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August 10, 2018

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

Dear Ms. Walli:

**Re: EB-2017-0049
Hydro One Networks Inc. application for electricity distribution rates beginning
January 1, 2018 until December 31, 2022**

We are counsel to Anwaatin Inc. (**Anwaatin**) in the above-mentioned proceeding. Please find enclosed the Final Argument of Anwaatin, submitted pursuant to Procedural Order No. 7.

Yours very truly,

A handwritten signature in black ink, consisting of a stylized, cursive 'L' followed by a long horizontal stroke that ends in an arrowhead pointing to the right.

Lisa (Elisabeth) DeMarco

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act*,
1998, S.O. 1998, c.15 (Schedule B), s. 78;

AND IN THE MATTER OF an application by Hydro One
Networks Inc. to raise its electricity distribution rates
effective January 1, 2018 and continuing each year for
another 4 years, until December 31, 2022.

EB-2017-0049

FINAL ARGUMENT

ANWAATIN INC.

August 10, 2018

INTRODUCTION AND OVERVIEW

1. We are counsel to Anwaatin Inc. (**Anwaatin**) on the Ontario Energy Board EB-2017-0049 proceeding to review Hydro One Networks Inc.'s (**Hydro One's**) 2018 to 2022 distribution rate application (the **Application**) pursuant to section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 (Schedule B) (the **Act**).
2. Anwaatin is a collective of Indigenous communities that are focused on achieving reliable, affordable, and sustainable energy for their communities. Anwaatin's members in this proceeding include: Aroland First Nation (**Aroland**); MoCreebec Eeyoud (**MoCreebec**); and Waaskiaysay Ziibi Inc. Development Corporation (**WZI**). WZI is an economic development corporation representing five First Nations in the Lake Nipigon watershed: Animbiigoo Zaagiigan Anishinaabek, Bingwi Neyaashi Anishinaabek, Biinjitiwaabik Zaaging Anishinaabek, Red Rock Indian Band, and Whitesand First Nation (the **WZI Communities**). Aroland, MoCreebec, and the WZI Communities together are referred to herein as the **Anwaatin First Nation Communities**.
3. Anwaatin's final argument is focussed on the following Issues being considered by the Board:
 - Hydro One's customer consultation and engagement (Issue 23);
 - Hydro One's First Nation and Métis strategy (Issue 6);
 - Hydro One's investment planning process as it relates to the condition of distribution assets and system reliability (Issue 24); and
 - Hydro One's rate class revenue-to-cost ratios in connection with deployment of non-wires solutions (Issue 51).

It reflects the Anwaatin First Nation Communities' support for the innovative and precedent-setting Settlement Proposal between Hydro One and Anwaatin, which has been filed as Exhibit K4.4 in this proceeding and in EB-2017-0335 (the **Settlement**

Proposal), and related evidence filed by each of Hydro One and Dr. Don Richardson for Anwaatin.¹

4. Anwaatin's final argument is intended to capture the dynamism, innovation, and collaboration that the Applicant and many stakeholders have contributed in attempt to achieve a potential new, non-wires, distributed energy resource (**DER**) solution to a traditional wires reliability challenge in vulnerable First Nation communities. Anwaatin's final submissions are also intended to highlight both the **process** undertaken to achieve the potential solution and the **substance** of that solution. Specifically, Anwaatin's submissions are organized as follows:

- I. **The Hydro One reliability challenges and disparate impacts on the Anwaatin First Nation Communities**
- II. **The customer engagement and consultation process: what Hydro One heard from First Nation communities**
- III. **The collaborative solution: the Settlement Proposal and related evidence**
- IV. **Requested relief**

DETAILED SUBMISSIONS

- I. ***The Hydro One reliability challenges and disparate impacts on the Anwaatin First Nation Communities***
5. Hydro One experienced challenges with reliability in its rural communities during the period between 2011 and 2016, for which data is currently available. Specifically, Mr. D'Andrea confirmed that both the average duration of interruptions (**SAIDI**) and average frequency of interruptions (**SAIFI**) in rural communities across the Hydro One system are not improving and Hydro One's proposed targets for rural SAIDI and SAIFI reflect that trend.²
6. The evidence also confirms that each of SAIDI and SAIFI are worse in the Anwaatin First Nation Communities than for Hydro One rural and urban customers.³ Further, reliability (SAIDI and SAIFI) in the Anwaatin First Nation Communities is worse than reliability in the

