale provided by stakeholders for being concerned)	Risk Owner	Risk Co-Owner	Open / Closed	Date Closed	Date Risk Reviewed	Cost Impact	Time Impact	Scope Impact	H&S Impact	Env Impact	Public/Ppl Impact	Customer Impact	Impact	Probability	Risk Score	Risk Zone	Trending Status	Deep Dive	Treatment Option	Treatment Action	Reporting	Monitoring	Comments	Last Monitored
1	6/7/2016	All Phases	Political Impacts including a change in government. A change in provincial or federal government could have a profound impact on the project.	A change in government could impact the priority regarding budget expenditures jeopardizing the project. Work on the project could indefinitely cease.	Priority Project designation supports the project, but a majority change in government could jeaopordize designation.	Government Relations	Stakeholder Relations	Open			L	VH	VH	VL	VL	M	VH	VH	VL	16	medium	→	No		within 2 mos	quarterly	quarterly	Impacts and Probability reviewed by Risk Co-Owner.	
2	6/7/2016	Development - Pre-Application	Leave to Construct on **OEB-Approved Filing Date of December 15, 2017** not met, resulting in potential OEB approval delays	It may not be possible to compress the schedule enough to complete the project by Q4-2020, if the start date is delayed.	Change to completion date could result in determination that project milestone not met EA approval anticipated to be granted in Q2-2018. The project construction is scheduled to begin in Q4-2018.	Regulatory	Government Relations	Open			M	H	L			L	VH	VH	VL	16	medium	→	No	Accept Risk	within 2 mos	quarterly	quarterly	Split original risk in three. Engineering will need to review Time Impact Column.	
3	6/7/2016	All Phases	Project could be cancelled because power consumption has been reduced as a result of a sluggish economy.	The OPA could re-define the need for the project and the government could decide to cancel it.		Government Relations	Project Management	Closed	17-Jun-16	17-Jun-16												→	No					Closed with OIC	6/17/2016
4	6/7/2016	All Phases	Health & Safety Jobsite Health and Safety requirements are rigorous under the Occupational Health and Safety Act. Dangers present on the job site include hand clearing (slashing), open excavations, using power tools, tower erecting, working beside high voltage power lines, stringing cable via helicopter, work in proximity to the switching stations beside live equipment etc. Serious potential risks include injuries from: a. Chainsaw accidents b. Heavy clearing equipment accidents c. Fire in the woods d. Road accidents e. Electrocution f. Falls	Failure to provide a safe workplace environment on the job site could result in injury, death, litigation, schedule delays and fines. A serious injury to a worker would result in increased scrutiny from the Ministry of Labour and jeopardize the reputation of NextBridge and the project team.		Engineering and Construction	Project Management	Open												→	No						
5	6/7/2016	Construction	The Owner May be Deemed the Constructor.	If it is not possible to adequately separate Constructors 'Time or Space', then the MOL can require NextBridge to be the Constructor.	With more than one Constructor on site, the MoL may deem NextBridge is the "Constructor".	Engineering and Construction	Legal	Open			L	L					L	L	4	low	→	No		As needed	not required	quarterly	Co-owner was changed to Legal during initial review.	
6	6/7/2016	Construction	Construction Cost Overruns The final cost of construction could exceed the budget. This can be the result of poor estimating/budgeting; excessive design; scope changes; design creep; bad weather; bad design; poor field planning (wrong sequencing); inadequate project controls; increase in material and commodity prices; increase in labour costs; increase in interest rates; lower Canadian exchange rate; delays; contractual claims; poor scope definitions; poor planning of interfaces between contractors; poor coordination between contracts; poor contract administration.	Construction cost overruns could result in exceeding the budget. Reputations suffer. Claims and litigation can result.		Engineering and Construction	Project Management	Open			M	M					M	M	12	medium	→	No		within 2 mos	quarterly	quarterly		

UNDERTAKING JT1.25

UNDERTAKING

TR 1, page 146

To provide an estimate of costs that NextBridge would incur from a delay of six months or one year to the in-service date.

RESPONSE

NextBridge expects delay costs associated with a delay of 6 months or even a year would be substantial, but the magnitude of the associated costs cannot be calculated without the known and specific factors that resulted in the 6 month delay. The inability to calculate delay losses is only made more difficult by consideration of a 1 year delay. As indicated by Mr. Mayers during the Technical Conference, some of these factors include, but are not limited to:

Cause of Delay – Different causes will trigger different impacts and therefore costs. For example, a six month delay in approval of the NextBridge Leave to Construct may only translate into delay costs associated with specific areas of the project that are dependent on the expropriation process to gain property access where it cannot be successfully negotiated. Some of such cost increases may be mitigated through the Construction contract by providing "move around events" as other areas of work can be constructed as planned. On the other hand, a six month delay in the EA approval or subsequent MNRF permits that cause NextBridge to completely lose the 2018/2019 winter construction season will have a significantly greater cost impact as certain areas forecasted for this winter construction period will be delayed a year due to seasonal restrictions. (Example: work in the Caribou zones is limited to a very small schedule window).

Length of Delay – The length of the delay will impact delay costs differently, depending on the most prudent course of action. A shorter delay (e.g., 1 month) may be best mitigated with increased costs to accelerate the work by adding additional crews and equipment without impact to the overall in-service date. Conversely, a longer delay (6 or 12 months) in the initial construction would jeopardize the 2020 in-service date, and result in significantly more unmitigatable costs.

Impacts to Local Communities – The magnitude of impacts on local communities is very difficult to estimate as these are not all contemplated in the construction agreement or directly with the communities. As described in evidence to date by NextBridge and some of the proximate Indigenous Communities, there are several investments and programs ramping up

in anticipation of construction efforts to maximize their ability to participate and earn economic benefits. Some of those programs include training of a local workforce to work on the project. These individuals will likely complete their training and in the event of project delays, newly trained workers may need to move out of their communities to find jobs, rendering some of such workers unavailable when needed for the EWT. Similarly, small businesses making investments for equipment and staffing in preparation to support some of the subcontracting work may incur costs relative to delayed revenue and may not be able to support their investments if the delays are significant.

