

EB-2017-0182
EB-2017-0194
EB-2017-0364

ONTARIO ENERGY BOARD

Upper Canada Transmission Inc. (on behalf of
NextBridge Infrastructure) Application for leave to construct an electricity
transmission line between Thunder Bay and Wawa, Ontario

-and-

Hydro One Networks Inc.
Application to upgrade existing transmission station facilities
in the Districts of Thunder Bay and Algoma, Ontario

-and-

Hydro One Networks, Inc.
Application for leave to construct and electricity transmission line between Thunder Bay and
Wawa,
Ontario

**BAMKUSHWADA LIMITED PARTNERSHIP COMPENDIUM FOR CROSS-
EXAMINATION OF HYDRO ONE**

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416-981-9352

Counsel for Bamkushwada Limited Partnership

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	<p>Filed: 2018-09-24 EB-2017-0364 Exhibit I Tab 3 Page 365 Letter</p> <p>Filed: 2018-09-24 EB-2017-0364 Exhibit I Tab 3 Page 560 Letter</p>
6	<p>Filed: 2018-05-07 EB-2017-0364 LSL Motion Additional Evidence Attachment 9 Page 1 of 3</p>
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10	<p>Filed: 2018-09-24 EB-2017-0364 Exhibit I Tab 1 Schedule 10 Page 5</p>

TAB 1

1 l) The First Nations and Métis consultation costs included in the Lake Superior Link project
2 application (\$1.133 million in construction plus \$1.101 million in development phase) are
3 significantly less than the First Nations and Métis consultation costs of NextBridge.
4

5 i. Can you please explain why Hydro One believes these estimates are reasonable?
6 Please explain why Hydro One believe it can complete First Nations and Métis
7 consultation for so much less costs.
8

9 **Response:**

10 a) Hydro One has shared Project information with the 18 Indigenous communities and the
11 MNO as identified by the Provincial Crown via the Ministry of Energy. Hydro One has also
12 offered each community an opportunity to meet regarding the Project. To date, Hydro One
13 has met with 15 of the 18 Indigenous communities, some more than once, and has entered
14 into Capacity Funding Agreements with 4 Indigenous communities.
15

16 Information shared to date includes: information on the Environmental Assessment (EA)
17 process, field studies, notice of commencement regarding the EA Terms of Reference (ToR),
18 and draft ToR, the revised draft ToR, and a Capacity Funding Agreement to assist with
19 participation on consultation. Hydro One is making best efforts to hear and address concerns
20 from Indigenous communities and will do so at all stages of the Project. For further details
21 regarding Hydro One's Indigenous Consultation please refer to Attachment 1 and 2 of this
22 Interrogatory Response.
23

24 b) Yes, consultation has commenced with all Indigenous communities.
25

26 c) The first clarification Hydro One would like to make, in accordance with Exhibit H, Tab 1,
27 Schedule 1, is that the 45 day timeline is a minimum amount of time requested from the date
28 of approval of the leave to construct application to negotiate in principle an agreement that
29 would ensconce mutually agreeable terms. Once these terms have been agreed upon, there
30 still may be additional time required to execute the contract sub-agreements. The execution
31 of said agreements does not need to be completed prior to the commencement of construction
32 and thus approval should not be contingent on these agreements being finalized.
33

34 d) Hydro One recognizes the importance of consultation with Indigenous communities in
35 connection with the Lake Superior Link Project. Hydro One's Indigenous consultation
36 process is designed to provide relevant Project information to Indigenous communities
37 proximate to the Project in a timely manner. The process enables affected Indigenous

TAB 2

1 **NextBridge Interrogatory # 35**

2
3 **Reference:**

4 EB-2017-0364 - February 15, 2018 HONI Lake Superior Link Application, EXHIBIT B, TAB 1,
5 SCHEDULE 1, pages 11-12.

6
7 **Interrogatory:**

- 8 a) Identify the Indigenous Communities that HONI will or has approached to participate
9 economically in the Lake Superior Link project.
- 10
11 b) For each identified Indigenous Community, explain in detail the current status of reaching an
12 agreement on participation.
- 13
14 c) Provide copies of all correspondence and documents related to seeking or agreement with an
15 Indigenous Community on participation.
- 16
17 d) Confirm that unless HONI is able to enter into participation agreements with each of the
18 identified Indigenous Communities, it will not proceed to construction with the Lake
19 Superior Link project. If not confirmed, explain your answer in detail how HONI would
20 proceed to construction with the Lake Superior Link project without some or all participation
21 agreements in place.

22
23 **Response:**

- 24 a) Hydro One has, to date, approached six First Nation partners in Bamkushwada Limited
25 Partnership (BLP) which includes: Pays Plat First Nation, Fort William First Nation, Red
26 Rock Indian Band, Pic Mobert First Nation, Biigtigong Nishnaabeg, and Michipicoten.¹
- 27
28 b) Although Hydro One has been sharing project related information and meeting with the BLP
29 communities, Hydro One has been instructed by BLP legal counsel to not discuss economic
30 accommodations and/or participation with these six First Nations. Please refer to Exhibit I,
31 Tab 1, Schedule 15.

¹ EB-2017-0364 – Hydro One Additional Evidence (May 7, 2018) page 12-13 and April 12 letter to BLP (Attachment 12 in additional evidence)

1 c) Specifically regarding equity participation, and for reasons outlined in a) and b) above, there
2 is no additional correspondence than already provided as evidence in this proceeding.

3

4 d) Following OEB approval of Hydro One's Application to construct the LSL, Hydro One will
5 make best efforts to work with BLP to establish mutually agreeable terms with regards to a
6 limited partnership that will own the Lake Superior Link Assets. Hydro One remains
7 committed to reaching agreeable terms in principle within 45 days following OEB approval.
8 Given the date of OEB approval is undefined, Hydro One cannot answer the question as to
9 whether or not the status of equity participation discussions or agreements will impact the
10 construction schedule.