¹ Evidence of Anwaatin Inc. filed by Dr. Don Richardson on April 13, 2018 (the **Anwaatin Evidence**)

² Hearing Transcripts, Volume 1, 177:18-178:17 and 183:13-183:23.

³ Exhibit I, Tab 24, Schedule Anwaatin-8, 6 (Figures C.1 and C.2).

other First Nation communities that Hydro One serves.⁴ In fact, the average duration of outages on the Moosonee F1 feeder has reached approximately 27 hours and the average frequency of outages on that feeder is almost eight times per customer.⁵

7. Ms. Bradley of Hydro One confirmed these reliability trends:

MS. DeMARCO: The Anwaatin five-year average SAIDI, the duration of outages is higher than the Hydro One five-year average system wide?

MS. BRADLEY: That's correct.

MS. DeMARCO: And higher than the First Nations system wide -- First Nations average?

MS. BRADLEY: Correct.

MS. DeMARCO: And moving on to the SAIFI calculation at page 64, is it fair to say that the Anwaatin five-year average for the frequency of outages is also the highest among that group?

MS. BRADLEY: The average is, correct.

MS. DeMARCO: Yes, so higher than the Hydro One five-year system average?

MS. BRADLEY: Correct.

MS. DeMARCO: And higher than the First Nations five-year system average?

MS. BRADLEY: That's correct.

MS. DeMARCO: And at page 65, here we've got a metric that you've done, looking at very specifically the Anwaatin feeders compared to the Hydro One system average, the First Nations system average, and your urban and rural customers. Is that a fair characterization of that graph?

MS. BRADLEY: Yes, it is.

MS. DeMARCO: And fair to say that there again, Anwaatin has the worst reliability when compared to Hydro One system average. Fair?

MS. BRADLEY: Fair.

MS. DeMARCO: First Nations five-year system average?

MS. BRADLEY: Correct.

MS. DeMARCO: The rural rates -- this is the turquoise bands?

MS. BRADLEY: Correct.

MS. DeMARCO: And certainly the urban rates, the orange bands?

MS. BRADLEY: Correct.

MS. DeMARCO: And would you take, subject to check, that that's the same for SAIFI, each of those elements? Anwaatin has the worst five-year average for frequency? This is figure C2.

MS. BRADLEY: Yes, that's correct.

⁴ Exhibit I, Tab 24, Schedule Anwaatin-8, 4.

⁵ Exhibit I, Tab 24, Schedule Anwaatin-8, 5 (Figures B1.5 and B.2).

MS. DeMARCO: Worse than the Hydro One system average, fair?

MS. BRADLEY: Yes.

MS. DeMARCO: Worse than the five-year system average for First Nations, fair?

MS. BRADLEY: Correct.

MS. DeMARCO: Worse than Hydro One rural, fair?

MS. BRADLEY: Yes.

MS. DeMARCO: And worse than Hydro One urban, fair?

MS. BRADLEY: Yes.⁶

8. Further, it does not appear as though these reliability challenges are predominantly the result of environmental events or tree trimming. The Hydro One evidence indicates that the majority (62.6%) of total customer hours of interruption in First Nation communities are due to defective equipment and "unknown/other" causes, according to data from 2012 through 2016.⁷ Similarly, a majority (55.3%) of total customer hours of interruption in the Anwaatin First Nation Communities are due to defective equipment and "unknown/other" causes during the same period.⁸ Less than 1% of the total customer hours of interruption were caused by loss of supply (0.7%) and human elements (0.3%) during the period.⁹ Tree contact appears to cause only a very small number of outages in the Anwaatin First Nation Communities.¹⁰
9. In the Anwaatin Evidence, Dr. Richardson highlighted the disproportionate impact that these reliability challenges have on the Anwaatin First Nation Communities,¹¹ which are extremely vulnerable to power outages and experience significant hardships when outages occur.¹²
10. Dr. Richardson summarized the disproportionate impacts of poor reliability on the Anwaatin First Nations Communities in the Anwaatin Evidence as follows:

⁶ Hearing Transcripts, Volume 7, 84:3-85:25.