Miscellaneous Impacts – Some factors experienced during the delay in the Development Phase may have similar impacts during a delay in the construction phase, and, therefore, could contribute to increased costs depending on what activity is delayed and for how long. For example, delay will likely impact costs associated with: changes in market pricing for construction materials; changes in exchange rate for goods sourced on the international market; and continuing project activities for a longer period such as consultations and extended permitting periods.

Thus, while a six month delay would result in a substantial increase in costs, NextBridge cannot calculate those costs without specifically knowing the causes of such delays.

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

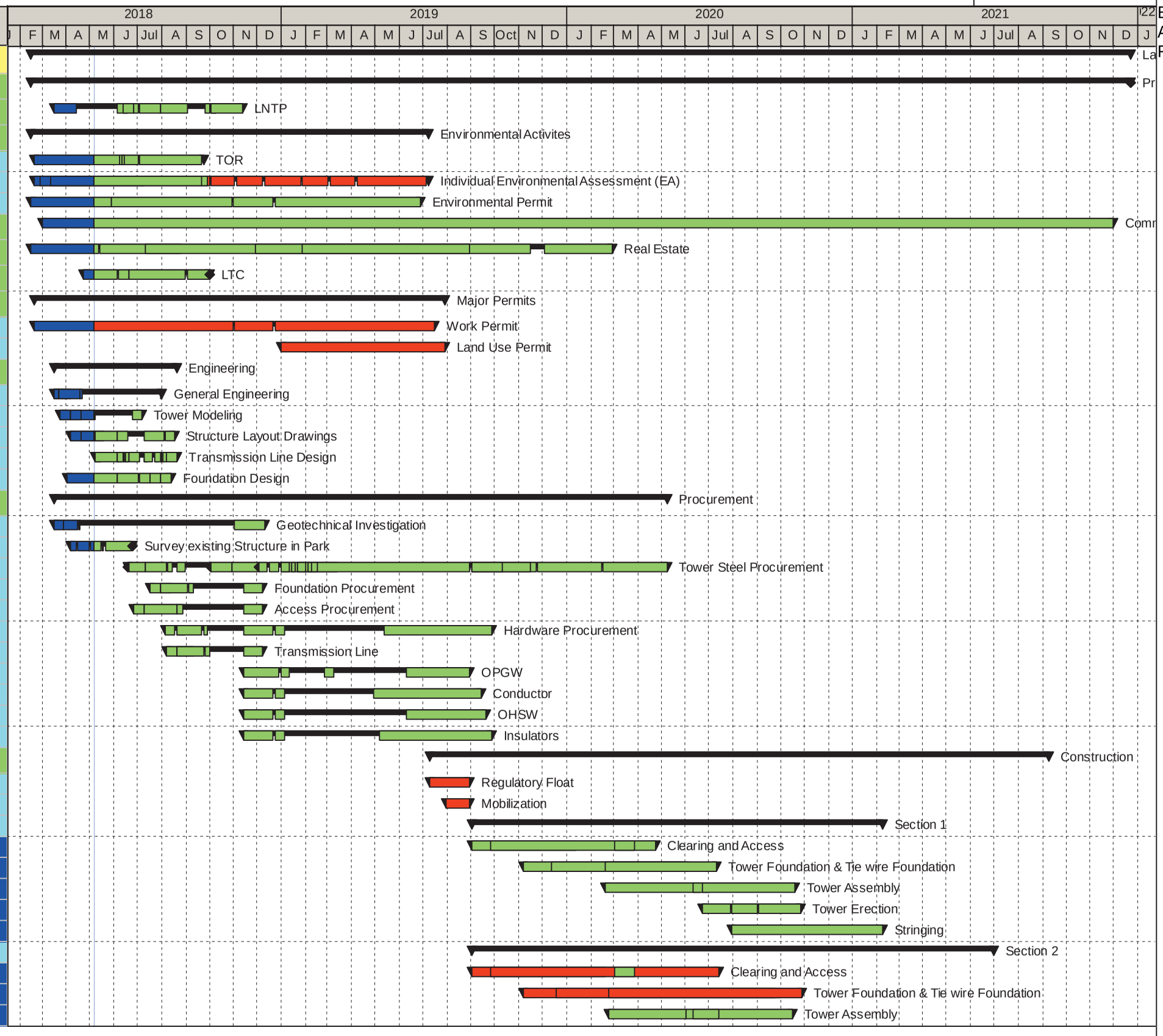
Minor updates are provided to the project schedule provided at EB-2017-0364 Exhibit B, Tab 11, Schedule 1.

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).