1 **Biinjitiwaabik Zaaging Anishinaabek Interrogatory # 10**

2
3 **Reference:**

4 HONI App EB-2017-0364 Exhibit X, Tab 1, Schedule 1, pages 1-5 (February 15, 2018)

5
6 **Interrogatory:**

7 If granted leave to construct, will HONI refrain from construction until obtaining the
8 consent of Biinjitiwaabik Zaaging Anishinaabek and the other First Nation or Metis
9 communities to construct the Lake Superior Link transmission line?

10
11 **Response:**

12 Reaching consultation agreements with each Indigenous community is not required for Hydro
13 One to proceed with construction. Hydro One has and will continue to make best efforts to reach
14 consultation agreements with all Indigenous communities who wish to enter into consultation
15 agreements. Not all Indigenous communities are interested in signing consultation agreements,
16 but they wish to be kept informed of Project status.

17
18 Hydro One recognizes the importance of consultation with Indigenous communities in
19 connection with the LSL project and will continue to make best efforts to consult with all 18
20 Indigenous communities identified by the Provincial Crown via the Ministry of Energy. Hydro
21 One's Indigenous consultation process is designed to provide timely and relevant project
22 information to Indigenous communities proximate to the Project. The process enables affected
23 Indigenous communities to review, consider and raise issues, concerns and questions they may
24 have about the Project and also allows Hydro One to respond to any concerns or questions raised
25 in a clear and transparent manner. Hydro One's Indigenous consultation approach includes
26 sharing Project-related information, meeting regularly, receiving and responding to input on all
27 aspects of the Project, and providing opportunities to meaningfully participate in the Project via
28 consultation agreements and capacity funding arrangements.

TAB 3

TAB 4

TAB 5

LAKE SUPERIOR LINK - RECORD OF CONSULTATION

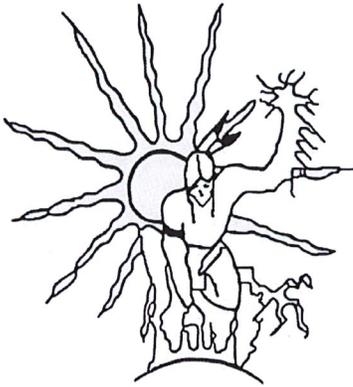
Date	Correspondence	Communication Medium	From: Organization	Sent From:	Stakeholder Type	To: Organization	Sent To:	Stakeholder Type	Summary	Communication Class	Action/Status	Summary of Action/Status
February 16 2018	Outgoing	Telephone	Hydro One	Tausha Esquega	Proponent	Biigtigong Nishnaabeg (Ojibways of the Pic River First Nation)	Chief Michano	Indigenous Community	Hydro One called Chief Michano to extend an invite for a February 20th dinner in Rama to further discuss the LSL submission.	Follow-up	None Required	None Required
February 16 2018	Outgoing	Mail	Hydro One	Derek Chum	Proponent	Biigtigong Nishnaabeg (Ojibways of the Pic River First Nation)	Chief Michano	Indigenous Community	Hydro One sent a introductory project notification. This letter identified that Hydro One seeks approval to construct the new East-West Tie transmission line and described the proposed undertaking.	Notice	Information Provided	Hard copy letter sent in addition to email
February 16 2018	Outgoing	Mail	Hydro One	Derek Chum	Proponent	Pic Mobert First Nation	Chief Desmoulin	Indigenous Community	Hydro One sent a introductory project notification. This letter identified that Hydro One seeks approval to construct the new East-West Tie transmission line and described the proposed undertaking.	Notice	Information Provided	Hard copy letter sent in addition to email
February 16 2018	Outgoing	Mail	Hydro One	Derek Chum	Proponent	Pays Plat First Nation	Chief Mushquash	Indigenous Community	Hydro One sent a introductory project notification. This letter identified that Hydro One seeks approval to construct the new East-West Tie transmission line and described the proposed undertaking.	Notice	Information Provided	Hard copy letter sent in addition to email
February 16 2018	Outgoing	Mail	Hydro One	Derek Chum	Proponent	Fort William First Nation	Chief Collins	Indigenous Community	Hydro One sent a introductory project notification. This letter identified that Hydro One seeks approval to construct the new East-West Tie transmission line and described the proposed undertaking.	Notice	Information Provided	Hard copy letter sent in addition to email
February 16 2018	Outgoing	Mail	Hydro One	Derek Chum	Proponent	Michipicoten First Nation	Chief Tangie	Indigenous Community	Hydro One sent a introductory project notification. This letter identified that Hydro One seeks approval to construct the new East-West Tie transmission line and described the proposed undertaking.	Notice	Information Provided	Hard copy letter sent in addition to email
February 16 2018	Outgoing	Mail	Hydro One	Derek Chum	Proponent	Red Rock Indian Band	Chief Wawia	Indigenous Community	Hydro One sent a introductory project notification. This letter identified that Hydro One seeks approval to construct the new East-West Tie transmission line and described the proposed undertaking.	Notice	Information Provided	Hard copy letter sent in addition to email
February 16 2018	Outgoing	Telephone	Hydro One	Tausha Esquega	Proponent	Pic Mobert First Nation	Chief Desmoulin	Indigenous Community	Hydro One called Chief Desmoulin to extend an invite for a February 20th dinner in Rama to further discuss the LSL submission.	Follow-up	None Required	Chief responded that she is unable to attend the session and that one of her councillors would be attending