⁷ Exhibit I, Tab 24, Schedule Anwaatin-8, 11 (Figure I.1).

⁸ Exhibit I, Tab 24, Schedule Anwaatin-8, 12 (Figure I.2).

⁹ Exhibit I, Tab 24, Schedule Anwaatin-8, 12 (Figure I.2).

¹⁰ Exhibit I, Tab 24, Schedule Anwaatin-8, 10 (Figure G.1)

¹¹ See EB-2016-0160, Anwaatin Final Argument (February 2, 2017), 18 ("a full sixty percent (60%) of the delivery points serving the Anwaatin First Nation Communities are customer delivery point performance standard "outliers". Specifically, each of Longlac TS, Moosonee DS, and Beardmore #2 DS."; "delivery points in Northern Ontario are over five (5) times (500%) less reliable than the Ontario average, and delivery points in the Anwaatin First Nation Communities are a staggering 20.81 times (2081%) less reliable than the Ontario average.")

¹² Anwaatin Evidence, 4.

First Nation community members associated with Aroland First Nation, Biinjitiwaabik Zaaging Anishinaabek, Red Rock Indian Band, Bingwi Neyaashi Anishinaabek, and Animbiigoo Zaagiigan Anishinaabek experienced a power outage along the A4L transmission line in the Greenstone-Marathon planning area for nearly 24 hours between August 30, 2016, and August 31, 2016.¹³ The power outage extended from the west, near Cameron Falls, south of Lake Nipigon, to east of Longlac and north of Nakina, including Aroland First Nation, and affected thousands of people. Community members affected by the power outage reported significant related hardships, including:

- (a) full loss of most refrigerated foods;
- (b) loss of significant quantities of frozen meat, fish, and game birds, representing months of protected hunting and harvested food upon which First Nation families depend for their livelihoods;
- (c) loss of hunting and harvesting time because of the necessity of dealing with the prolonged outage, and the need to invest time to replace lost meat, fish, and game birds with new protein sources through additional hunting and harvesting outside of the normal course;
- (d) loss of significant quantities of frozen blueberries used for sustenance and upon which First Nation families depend for their incomes and livelihoods;
- (e) significant additional time needed to engage in the traditional practice of honouring the bodies of harvested animals whose meat is spoiled and wasted by taking the harvested animal parts that spoiled during the long outage to the bush to be buried and honoured with tobacco;
- (f) increased sightings of, and dangers from, bears foraging at landfills for spoiled meats that were not subject to traditional methods of disposition;
- (g) financial challenges for families with elders and caregivers who rely on traditional food sources to nourish their families with traditional meals, but who were forced to replace traditional food sources with store-bought foods, and use very limited household incomes to purchase food instead of paying for other family necessities; and
- (h) additional financial expenditures in Aroland First Nation, community and band council planning to identify a source of funds for building a community freezer with a backup generator to provide elders and caregivers with assurance that harvested foods will be protected from substandard system reliability.¹⁴

11. Anwaatin submits that these disproportionate impacts are significantly more severe than the impacts of an occasional power outage in other regions of Ontario,¹⁵ are not just and reasonable, and fall squarely within the Board's mandate to remedy under Section 1(1), paragraph 1 of the Act.

¹³ The Anwaatin Evidence clarifies that delivery points from the A4L transmission system may be distribution assets and may affect reliability. See EB-2016-0160, Transcript Volume 7, at 150-152.

¹⁴ Anwaatin Evidence, 4-6. First-person video evidence submitted by Anwaatin in EB-2016-0160 provides a fuller view of the hardships discussed here. See Shared Value Solutions Ltd. "Aroland First Nation - OEB Hearings Video (Nov. 2016)". Available online: <https://youtu.be/ofgea2QFzQY>.