Filed: 2018-05-25
EB-2017-0364
Exhibit: JT 2.9
Attachment 1
Page 1 of 2

Activity ID	Activity Name	Duration	Start	Finish
Lake Superior Link Project Schedule		1007	14-Feb-18 A	22-Dec-21
Project		1007	14-Feb-18 A	22-Dec-21
LNTP		172	16-Mar-18 A	12-Nov-18
Environmental Activites		364	15-Feb-18 A	08-Jul-19
TOR		156	19-Feb-18 A	24-Sep-18
Individual Environmental Assessment (EA)		362	19-Feb-18 A	08-Jul-19
Environmental Permit		358	15-Feb-18 A	28-Jun-19
Community & Indigenous Relation Activities		980	01-Mar-18 A	30-Nov-21
Real Estate		533	15-Feb-18 A	28-Feb-20
LTC		116	23-Apr-18 A	01-Oct-18
Major Permits		377	19-Feb-18 A	29-Jul-19
Work Permit		367	19-Feb-18 A	15-Jul-19
Land Use Permit		150	01-Jan-19	29-Jul-19
Engineering		112	16-Mar-18 A	20-Aug-18
General Engineering		98	16-Mar-18 A	31-Jul-18
Tower Modeling		76	23-Mar-18 A	06-Jul-18
Structure Layout Drawings		96	06-Apr-18 A	17-Aug-18
Transmission Line Design		75	08-May-18	20-Aug-18
Foundation Design		96	02-Apr-18 A	13-Aug-18
Procurement		562	16-Mar-18 A	08-May-20
Geotechnical Investigation		194	16-Mar-18 A	11-Dec-18
Survey existing Structure in Park		56	06-Apr-18 A	25-Jun-18
Tower Steel Procurement		495	19-Jun-18	08-May-20
Foundation Procurement		105	17-Jul-18	07-Dec-18
Access Procurement		120	26-Jun-18	07-Dec-18
Hardware Procurement		301	06-Aug-18	27-Sep-19
Transmission Line		90	07-Aug-18	07-Dec-18
OPGW		210	13-Nov-18	30-Aug-19
Conductor		220	13-Nov-18	13-Sep-19
OHSW		225	13-Nov-18	20-Sep-19
Insulators		230	13-Nov-18	27-Sep-19
Construction		568	09-Jul-19	09-Sep-21
Regulatory Float		39	09-Jul-19	30-Aug-19
Mobilization		24	30-Jul-19	30-Aug-19
Section 1		376	02-Sep-19	08-Feb-21
Clearing and Access		169	02-Sep-19	23-Apr-20
Tower Foundation & Tie wire Foundation		169	07-Nov-19	10-Jul-20
Tower Assembly		174	19-Feb-20	19-Oct-20
Tower Erection		91	22-Jun-20	26-Oct-20
Stringing		130	30-Jul-20	08-Feb-21
Section 2		478	02-Sep-19	30-Jun-21
Clearing and Access		226	02-Sep-19	13-Jul-20
Tower Foundation & Tie wire Foundation		246	07-Nov-19	27-Oct-20
Tower Assembly		170	24-Feb-20	16-Oct-20



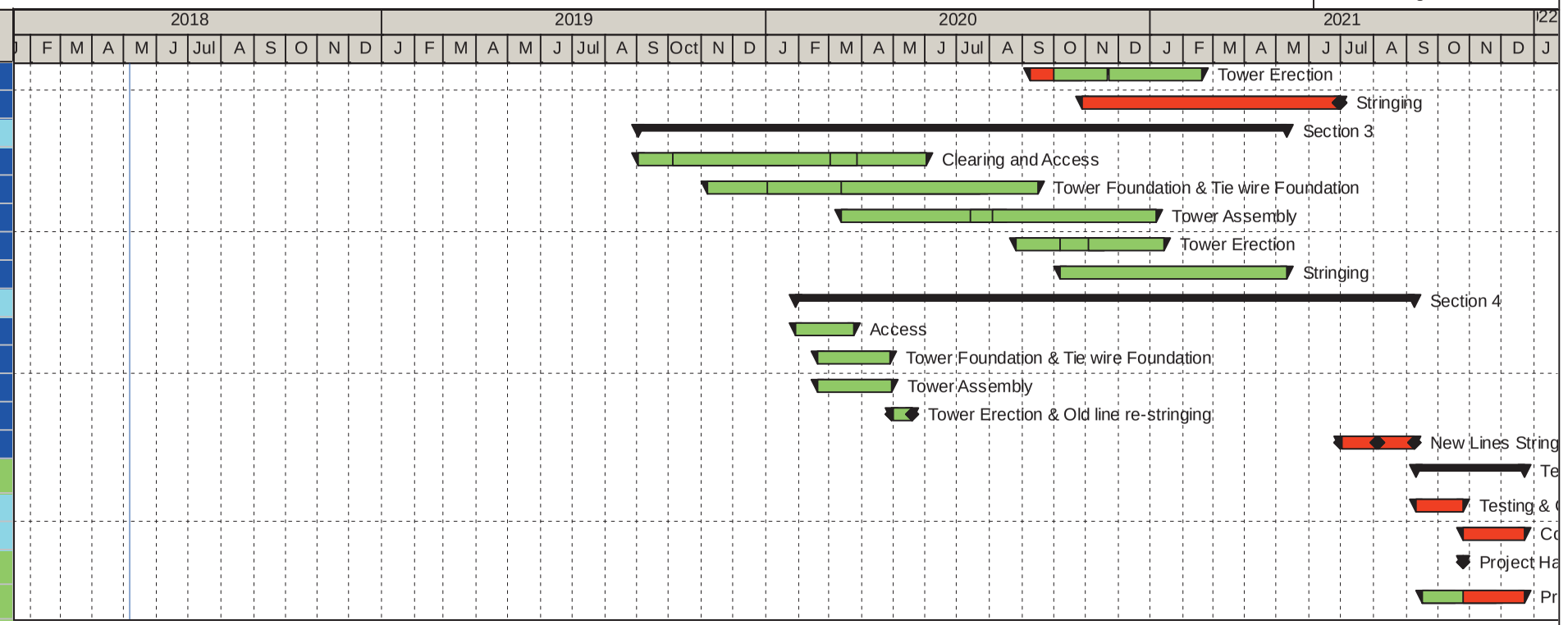
Remaining Level of Effort | Actual Work | Critical Remaining Work | Summary
Actual Level of Effort | Remaining Work | Milestone