Date	Correspondence	Communication Medium	From: Organization	Sent From:	Stakeholder Type	To: Organization	Sent To:	Stakeholder Type	Summary	Communication Class	Action/Status	Summary of Action/Status
February 16 2018	Outgoing	Telephone	Hydro One	Tausha Esquega	Proponent	Biigtigong Nishnaabeg (Ojibways of the Pic River First Nation)	Chief Michano	Indigenous Community	Hydro One called Chief Michano to extend an invite for a February 20th dinner in Rama to further discuss the LSL submission.	Follow-up	None Required	None Required
March 6 2018	Outgoing	Email	Hydro One	Christine Goulais	Proponent	Pays Plat First Nation	Chief Mushquash	Indigenous Community	Hydro One followed up on the February 16 email sent to provide notice of an upcoming caribou survey planned between Wawa and PNP from March 6 to 8. A copy of the work plan was provided and it was noted the survey needed to be completed before March 15th to adhere to survey protocols.	Notice	Information Provided	
March 6 2018	Outgoing	Email	Hydro One	Christine Goulais	Proponent	Fort William First Nation	Chief Collins	Indigenous Community	Hydro One followed up on the February 16 email sent to provide notice of an upcoming caribou survey planned between Wawa and PNP from March 6 to 8. A copy of the work plan was provided and it was noted the survey needed to be completed before March 15th to adhere to survey protocols.	Notice	Information Provided	
March 6 2018	Outgoing	Email	Hydro One	Christine Goulais	Proponent	Red Rock Indian Band	Chief Wawia	Indigenous Community	Hydro One followed up on the February 16 email sent to provide notice of an upcoming caribou survey planned between Wawa and PNP from March 6 to 8. A copy of the work plan was provided and it was noted the survey needed to be completed before March 15th to adhere to survey protocols.	Notice	Information Provided	
March 6 2018	Outgoing	Email	Hydro One	Christine Goulais	Proponent	Biigtigong Nishnaabeg (Ojibways of the Pic River First Nation)	Chief Duncan	Indigenous Community	Hydro One followed up on the February 16 email sent to provide notice of an upcoming caribou survey planned between Wawa and PNP from March 6 to 8. A copy of the work plan was provided and it was noted the survey needed to be completed before March 15th to adhere to survey protocols.	Notice	Information Provided	

Date	Correspondence	Communication Medium	From: Organization	Sent From:	Stakeholder Type	To: Organization	Sent To:	Stakeholder Type	Summary	Communication Class	Action/Status	Summary of Action/Status
February 16 2018	Outgoing	Telephone	Hydro One	Tausha Esquega	Proponent	Biigtigong Nishnaabeg (Ojibways of the Pic River First Nation)	Chief Michano	Indigenous Community	Hydro One called Chief Michano to extend an invite for a February 20th dinner in Rama to further discuss the LSL submission.	Follow-up	None Required	None Required
June 18 2018	Incoming	Email	Jackfish Métis	Jon MacDonald	Indigenous Community	Hydro One	Vicky Woodbeck	Proponent	A member of the Jackfish Métis community emailed Hydro One to follow-up from the Schreiber CIC. Jackfish Métis thanked Hydro One for the meeting it held with its member at the CIC and noted it supports the Hydro One project. Jackfish Métis noted if it could provide any assistance to the project that they be contacted.	Follow-up	Completed	
June 19 2018	Outgoing	Email	SNC-Lavalin	Angela Brooks	Consultant	Biigtigong Nishnaabeg (Ojibways of the Pic River First Nation)	Brittany Moses	Indigenous Community	SNC-Lavalin emailed Pic River FN to follow-up on a conversation held on June 18. SNC-Lavalin informed Pic River FN that it would be within the area between Marathon and Wawa from June 22 to 27. SNC-Lavalin noted it would be staging out of the Wawa airport as helicopters will be used to access survey locations. SNC-Lavalin identified survey start times and extended an invite to Pic River FN to participate in the upcoming field studies. SNC-Lavalin provided contact information.	Notice	Information Provided	
June 19 2018	Incoming	Email	Biigtigong Nishnaabeg (Ojibways of the Pic River First Nation)	Brittany Moses	Indigenous Community	SNC-Lavalin	Angela Brooks	Consultant	Pic River FN emailed SNC-Lavalin in response to the email received on June 19. Pic River FN noted it was still awaiting on the go ahead from leadership to determine the letter of intent for studies within PNP. Pic River FN noted it would provide direction once available.	Follow-up	Completed	
June 19 2018	Incoming	Email	Michipicoten First Nation	John Kim Bell	Indigenous Community	Hydro One		Proponent	Michipicoten FN emailed Hydro One in response to an email sent to the Band Manager. Michipicoten FN noted it was in the process of drafting an MOU for the LSL project and until that process is completed there will be no meetings with Chief and Council. Hydro One was asked to provide contact information to discuss the ongoing concerns.	Notice	Completed	

Date	Correspondence	Communication Medium	From: Organization	Sent From:	Stakeholder Type	To: Organization	Sent To:	Stakeholder Type	Summary	Communication Class	Action/Status	Summary of Action/Status
February 16 2018	Outgoing	Telephone	Hydro One	Tausha Esquega	Proponent	Biigtigong Nishnaabeg (Ojibways of the Pic River First Nation)	Chief Michano	Indigenous Community	Hydro One called Chief Michano to extend an invite for a February 20th dinner in Rama to further discuss the LSL submission.	Follow-up	None Required	None Required
September 4 2018	Outgoing	Email	Archaeological Research Associates Limited	Victoria Cafik	Consultant	Long Lake No. 58 First Nation	John Onabigon	Indigenous Community	ARA emailed LLS8 to provide an update on the LSL archaeology program. ARA provided a letter noting there were four find locations in the Dorion By-pass study area, three of which were related to pre-contact tool making. ARA noted on September 7th artifacts would be removed from the field and transported to the lab for analysis as per MTCS regulations. ARA noted if the community would like to be involved in the removal that they inform ARA no later than September 7th. The community was also provided an update on upcoming work and invited to participate if interested.	Notice	Information Provided	
September 4 2018	Outgoing	Email	Archaeological Research Associates Limited	Victoria Cafik	Consultant	Biigtigong Nishnaabeg (Ojibways of the Pic River First Nation)	Juanita Starr	Indigenous Community	ARA emailed Pic River FN to provide an update on the LSL archaeology program. ARA provided a letter noting there were four find locations in the Dorion By-pass study area, three of which were related to pre-contact tool making. ARA noted on September 7th artifacts would be removed from the field and transported to the lab for analysis as per MTCS regulations. ARA noted if the community would like to be involved in the removal that they inform ARA no later than September 7th. The community was also provided an update on upcoming work and invited to participate if interested.	Notice	Information Provided	