¹⁵ Anwaatin Evidence, 4-6.

II. *The customer engagement and consultation process: what Hydro One heard from First Nation communities*

12. The Board's *Filing Requirements for Electricity Distribution Rate Applications – 2016 Edition for 2017 Rate Applications* (the **Filing Requirements**) expressly require Hydro One to engage and consult with customers on its proposed distribution rates. Section 2.1.6 of the Filing Requirements requires Hydro One to address, among other things: (i) customer engagement activities undertaken with respect to distribution planning; (ii) how customer needs, preferences, and expectations have been reflected in the application; and (iii) how the outcomes of customer engagement influenced Hydro One's planning and rate application.
13. Further, the duty to consult and accommodate customers that are First Nations on decisions and major government decisions is enshrined in the Constitution, affirmed by the Supreme Court of Canada, and more recently bolstered by Canada's acceptance of the United Nations Declaration on the Rights of Indigenous Peoples.
14. Anwaatin acknowledges the developments and progress achieved through Hydro One's new and enhanced approach to engagement with First Nations that included at least six separate contact initiatives with members of the Anwaatin First Nations Communities on the proposed distribution rates.¹⁶ Mr. Pugliese confirmed that Hydro One undertook a "new approach" to engagement with Indigenous communities and accomplished a "real change in policy and approach" in a manner that provided Hydro One with "good qualitative data around the challenges that certain communities were facing, everything from affordability to accessibility and reliability."¹⁷ Hydro One made a concerted effort to conduct engagement with Indigenous customers by hiring Mr. Chum and hosting a series of dedicated engagement sessions in 2016, 2017, and 2018. Mr. Chum acknowledged that this level of engagement represents a significant improvement from the past:

MS. DeMARCO: So this is a significant uptick in the amount of consulting you are doing, and the process is quite more elaborate than it has been historically?

MR. CHUM: Certainly more robust, yes.¹⁸

¹⁶ Hearing Transcripts, Volume 5, 19-21.

¹⁷ Hearing Transcripts, Volume 5, 19:15-19:24.

¹⁸ Hearing Transcripts, Volume 5, 21:12-21:15

15. Hydro One confirmed that it respected the oral tradition of Indigenous peoples and confirmed that it heard the following key messages (many reflected in pictographs) from First Nations customers and rights holders through its improved engagement process:

- poor system reliability and the disproportionate impact on First Nation communities was a concern;
- there were also concerns about the high frequency and duration of outages;
- First Nations were proposing that DERs may be used to help solve the reliability crisis;
- there is a need to be at the table together and break down barriers;
- there is a need to change to a two-sided conversation;
- the outcome should result in action, not just talk;
- the need to listen to First Nations and advocate on their behalf;
- there is a need to keep costs low; and
- Hydro One should consider DERs as a potential solution.¹⁹

¹⁹ See generally Hearing Transcripts, Volume 5, 21:23-24:9. An excerpt from the transcript follows:

MS. DeMARCO: As I understand these, there were a number of issues that were raised that you heard that are reflected in these pictographs; is that fair?

MR. CHUM: Yes, that's correct. They reflect the issues raised at our engagement session.

MS. DeMARCO: And we see some very deep historical issues. At the bottom of the first one, the need to understand that you are at the table together, you need to break down barriers, you need to change history and culture and understand the experience. Is that fair?

MR. CHUM: Yes.

MS. DeMARCO: Then you need to change to a two-sided conversation; is that fair?

MR. CHUM: Yes.

MS. DeMARCO: And in the bottom right corner, there is direct -- a direct and express reflection of action, the need to do more than just talk?

MR. CHUM: Correct.

MS. DeMARCO: Would you say that all three of those elements are reflected in the settlement proposal?

MR. CHUM: I would suggest they are, yes.