Classic WBS Layout - Submission

TASK filter: All Activities

Note: Schedule reflects work post S92 Application only

Activity ID	Activity Name	Duration	Start	Finish
	Tower Erection	110	09-Sep-20	19-Feb-21
	Stringing	168	28-Oct-20	30-Jun-21
	Section 3	441	02-Sep-19	10-May-21
	Clearing and Access	197	02-Sep-19	02-Jun-20
	Tower Foundation & Tie wire Foundation	216	07-Nov-19	15-Sep-20
	Tower Assembly	206	13-Mar-20	06-Jan-21
	Tower Erection	93	26-Aug-20	13-Jan-21
	Stringing	146	07-Oct-20	10-May-21
	Section 4	413	30-Jan-20	09-Sep-21
	Access	39	30-Jan-20	24-Mar-20
	Tower Foundation & Tie wire Foundation	49	20-Feb-20	28-Apr-20
	Tower Assembly	50	20-Feb-20	29-Apr-20
	Tower Erection & Old line re-stringing	14	30-Apr-20	19-May-20
	New Lines Stringing	51	01-Jul-21	09-Sep-21
	Testing & Commissioning	74	10-Sep-21	22-Dec-21
	Testing & Commissioning	32	10-Sep-21	25-Oct-21
	Construction Float	42	26-Oct-21	22-Dec-21
	Project Hand-over	0	25-Oct-21	25-Oct-21
	Project Close Out	69	17-Sep-21	22-Dec-21



Remaining Level of Effort
Actual Level of Effort
Actual Work
Remaining Work
Critical Remaining Work
Milestone
Summary

Classic WBS Layout - Submission

TASK filter: All Activities

Note: Schedule reflects work post S92 Application only

UNDERTAKING – JT 2.3

Undertaking

Hydro One to provide a schedule of all activities leading to the July 2018 date of individual environmental assessment completion.

Response

Hydro One would like to correct that the undertaking timeline should read July 2019, not 2018. Below is the schedule requested.

Individual Environmental Assessment Milestone	**Projected Timeline**
Submit Notice of Commencement of Preparation TOR to MOECC	May 2018
Issue Public Notice of Commencement of Preparation of TOR	
Consultation on, and Preparation of TOR	
Community Information Centres #1 (TOR)	June 11 to 14, 2018
Draft TOR submitted to MOECC and available for review	June 2018
Submit TOR	June – Sept 2018 (12 weeks)
TOR Review Period	
Minister's Decision on TOR	
Submit Notice of Commencement of Initiation of EA to MOECC	July 2018
Issue Public Notice of Commencement of Preparation of EA	
Community Information Centres #2 (EA)	Sept 2018
EA Studies	March – Sept 2018
Draft EA submitted and available for review	November, 2018
Submission of EA to MOECC and Notice of EA Submission	Dec 2018

Individual Environmental Assessment Milestone	Projected Timeline
Public and Government Review of EA	Dec 2018 – Jan 2019 (7 weeks)
Government Issues Notice of Completion of Ministry Review of EA	Jan 2019 - March 2019 (5 weeks)
Public Inspection of Ministry Review	March - April 2019 (5 weeks)
Minister's Decision	April - July 2019 (13 weeks)
EA Approval	July 2019
Implement the Project and Monitor Compliance	July 2019 -Dec 2021

1

UNDERTAKING – JT 2.5

Undertaking

Hydro One to provide a schedule for Parks Canada approval of all Environmental Canada Impact Assessments processes for the Pukaskwa National Park portion of the route.

Response

Pukaskwa National Park ("PNP") – Park Canada Approval Schedule

Task	Projected Timeline	Comment
Project Overview - Potential Infrastructure Alteration and Renewal	Oct-17	Complete
Environmental Evaluations Report Updated	Jan-18	Complete. Environmental Evaluation Report that forms part of the Licence Agreement was updated and sent back to PNP
Construction Execution Plan	Feb-18	Complete. Construction Execution Plan, as requested by PNP, provided to PNP.
PNP review of draft Table of Contents of Environmental Assessment Report	May-18	PNP to provide input into the draft Table of Contents of the Environmental Assessment Report to ensure compliance with CEAA requirements.
Provide PNP with draft environmental study work plan reports for comment	May-18	Complete
Provide PNP with final Environmental study work plan reports	May-18	Complete
Research and Collection Permit Application for Caribou Study	Mar-18	Complete
Caribou Study	Mar-18	Complete
Research and Collection Permit Applications	May-18	Complete
Other Environmental Studies	May - Sept 2018	
Submit Draft ToR to PNP for comment	Jun-18	

Task	Date	Comment
Provide PNP with draft Study Reports for comment	Oct-18	
Provide PNP with final Study Reports	Nov-18	
Provide PNP with draft EA for comment	Oct - Dec 2018	
Provide PNP with Final EA	Dec-18	
EA Approval	Jul-19	
Finalize Licence Renewal	Jul-19	
PNP Approval	Jul-19	