Date	Correspondence	Communication Medium	From: Organization	Sent From:	Stakeholder Type	To: Organization	Sent To:	Stakeholder Type	Summary	Communication Class	Action/Status	Summary of Action/Status
February 16 2018	Outgoing	Telephone	Hydro One	Tausha Esquega	Proponent	Biigtigong Nishnaabeg (Ojibways of the Pic River First Nation)	Chief Michano	Indigenous Community	Hydro One called Chief Michano to extend an invite for a February 20th dinner in Rama to further discuss the LSL submission.	Follow-up	None Required	None Required
July 3 2018	Outgoing	Email	Hydro One	Tausha Esquega	Proponent	Ginoogaming First Nation	Chief Echum	Indigenous Community	Hydro One emailed Ginoogaming FN to follow-up and inquire whether the community had any questions on recent LSL material provided and whether the community would like to arrange a meeting to discuss the project further.	General Inquiry	Completed	
July 3 2018	Outgoing	Email	Hydro One	Tausha Esquega	Proponent	Long Lake No. 58 First Nation	Chief Waboose	Indigenous Community	Hydro One emailed Long Lake 58 FN to follow-up and inquire whether the community had any questions on recent LSL material provided and whether the community would like to arrange a meeting to discuss the project further.	General Inquiry	Completed	
July 3 2018	Incoming	Email	Red Sky Métis Independent Nation	Donelda Delaronde	Indigenous Community	Hydro One	Bruce Hopper	Proponent	RSMIN emailed Hydro One to follow-up on an email received on June 14. RSMIN provided Hydro One a basic map of RSMIN's traditional territory.	Follow-up	Information Provided	
July 3 2018	Outgoing	Email	Hydro One	Bruce Hopper	Proponent	Red Sky Métis Independent Nation	Donelda Delaronde	Indigenous Community	Hydro One emailed RSMIN in response to the email received on July 3. Hydro One thanked RSMIN for providing the map and noted a revised CFA agreement would be provided to RSMIN in the coming days.	Follow-up	Completed	
July 4 2018	Incoming	Email	Biigtigong Nishnaabeg (Ojibways of the Pic River First Nation)	Juanita Starr	Indigenous Community	Archaeological Research Associates Limited	Victoria Cafik	Consultant	Pic River FN emailed ARA in response to the June 29 email received. Pic River FN provided a letter noting the community is unable to respond to the July 13 deadline imposed unless and until it has reached an agreement with Hydro One on consultation and accommodation process. Pic River FN expressed concern with scope or work identified, noting the limited work proposed in PNP is not appropriate. Pic River FN noted it would not be rushed and that it awaits Hydro One's response to the edits provided on the draft consultation agreement.			



BIIGTIGONG NISHNAABEG

July 4, 2018
VIA EMAIL

Victoria Cafik
Archaeological Research Associates Ltd
900 Guelph St
Kitchener, ON N2H 5Z6
vcafik@arch-research.com

Re: Lake Superior Link Stage 1 and 2 Archaeological Assessments, Project Introduction and Invitation to Participate - Ojibways of the Pic River First Nation

Dear Ms. Cafik;

We have reviewed your letter and had our lawyer review it as well. First, we are unable to respond to you by the deadline you imposed (July 13), unless and until we have reached an agreement with HONI on the consultation and accommodation process and its related agreement and workplan and budget. We submitted edits to HONI's draft consultation agreement and budget, over a week ago, and are awaiting a response. We informed HONI that the agreement and workplan and budget it had provided to us, was wholly inadequate to meet the constitutional duty to consult and accommodate, and that we would not allow shortcuts and inadequate measures to be taken just because HONI has created for itself a tight timeline. That is HONI's fault and problem, and it cannot impose the burden of it on us.

In our edits to the consultation agreement and budget, we provided for more work and funding for traditional use studies and for archaeological peer review and monitoring. Your company is not working for us, and this makes us uncomfortable since it is our cultural heritage at stake, and not HONI's. Too much has been taken from us already. As such, it is imperative that we have both the time and the funds required for an archaeologist or other qualified consultant of our choosing, to review, monitor and comment on what you intend to do, at all stages of your work.

We have some serious concerns already about the scope of your work. You intend to do very little in Pukaskwa National Park, on the premise that the new towers would be built on the current right of way. To assume that surrounding land would not be impacted is not in keeping with best practices – we believe it will be. Also, you seem to be assuming that our heritage will have already been destroyed in the current right of way and need not be investigated and protected now. That is also not in keeping with best practices, and this assumption has been proved wrong in other contexts. To compound an original wrong with another is not sufficient. Further, it appears that you do not have plans to conduct

BIIGTIGONG NISHNAABEG - OJIBWAYS OF THE PIC RIVER FIRST NATION

interviews of our knowledge holders, and instead would rely on whatever TLUS or related studies exist to date. Such studies do not exist for areas of the HONI project that are not the same as the EWT project. Such studies would have to be done before you commenced any stage two fieldwork or concluded any stage one report. Again, we have identified to HONI that more funding is required for this, in the budget attached to the draft consultation agreement.

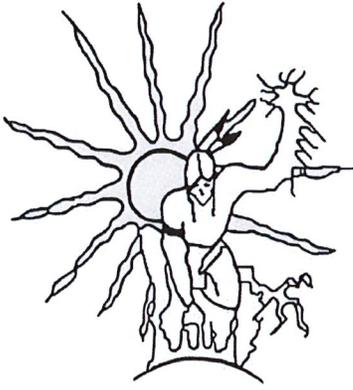
Your company seems to have been told by HONI to hurry things along. It seems as if HONI's clock is taking precedence over everything else, including our cultural heritage and our rights. The entire HONI LSL project is within Biigtigong asserted title lands. Steamrolling across our rights and claims is something we cannot allow.