16. Mr. D'Andrea specifically acknowledged that Hydro One heard about DERs as a potential reliability solution as part of customer needs and preferences in the statements of Chief Melvin Hardy of Biinjitiwaabik Zaaging Anishinaabek and Chief Jim Leonard of Rainy River First Nation during the Hydro One and First Nations Engagement Session held on February 9, 2017.²⁰

17. Hydro One, having heard from Indigenous communities about reliability issues and the potential role of DERs in alleviating those issues, then proceeded to engage with Anwaatin and act upon the Indigenous needs and preferences that it heard during the engagement process. Mr. Chum confirmed that Hydro One elected to act on the opportunity immediately as it presented itself:

MS. DeMARCO: And then what you did was you acted on what you'd heard?

MR. CHUM: That's correct.

MS. DeMARCO: You didn't wait for a subsequent application; is that fair?

MR. CHUM: That's right. Really, the opportunity presented itself, we worked through it, did an analysis, and there and there appeared to be a solution that we could work with in front of us.

MS. DeMARCO: And certainly that was successful. It resulted in an outcome that was good?

MR. CHUM: Yes, I would suggest it's a good outcome.²¹

III. *The collaborative solution: the Settlement Proposal and related evidence*

18. Anwaatin submits that the Settlement Proposal is, in part, the result of: (i) Hydro One's enhanced engagement and consultation with the Anwaatin First Nation Communities and other Indigenous rights holders; (ii) the key messages that Hydro One heard during engagement and consultation; and (iii) Hydro One's decision to efficiently and effectively begin responding to the stated needs and preferences of Indigenous electricity customers, including the potential deployment of DERs in attempt to address reliability issues.

19. Anwaatin and Hydro One filed the Settlement Proposal in EB-2017-0335 and Hydro One filed the Settlement Proposal in this proceeding as Exhibit K4.4 and concurrently updated its response to Anwaatin Interrogatory No. 1, which provides additional details.

²⁰ Hearing Transcripts, Volume 1, 175:9-176:15.

²¹ Hearing Transcripts, Volume 5, 29:25-30:26. The outcome referred to is the Hydro One–Anwaatin Settlement Proposal.

20. The Settlement Proposal and other evidence filed by Hydro One provides, subject to a number of conditions subsequent, for:
- (a) Hydro One to undertake a pilot project to explore the feasibility of implementing non-wires distributed energy project in and around the Anwaatin First Nation Communities in order to improve reliability (the **Pilot Project**), and consider whether similar approaches may be used in remote areas of the grid experiencing poor reliability;
 - (b) Hydro One to fund the Pilot Project from its existing capital investment plan outlined in the Application in an amount not to exceed \$5 million;
 - (c) Hydro One and Anwaatin to cooperate to receive further government funding to augment the Hydro One investment, and any additional capital investment envelope funding by Hydro One being subject to further review and rate recovery approval by the Board;
 - (d) the Pilot Project to proceed in two (2) phases, where:
 - i. In Phase 1, Hydro One will focus on developing energy storage facilities that may improve the reliability in Hydro One's F2 feeder in the Nakina area with a targeted in-service date of March 31, 2019, and consider the technical feasibility of potential repurposed solar facilities as a source of supply to the storage facilities. A technical review of the Phase 1 project will inform the approach, design, and viability of Phase 2.
 - ii. In Phase 2, Hydro One will complete technical assessments for the WZI Communities and MoCreebec Eeyoud served by Hydro One's F1 and F3 feeders and Hydro One will assess the feasibility of implementing non-wires solutions to improve reliability in these communities. Hydro One, Anwaatin, the WZI Communities, MoCreebec Eeyoud, and related communities will meet to assess solar/storage solutions and decide how and if to proceed with such non-wires solutions.
 - (e) the development and implementation of an ongoing communications plan between Hydro One and the Anwaatin First Nation Communities;