1

Filed: 2018-05-25
EB-2017-0364
Exhibit: JT 2.19
Attachment 3
Page 1 of 27

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,

Gregory Kiraly
Chief Operating Officer

East West Tie – Board Approval to Submit Leave to Construct

hydro One

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

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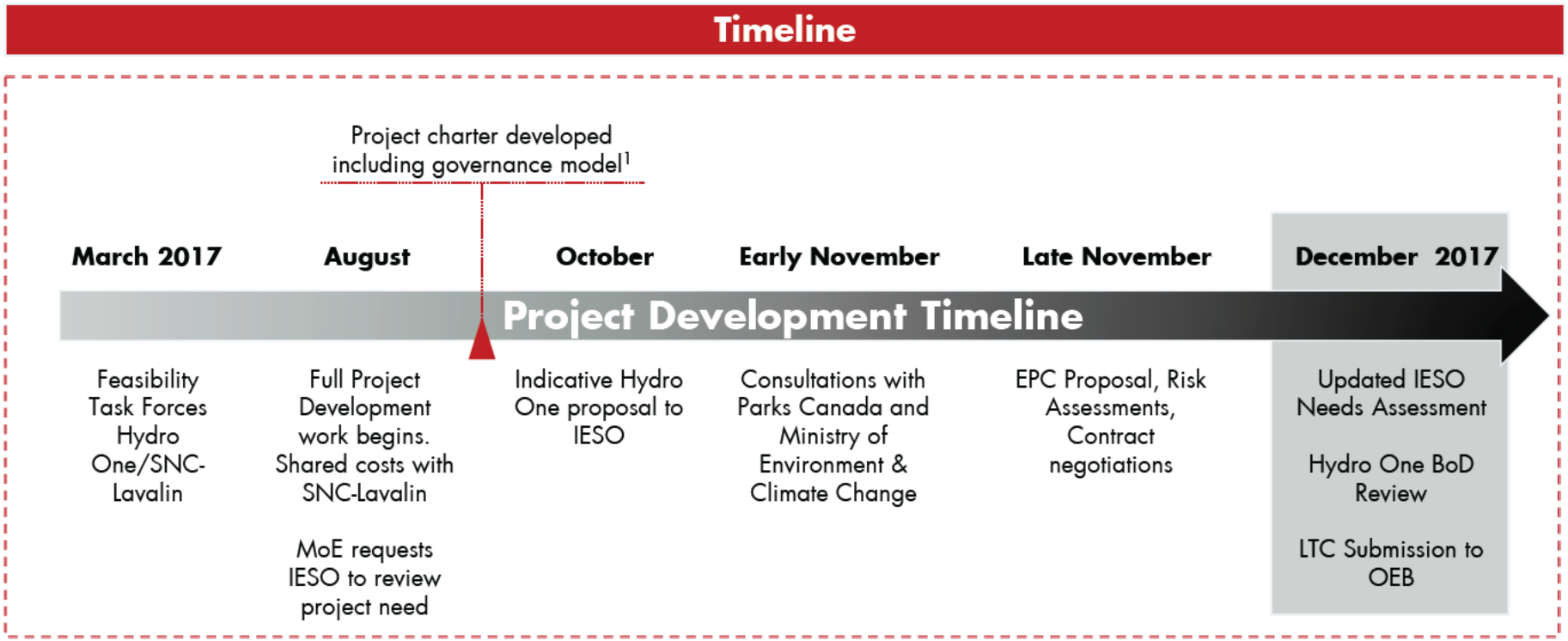
Project Development Timeline



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 year[1]**

- 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

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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 proponency 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.

hydro One

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 wrong-doing.

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 communities[1], 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

Hydro One
Board of Directors

Hydro One
Executive Leadership Team

Executive Project Management Office

Project Executive Sponsor
Greg Kiraly

PMOLT
Project Management, Operations, and Leadership Team

Chair: A. Spencer (H1)
Hydro One Teams
SNC-Lavalin Teams

Actions:

- Regular updates as determined by CEO
- Written briefing for Board of Directors
- Approval of Strategic elements prior to submission to OEB

- Bi-weekly written updates + meeting for bi-directional communication progress against plan, and strategic guidance

Project Manager

Legal Team

All Teams consist of 2 to 6 leaders or experts from HONI and SNC-Lavalin.

- Corporate Development Team
- Technical Solution Team
- Environmental Team
- Finance & Commercial Team
- Procurement & Real Estate Team
- Communications Team
- Legal, Regulatory and Risk Team
- First Nations Team

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	$42 (forecast)	TBD	TBD
Construction Cost ($ milllion)	$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 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 D: Financial Forecasts (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										

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 proponency 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 impactive 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 impactive 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%)**	**High.** Cost & Schedule: Would have to design & build to NextBridge EA, with longer route, specifically clearing 53km of additional corridor. Reputational: Challenging conversations with local landowner associations.	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 %)**	**Medium.** Cost & Schedule: Would be subject to penalties and litigation for failing to fulfil contractual obligations. Reputational: Damage impacting relations with Hydro One and Canadian T&D sector	Substantial engineering work completed to clearly understand project risks. Probabilistic risk assessment utilized to define project contingency.	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

Ministry of the Attorney General

Legal Services Branch
Environment and Climate Change

10th Floor
135 St. Clair Avenue West
Toronto, ON M4V 1P5
Telephone: (416) 314-6589
Facsimile: (416) 314-6579

Direct Line: (416) 314-0578

Ministère du Procureur général

Direction des services juridiques
Environnement et Action en matière de changement climatique

10e étage
135, avenue St. Clair Ouest
Toronto, ON M4V 1P5
Téléphone: (416) 314-6589
Télécopieur: (416) 314-6579

Email: nicholas.adamson@ontario.ca

Via email (boardsec@oeb.ca and registrar@oeb.ca) and delivery (two hard copies to the Board)

May 25, 2018

Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4
E-mail: boardsec@oeb.ca
Tel: 1-888-632-6273
Fax: 416-440-7656

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

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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:

UNDERTAKING – JT 2.29

Undertaking

Hydro One is to advise what is the point at which field construction work must be postponed to the following year.

Response

To be able to maintain the December 2021 completion date, construction work must begin no later than January 13, 2020.