Respectfully,

A handwritten signature in black ink, appearing to read 'DM', with a large, stylized flourish extending to the left.

Chief Duncan Michano
Biigtigong Nishnaabeg

Cc. Bruce Hopper, Hydro One Networks Ltd
Juanita Starr, Biigtigong Nishnaabeg
Kate Kempton, OKT Law



BIIGTIGONG NISHNAABEG

June 22, 2018
VIA EMAIL

Hydro One Networks Inc.
Bruce Hopper, Environmental Planner
483 Bay Street
Toronto, ON
M5G 1P5
Community.relations@hydronone.com

Re: Biigtigong Nishnaabeg Consultation with HONI

Dear Mr. Hopper;

We attach to this letter for our requested amendments to the consultation process agreement. What you had sent us was not adequate to facilitate meeting the Duty to Consult and Accommodate, which Duty must always be carried out in good faith with the intent of substantially addressing all of the First Nation's concerns about the Project.

As you know, our First Nation has many serious concerns. We have asserted aboriginal title to lands on which your project would be situated and would impact. Much of those lands are not the same as the lands for the EWT project, and we are deeply concerned about impacts to national park (which is in our title area). We set out the nature of our concerns in our submissions in the Nextbridge motion to strike out HONI's leave to construct application.

But neither HONI nor BN have undertaken the necessary studies to ascertain in detail the extent, timing, location or elements of the impacts on our asserted title lands, especially in the park. These studies are of critical importance to understanding such impacts and BN concerns with them. And such understanding is critical to determining if and how such concerns can be substantially addressed through accommodation measures. In other words, these studies are the foundation on which the duty will be met or breached. They cannot be rushed or taken lightly. Nor is BN prepared to simply give HONI our consent to proceed with them in a rushed manner and without much of our considered involvement.

While we appreciate that HONI wants to get the consultation and accommodation of BN undertaken and completed quickly, it is HONI that has itself created the cause of this timeframe. HONI is the author of its own misfortune here. HONI cannot short circuit the duty to consult and accommodate, which is a constitutional duty, and cannot short circuit BN rights in the process.

BIIGTIGONG NISHNAABEG - OJIBWAYS OF THE PIC RIVER FIRST NATION

We will consent to HONI undertaking studies of impacts in our traditional and title lands, only when we have concluded the consultation process agreement and sufficient funding and protocol protections are in place through this agreement for us to participate in these studies and the rest of the engagement in an informed and meaningful way. Note that the version of the agreement you sent us was seriously deficient in the funding provisions and budget – both in amounts and in unfettered discretion that HONI would have in determining whether and if so how much funding would be allocated. This is unacceptable and our edits have addressed these deficiencies.

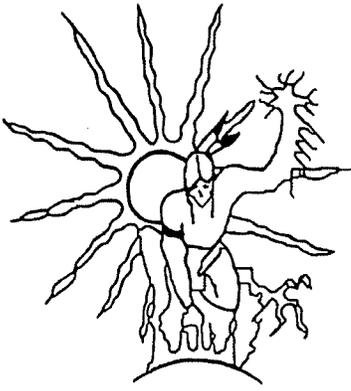
We thus strongly suggest you get back to us as soon as possible on your comments to our edits to this agreement, and that you make best efforts to conclude and execute this agreement in the next few days.

Sincerely,



Chief Duncan Michano
Biigtigong Nishnaabeg

- Cc. Stephan Lindley - VP Aboriginal and Northern Affairs, SNS Lavalin
 Tausha Esquega - Indigenous Relations, Hydro One Networks Inc.
 Juanita Starr, Director – Sustainable Development, Biigtigong Nishnaabeg
 Kate Kempton - Olthius Klear Townshend LLP



BIIGTIGONG NISHNAABEG

July 9, 2018
VIA EMAIL

Steve Mantifel
Manager, Special Projects, Community Relations
Hydro One Networks Inc.
483 Bay St
South Tower, 6th Floor
Toronto, ON M5G 2P5

Re: Biigtigong Nishanaabeg's Review of the Lake Superior Link Environmental Assessment Draft Terms of Reference

Dear Steve,

In response to the Hydro One Networks Inc. (HONI) Notice of Commencement of the Draft Terms of Reference (Draft ToR) for the Lake Superior Link (LSL) Environmental Assessment, we are sending this letter and accompanying report to you.

The Draft ToR does not address many of the concerns of the Biigtigong Nishanaabeg (BN) community. We have numerous concerns that must be addressed through a revised Draft ToR. As the First Nation government with jurisdictional regulatory authority over our territory, we provide BN's requirements for a revised Draft ToR below.

Project Alternatives

BN Requirement 1a.

Biigtigong Nishnaabeg requires HONI to thoroughly review a "do nothing" alternative within the EA. Using a "do nothing" alternative is a normal and accepted methodology in Ontario EAs. In this case, the "do nothing" alternative would likely include the existing OEB designated NextBridge EWT project proceeding to construction and operation. The existing OEB designated NextBridge EWT project is a reasonably foreseeable project that is likely to proceed. As such, the "do nothing" alternative is a reasonable and practical component for the HONI EA.

BN Requirement 1b.

Biigtigong Nishnaabeg requires HONI to conduct an updated needs assessment for the LSL project EA, with more recent economic growth data for Northwestern Ontario, more recent

BIIGTIGONG NISHNAABEG - OJIBWAYS OF THE PIC RIVER FIRST NATION

data on the electricity needs of the mining sector in Northwestern Ontario, and transmission and generation options that include advances in distributed energy resources, and the use of such systems for providing reliable electricity to the mining sector.

Reference Route and Alternative

BN Requirement 2a.

HONI must provide First Nations including BN with a seat at the decision-making table to have meaningful input and allow for a full and complete assessment of the implications of the Project alternatives.

BN Requirement 2b.