- (f) the potential use of the Pilot Project, if successful, to facilitate reliability improvements in similarly situated communities and Hydro One-Indigenous community cooperation.
21. Hydro One's technical assessments for the Pilot Project are continuing, according to Hydro One's updated response to Anwaatin Interrogatory No. 1.²² The sizing of energy storage, siting, and preliminary cost estimates have been filed by Hydro One in this proceeding and warrant the Board's consideration as an innovative approach to addressing significant reliability challenges under the Board's review. Completion of all detailed engineering and financial viability review is targeted by September 30, 2018. Forecast investment for the Pilot Project will not exceed \$5 million. Government grants and funding may also provide a source of funds.
22. Anwaatin submits that the Pilot Project and the amount of Hydro One's capital envelope allocated thereto is now part of the Hydro One evidence in the proceeding and should be expressly approved by the Board in its decision on the Application.
23. The Settlement Proposal appears to be a precedent-setting agreement in many ways:
- MS. DeMARCO: It is my understanding, panel, that this is the very first settlement agreement of its kind; would you agree?
- MR. PUGLIESE: I would agree, yes.
- MS. DeMARCO: And it is the first instance of Hydro One and a group of First Nations settling a regulatory issue with or through the OEB. Would you agree?
- MR. CHUM: Yes, I would agree.
- MS. DeMARCO: And subject to check, my quick check this weekend indicated it was the first time in the history of the OEB that a group of First Nations and HONI had filed a settlement proposal; would you agree?
- MR. CHUM: Yes.
- MS. DeMARCO: And one more first: The first instance where distributed energy resources are being actively considered and potentially implemented to solve a First Nations reliability problem. Would you agree?
- MR. CHUM: It is one of. We are looking at another project with Christian Island at the moment, as well.
- MS. DeMARCO: And certainly in that regard, four firsts. It's a pretty big deal, would you agree?
- MR. CHUM: I would agree, yes.
- MS. DeMARCO: And potentially a very important and precedent-setting manner to proceed.

²² Exhibit I, Tab 6, Schedule Anwaatin-1.

MR. CHUM: Yes.²³

24. Anwaatin submits that Hydro One's willingness to listen to the concerns and understand the needs and preferences of Indigenous communities and flexibility to act promptly contributed to achieving the Settlement Proposal. The outcomes of Hydro One's enhanced engagement with Indigenous communities appear to be reflected in the Settlement Proposal, if successfully implemented.
25. Anwaatin notes that, as at the time of filing these submissions, the Settlement Proposal has also attracted express support from a wide range of stakeholders, including the Vulnerable Energy Consumers Coalition, the Society of United Professionals, and the Quinte Manufacturers Association. Anwaatin submits that the Settlement Proposal represents a significant and decisive step forward in:
- (a) responding to electricity service reliability challenges, which disproportionately affect Indigenous communities;
 - (b) conducting meaningful engagement and consultation with Indigenous electricity customers, specifically the Anwaatin First Nation Communities; and
 - (c) advancing innovation through the deployment of DERs in attempt to address electricity service reliability challenges in Indigenous communities.

IV. Requested relief

26. Anwaatin therefore respectfully requests that the Board:
- (a) expressly acknowledge the reliability challenges of the Anwaatin First Nation Communities that are set out in the Anwaatin Evidence in its decision on the Application;
 - (b) approve the portion of Hydro One's proposed capital investment envelope, any applicable operations and maintenance amounts, and related evidence pertaining to the Settlement Proposal and the Pilot Project;
 - (c) incorporate, by express reference in its decision on the Application and potentially in future score cards, the DERs reflected in the Pilot Project and the communications

²³ Hearing Transcripts, Volume 5, 17:24-18:19.

and cooperation plan reflected in the Settlement Proposal as innovative non-wires approaches to attempt to address the reliability challenges and the disparate impact of those challenges in Indigenous communities; and

- (d) facilitate continued collaboration between and among Hydro One, its First Nations rights holders, and other stakeholders in order to implement the Settlement Proposal and address and respond to electricity system reliability challenges; and
- (e) award Anwaatin its full costs associated with this proceeding.

ALL OF WHICH IS RESPECTFULLY
SUBMITTED THIS 10th DAY OF AUGUST,
2018.



Lisa (Elisabeth) DeMarco
DeMarco Allan LLP
Counsel for Anwaatin