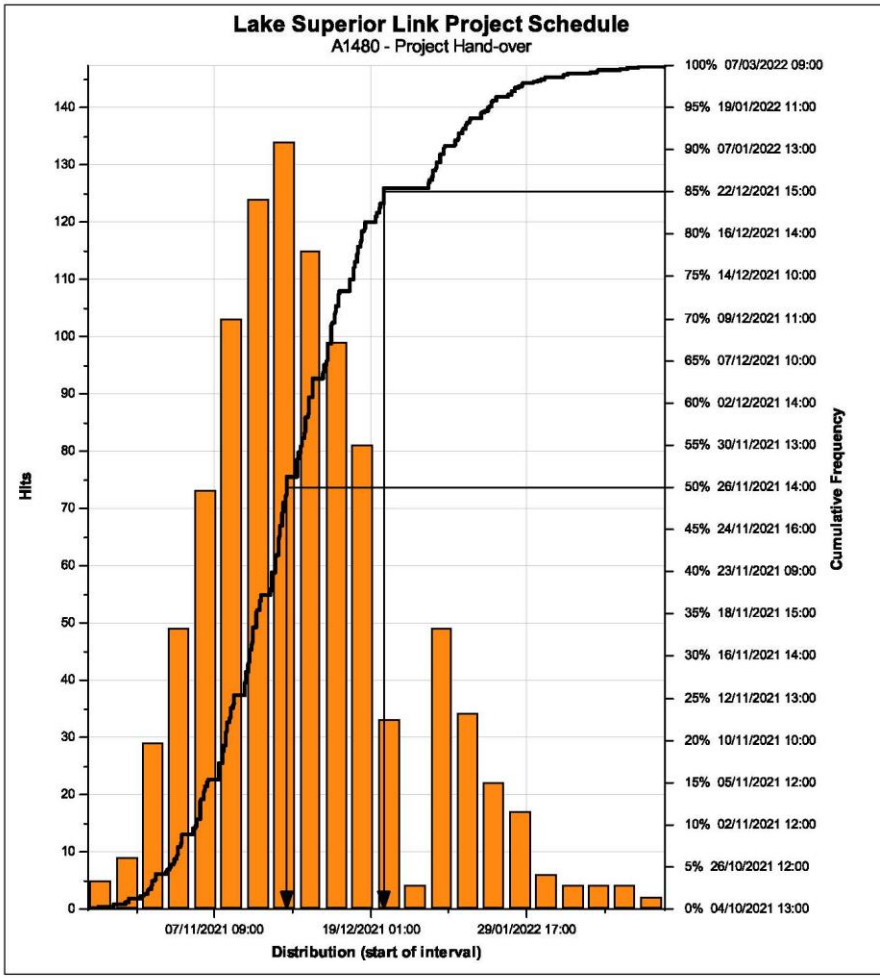
UNDERTAKING – JT 2.30

Undertaking

Hydro One to file the probabilistic Monte Carlo analysis used to confirm the LSL schedule.

Response

Hydro One and SNC-Lavalin completed a process to look at factors which could cause the project schedule to extend beyond the planned completion date of December 2021. These factors were considered from a risk basis, assessing both likelihood and consequence of occurrence. The results were then modeled through a Monte Carlo simulation to probabilistically determine the confidence interval. The following distribution articulates to an 85% confidence interval (i.e. P85) that the LSL project will be completed prior to December 31, 2021.



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

Submitted to the Ministry of Energy

December 1, 2017

ieso
Connecting Today.
Powering Tomorrow.

Table of Contents

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 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 2010[1] and 2013[2] 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.

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

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

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

On July 31, 2017, NextBridge and Hydro One Networks Inc. ("Hydro One") filed Leave to Construct ("LTC") applications[6] 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.

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

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

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

3.0 CHANGES TO THE PLANNING ASSUMPTIONS

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

Cancellation of TransCanada's Energy East Pipeline Project

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

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

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[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-anounces-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 MW[9] 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

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

Updated Transmission Cost Estimates

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

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

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

4.0 NORTHWEST DEMAND OUTLOOK

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

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

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

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

4.1 Historical Northwest Demand

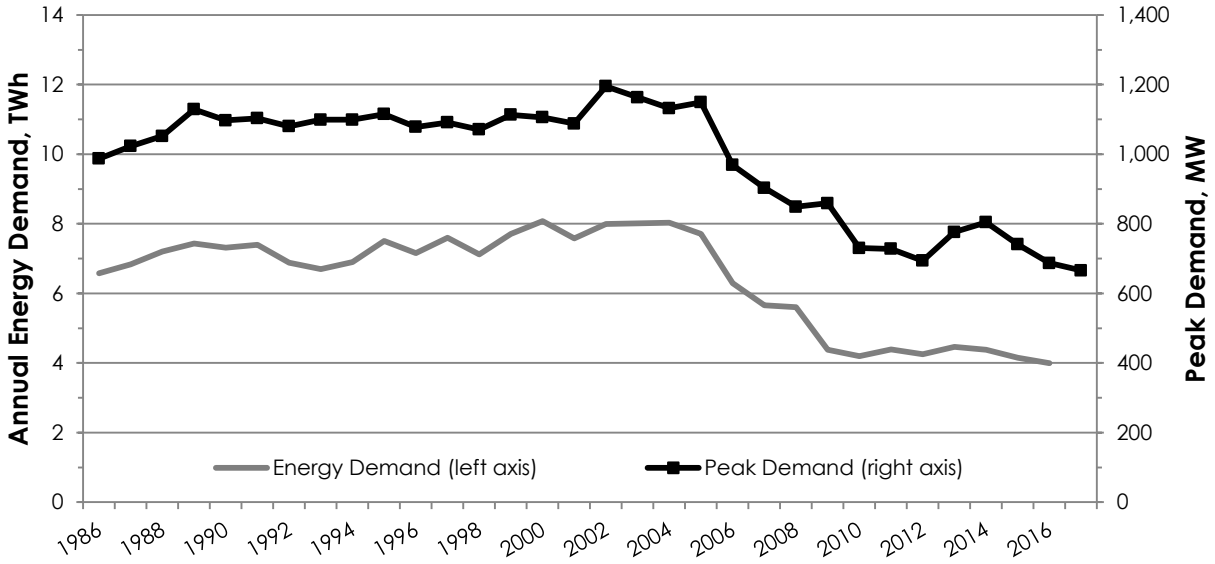
Historical electricity demand in the Northwest is presented in Figure 1 below. This update includes actual energy and peak demand data from 2015 and 2016 and preliminary data from 2017, which was not available when the December 2015 Report was prepared. While the winters of 2013 and 2014 saw an increase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