HONI must include detailed plans on the assessment of their preferred route and how they will protect traditionally important areas to BN.

Project timelines and targeted In-service date

BN Requirement 3a.

HONI must commit in the ToR to provide a comprehensive Environmental Assessment study, while following regulatory guidelines and having sufficient time for meaningful consultation with BN and other First Nations. HONI must demonstrate how they will achieve both these goals in the tight timelines without compromising on either.

Reliability of Electricity Lines

BN Requirement 4a.

HONI must commit in the ToR to provide detailed plans on how they will ensure that existing electrical customers on the EWT line have reliability of supply during construction and maintenance of the LSL. HONI must provide proof that a twinned line will have better reliability of supply than a line on a separate corridor.

BN Requirement 4b.

HONI must commit in the ToR to provide detailed contingency plans for accidents and malfunctions and how they will limit the duration and frequency of power outages for customers on the existing EWT line.

Existing Transmission Towers

BN Requirement 5.

HONI must commit in the ToR to assessing all existing towers to ensure that they meet current and future standards for reliability and structural stability in our changing climate. HONI must provide rationale for maintaining existing structures, upgrading towers or tower replacement.

Water Body Crossings

BN Requirement 6.

HONI must perform detailed assessments of water quality at each water body crossing during baseline conditions. All waterbody crossings must have at minimum an assessment of the baseline conditions for water quality including temperature, dissolved oxygen, total suspended sediments, conductivity, nutrients and metals. This data should then be used during construction monitoring to determine exceedances to baseline water quality and when to implement contingency measures.

Water Quantity Maintenance (flows)

BN Requirement 7a.

HONI needs to complete sufficient baseline studies of all potential water body crossings along the reference route to give BN assurance that indicators of impacts will be detected during construction or that existing exceedance can be mitigated for.

BN Requirement 7b.

An assessment of the flow regime including mean annual flow must also be completed at each watercourse crossing.

Water Courses

BN Requirement 8a.

HONI must commit in the ToR to provide a good characterization and understanding of the fish and fish habitat along the Project Footprint to ensure that important fish species to BN are protected and their habitat is not compromised. Fish surveys are needed to locate critical fish habitat as well as fish presence and assemblages. This is especially important within the Pukaskwa National Park where no recent surveying has been completed.

BN Requirement 8b.

HONI must commit in the ToR to complete fish habitat surveys to determine fish presence in and around (upstream and downstream) of crossings and using the information to determine the crossing structures and potential mitigation measures.

BN Requirement 8c.

HONI must commit in the ToR to an Environmental Protection Plan that integrates the fish habitat survey results and mitigation measures being added to the Plan based on the field surveys.

Tower Locations in Environmentally Significant Areas

BN Requirement 9.

HONI must commit in the ToR to avoid placing transmission towers in PSWs, ANSIs, ESAs and in areas of traditional importance to BN.

Riparian Buffers

BN Requirement 10a.

HONI must commit in the ToR to using guidelines for riparian buffers based on slope, such as the MNRF Guide for Conserving Biodiversity at the Stand and Site Scales to protect adjacent waterbodies, at a minimum.

BN Requirement 10b.

HONI must commit in the ToR to limit removal of existing riparian buffers along the Project Footprint.

BN Requirement 10c.

HONI must commit in the ToR to restore disturbed riparian buffers as soon as possible and look for opportunities to improve marginal riparian buffers where possible along the Project Footprint.

Water Body Crossings Structures

BN Requirement 11.

HONI must commit in the ToR to providing detailed analysis on the crossing structures and flow needs of each water body crossing to determine how flow hydraulics and connectivity will be maintained.

Completion of Baseline Studies

BN Requirement 12a.

HONI must commit in the ToR to complete all necessary baseline studies for the entire study area to show their due diligence and gain a full understanding of both the existing environmental conditions and the resulting potential effects. This will ensure that HONI is taking responsibility of the Project and its effects by ensuring that baseline data is sufficient, reliable, scientifically sound, and protective of the environment. These studies need to be thorough and multi-seasonal to account for natural temporal variability in species presence and identifiability.

BN Requirement 12b.

HONI must commit in the ToR to completing any mammal surveys beyond winter aerial surveys, and define which species the intended aerial surveys will be evaluating.

BN Requirement 12c.

HONI must commit in the ToR to incorporating traditional knowledge and traditional ecological knowledge in their baseline studies in order to determine the full extent of Project effects.

BN Requirement 12d.

HONI must commit in the ToR to involving First Nations communities in the execution of environmental baseline studies and fieldwork.

Access to Remote Areas

BN Requirement 13a.

HONI must identify if new helipads will need to be created to accommodate this work, or if existing infrastructure can be used. In either case, HONI must complete thorough baseline studies in and around the areas for identified aerial works to ensure that no species of significance (both vegetative and wildlife), significant wetlands, or sensitive habitat areas will be disturbed. Appropriate setback distances and timing restrictions will need to be applied.

BN Requirement 13b.

If helicopter work is to occur as part of the Project's ongoing operation and maintenance, HONI must commit to ensuring that no fuelling or mechanical maintenance activities will occur in or around the helipads located in Pukaskwa National Park.

BN Requirement 13c.

HONI will need to undertake vegetation management practices in order to maintain helipads for safe operations. HONI must identify, through a full Vegetation Management Program, how they intend to manage vegetation growth in these remote areas.

Vegetation Management

BN Requirement 14a.

HONI must commit in the ToR to indicating the anticipated spatial extent of vegetation clearing for construction, and if it is in excess of the proposed 37-46m wide ROW. They must also indicate the extent that such site preparation is expected to occur within Pukaskwa National Park.

BN Requirement 14b.

HONI must commit in the ToR to completing baseline field surveys to ensure that vegetation clearing and site preparation activities will not negatively impact any ecological sensitive areas, wildlife and wildlife habitat, and species-at-risk.

BN Requirement 14c.