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

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

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

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

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

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

Figure 2. Northwest Net Peak Demand Outlooks

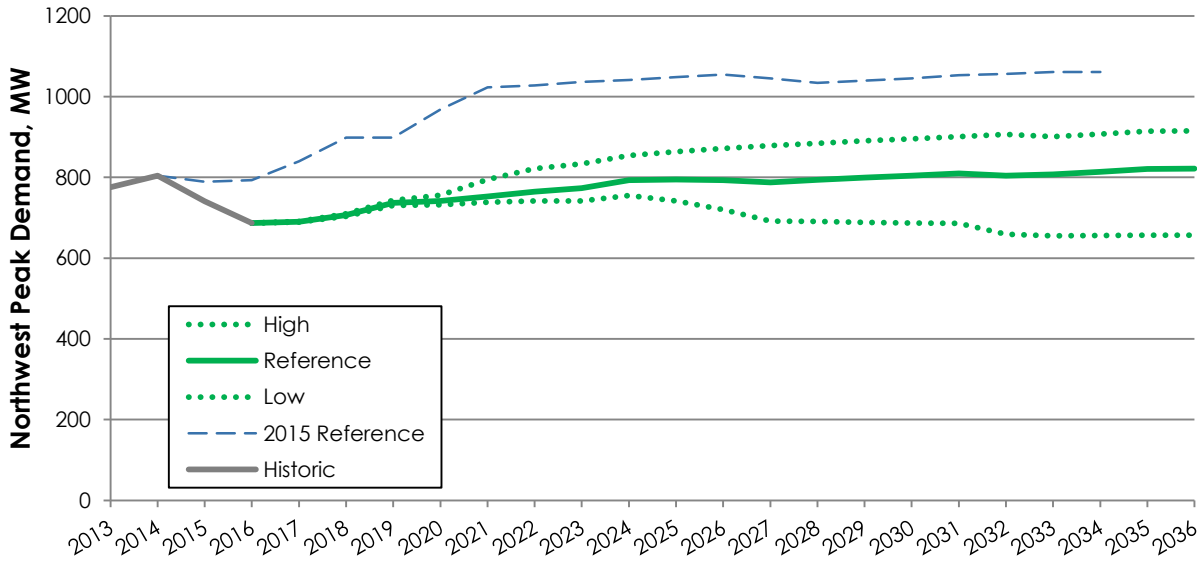
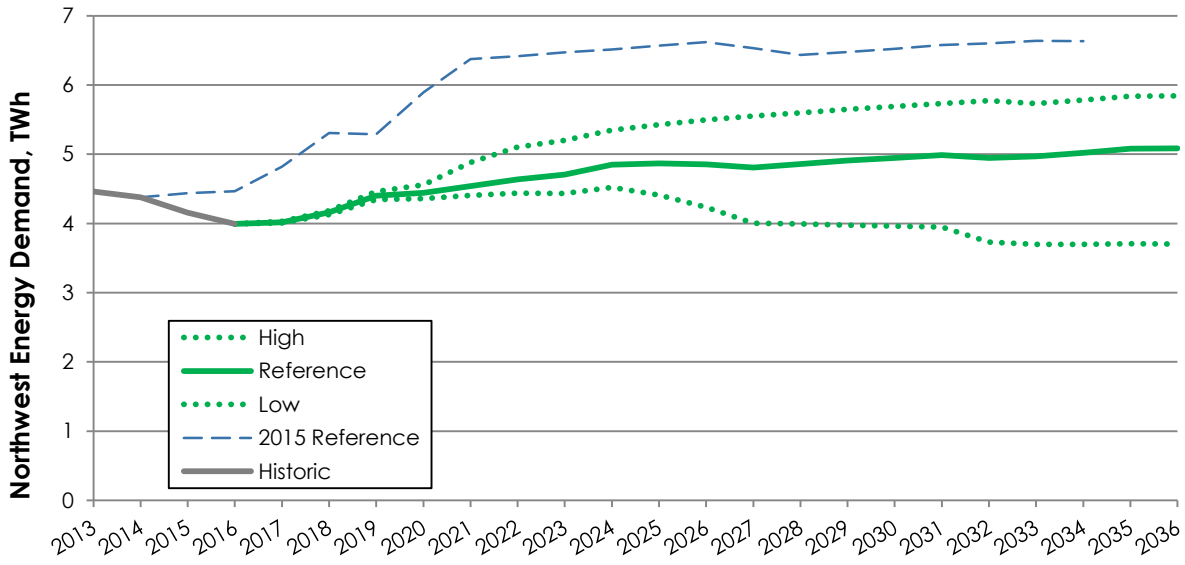


Figure 3. Northwest Net Energy Demand Outlooks



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.

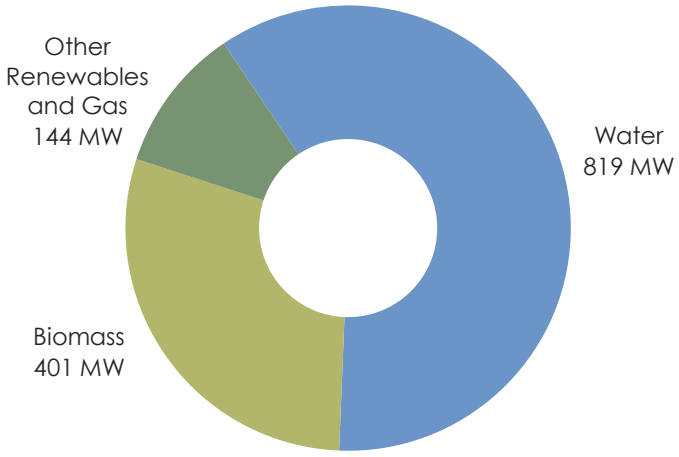
5.1 Internal Resources in the Northwest

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

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

However, as previously discussed, this E-W Tie planning limit relies on support from Manitoba following contingencies on the E-W Tie, which cannot be counted on for more than 30 minutes. As a result, 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.

For example, 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.

6.0 THE NEED FOR ADDITIONAL SUPPLY FOR THE NORTHWEST

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

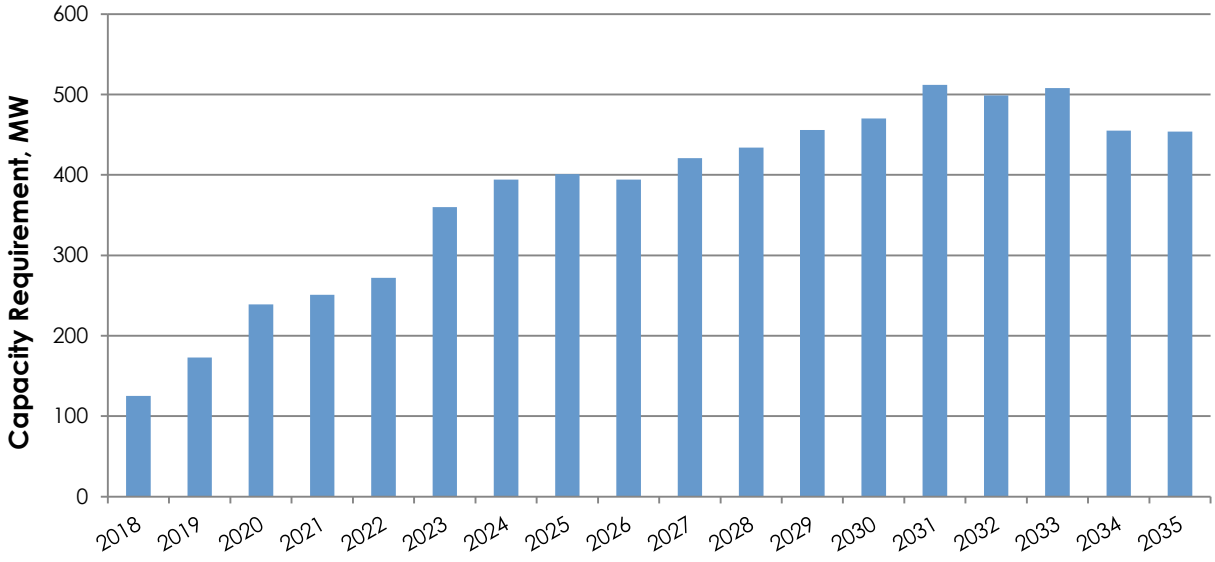
6.1 Capacity Adequacy Requirement

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

The updated capacity need, based on the Reference demand outlook with no E-W Tie Expansion, is shown in Figure 5. 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.

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

Figure 5. Expected Incremental Northwest Capacity Requirement under Reference Demand

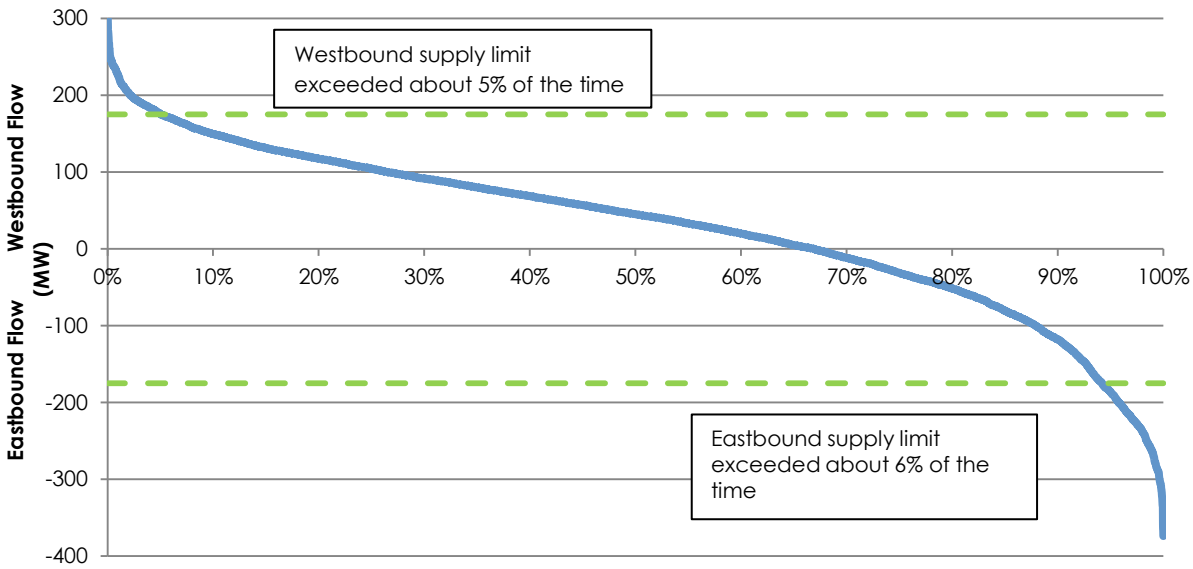


6.2 Energy Requirement

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: i) meeting Northwest needs through the addition of new local natural gas-fired generation, and ii) 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

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

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

No E-W Tie Expansion Option – Other Considered Alternatives

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

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

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

7.1 Cost-Effectiveness Comparison of Generation and Transmission Alternatives

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

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

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

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

The following assumptions remain unchanged from the December 2015 Report:

- The NPV analysis was conducted using a 4% real social discount rate. Sensitivities at 2% and 8% real social discount rate were also performed.
- The assessment is performed from an electricity ratepayer perspective.
- Median-water hydroelectric energy output was used for energy simulation in the economic analysis.
- Dual-fuel gas-fired generation was assumed to be added to the Northwest due to 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.

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

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

9.0 CONCLUSIONS AND RECOMMENDATIONS

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

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.

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.