HONI indicates that some construction activities will be staged to minimize potential environmental effects, such as avoiding clearing of vegetation during migratory bird nesting season. HONI must commit in the ToR to avoiding clearing of vegetation during bat hibernation and maternity roosting period, amphibian breeding and hibernation periods, and turtle nesting periods.

BN Requirement 14d.

HONI must commit in the ToR to explore alternative vegetation management practices, as part of the “alternative method” section of the ToR, to implement during all project phases to avoid the use of herbicides. HONI must also commit in the ToR to no aerial spraying herbicides on or off the ROW.

Environmentally Significant Areas

BN Requirement 15.

HONI must commit in the ToR to identify if there are any provincially significant wetlands or environmentally sensitive areas within the Project area and identify appropriate mitigation measures and monitoring programs to ensure that these significant areas are appropriately protected. Wetlands in and around the proposed transmission route should be delineated and evaluated using the Ontario Wetland Evaluation System.

Species at Risk

BN Requirement 16a.

HONI must commit in the ToR to indicating how they intend on collecting and verifying unpublished information and personal communications that will be used to compile known incidences of species at risk.

BN Requirement 16b.

Desktop studies are not sufficient for determining the presence of species at risk in the Project area, and as such HONI must commit in the ToR to including species at risk surveys as part of their baseline field studies.

BN Requirement 16c.

HONI must commit in the ToR to indicating their proposed process for screening locations based on presence/absence of species at risk within the study area that could be directly affected by construction activities.

Acoustic Disturbances

BN Requirement 17a.

HONI must commit in the ToR to conducting baseline noise surveys in ecologically sensitive and remote areas (including Pukaskwa National Park and known habitat for sensitive birds and wildlife) that will be near construction and maintenance activities.

BN Requirement 17b.

HONI must commit in the ToR to restricting noise activities near identified habitat areas during active bat maternity roosting periods, migratory bird nesting periods, amphibian breeding periods, turtle nesting periods, and ungulate calving periods.

Human Health and Environmental Risk Assessment

BN Requirement 18a.

HONI must commit in the ToR to avoiding the use of aerial spraying of pesticides and herbicides during construction and line maintenance.

BN Requirement 18b.

HONI must commit in the ToR to include a country foods assessment and human health risk assessment in their EA studies and include input from First Nations, including BN.

Environmental Monitoring and Employment Opportunities

BN Requirement 19a.

HONI must commit in the ToR to consider preferential hiring of First Nations members for positions as Environmental Monitors or 'Guardians', to ensure that BN's traditional territories and traditional environmental values are being monitored.

BN Requirement 19b.

HONI must commit in the ToR to establishing a bi-lateral agreement to provide support, capacity and training for BN to be involved in the environmental aspects of the EA, and the Project, at all phases.

BN Requirement 19c.

HONI must commit in the ToR establish and provide capacity for a First Nation Environmental Management Committee with BN and other First Nations, as soon as possible in the EA process, and certainly by the next version of the Draft ToR. This Committee would ensure First Nation oversight for all environmental issues, would have direct access to review and comment on any environmental reports and regulatory applications and approvals, and would have decision-making authority with respect to the environmental practices of HONI throughout the life of the project.

Field Monitoring Studies

BN Requirement 20a.

HONI must commit in the ToR to performing field monitoring studies throughout all Project phases, including during the EA, to ensure that all ecologically sensitive and significant features are identified, protected, and if necessary, remediated. These studies need to be performed directly by HONI, in collaboration with BN, for *all* Project areas, not just in areas that haven't been previously investigated by other proponents. These studies must be field based for all indicators to collect the most up to date and accurate information and subsequently develop the most appropriate mitigation measures and monitoring programs.

BN Requirement 20b.

HONI must commit in the ToR that it will provide funding and support for members of Indigenous communities must be part of the field monitoring teams, as third-party monitoring technicians or "Environmental Guardians", during the EA and for all other project monitoring activities, to provide important cultural insight to the monitoring activities, to ensure that significant environmental features are being considered and adequately protected, and to act as a third party environmental compliance body.

Construction Monitoring Plans

BN Requirement 21a.

Monitoring prior to, during and post- construction are necessary to determine the effects of the Project in the local and regional area. HONI must commit in the ToR to doing environmental monitoring during all phases of the Project to understand impacts of the Project on the environment, and develop and implement appropriate mitigation measures and contingency plans.

BN Requirement 21b.

Once baseline conditions have been studied, monitoring construction must be completed to ensure that mitigation measures are working properly and the water bodies are not being negatively impacted by the construction. HONI must commit in the ToR for that construction monitoring activities must include Biigtigong Nishnaabeg member involvement as Environmental Monitors or Guardians.

BN Requirement 21c.

HONI must commit in the ToR for Biigtigong Nishnaabeg member involvement third-party monitoring technicians, sometimes referred to as "Environmental Guardians", and provided training and capacity from the Proponent for involvement during the EA and all project phases.

First Nation Lands and Federal Lands

BN Requirement 22a.

HONI must commit in the ToR to engaging Biigtigong Nishnaabeg in all its meetings with Parks Canada with regard to the renewal process for HONI's License of Occupation in relation to BN's assertion of Aboriginal Title and its comprehensive land claim over its traditional territory.

BN Requirement 22b.

HONI must commit in the ToR to engaging Biigtigong Nishnaabeg in all meetings with Parks Canada with respect to HONI's apparent assertion that the LSL project is limited to "upgrades to infrastructure" within Pukaskwa National Park that are "not considered new development" under the existing HONI License of Occupation, or any future License of Occupation.

Socio Economic and Cultural Environment

BN Requirements 23a.

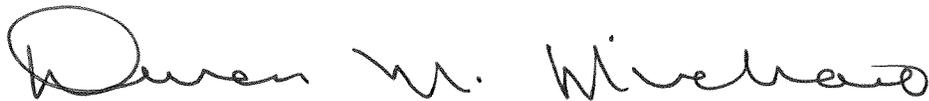
Biigtigong Nishnaabeg has requested a thorough archeology assessment and traditional knowledge study be completed prior to any work to be done on the existing infrastructure through Pukaskwa Park. This assessment was never meaningfully done on the original line and given BN's historic ties to the land within and around Pukaskwa, we feel this is necessary. BN would also like to utilize an archaeologist of their choosing.

BN Requirements 23b.

Biigtigong Nishnaabeg have asserted aboriginal title on the traditional lands for which the Lake Superior Link Transmission Line is proposed. Because of this fact, HONI should acknowledge that the relationship between HONI and BN is unique and that the development of a Consultation Agreement is necessary for meaningful consultation.

As the LSL is in the early stages of the Ontario Environmental Assessment process, it is important that HONI provide BN with an understanding and commitment to ensuring the Project will be properly scoped, planned, monitored, fiscally responsible and that BN will be properly consulted and accommodated through the life of the line. The above BN requirements will provide some measure of assurance to our First Nation that this will be the case.

Sincerely,



Chief Duncan Michano

Cc. Antonia Testa, Special Project Officer, Ministry of the Environment, Conservation and Parks
Bruce Hopper, Environmental Planner, Hydro One Networks Inc
Vicky Woodbeck, Aboriginal Liaison, Hydro One Networks Inc
Juanita Starr, Director of Sustainable Development

TAB 6

Ministry of Energy

77 Grenville Street
6th Floor
Toronto ON M7A 2C1

Tel: (416) 314-2599

Ministère de l'Énergie

77 rue Grenville
6^e étage
Toronto ON M7A 2C1

Tél: (416) 314-2599



Indigenous Energy Policy

VIA EMAIL

March 2, 2018

Daniel Charbonneau
Senior Manager, Indigenous Relations
Hydro One Networks Inc.
483 Bay Street
Toronto, Ontario M5G 2P5

Re: East-West Tie Line

Dear Mr. Charbonneau:

Thank you for your letter dated November 7, 2017 requesting clarification from the Ministry of Energy on the Duty to Consult requirements for the East West Tie Line (Lake Superior Link).

Your letter states that the preliminary scope of the project consists of a new 398 kilometer, 230 kilovolt double-circuit transmission line along the northern shore of Lake Superior between Wawa and Thunder Bay. The proposed project would parallel the existing Hydro One tie between Lakehead Transmission Station and the Wawa Transmission Station.

The Ministry of Energy has reviewed the information provided relative to its current understanding of the interests of First Nation and Métis communities in the area and has determined that it may have the potential to affect First Nation and Métis communities who hold or claim Aboriginal or treaty rights protected under Section 35 of Canada's *Constitution Act* 1982.

The Ministry of Energy is delegating the procedural aspects of consultation and the Ministry of Energy expects that Hydro One will undertake the procedural aspects of consultation, consistent with the responsibilities outlined in the Memorandum of Understanding (MOU) signed between Ontario, represented by the Minister of Energy, and Hydro One, in September 2016. Please note that these consultation obligations are in addition to the consultation requirements imposed under the *Environmental Assessment Act* and further

clarified in the 'Consultation in Ontario's Environmental Assessment Process' Code of Practice as well as the 'Preparing and Reviewing Environmental Assessments in Ontario' Code of Practice.

Per section 8.1 of the MOU, the MOU and Schedule 'A' may be amended in writing at any time by the agreement of the Parties. The Ministry of Energy proposes an amendment to the MOU to include the following project description:

2. East West Tie Transmission Line (Lake Superior Link)

The East West Tie Transmission Line Project is added to this schedule consistent with the 2013 Long-Term Energy Plan, the Order in Council 326/2016 and the December 2017 Updated Assessment of the Need for the East-West Tie Expansion conducted by the IESO, which confirms the East-West Tie, a new transmission line roughly parallel to the existing transmission line that extends between Wawa and Thunder Bay, as the recommended option for maintaining a reliable and cost-effective supply to Northwest Ontario for the long term.

Per Sections 2.2(c) and 3 of the MOU, the Ministry of Energy also wishes to clarify that for the purposes of the Environmental Assessment under Part II of the *Environmental Assessment Act*, the Ministry of the Environment and Climate Change assumes primary responsibility, on behalf of the Crown, for items (c), (d), (e), (g), (h) under Section 3.2 of the MOU.

Based on the Crown's assessment of First Nation and Métis community rights and project impacts, the following Aboriginal communities should be consulted on the basis that they have or may have constitutionally protected Aboriginal or treaty rights that may be adversely affected by the Project:

Community	Mailing Address
Animbiigoo Zaagi'igan Anishnaabek First Nation (Lake Nipigon Ojibway)	204 Main Street, PO Box 120 Beardmore, ON P0T 1G0
Biinjitiwaabik Zaaging Anishinaabek First Nation (Rocky Bay)	General Delivery MacDiarmid, ON P0T 2B0
Biigtigong Nishnaabeg	PO Box 193, 78 Pic River Road Heron Bay, ON P0T 1R0
Bingwi Neyaashi Anishinaabek (Sand Point First Nation)	146 S. Court Street Thunder Bay, ON P7B 2X6
Fort William First Nation	90 Anemki Place, Suite 200 Fort William First Nation, ON P7J 1L3
Ginoogaming First Nation	PO Box 89, 101 Poplar Crescent Long Lac, ON P0T 2A0
Long Lake #58 First Nation	209 Otter Street, PO Box 609 Long Lac, ON P0T 2A0
Michipicoten First Nation	107 Hiawatha Drive, Box 1, Site 8, RR#1 Wawa, ON P0S 1K0
Missanabie Cree First Nation	174B, Hwy. 17E, Bell's Point Garden River, ON P6A 6Z1
Ojibways of Batchewana	236 Frontenac Street, Rankin Reserve 15D

	Sault Ste. Marie, ON P6A 5K9
Ojibways of Garden River	7 Shingwauk Street Garden River, ON P6A 6Z8
Pays Plat First Nation	10 Central Place Pays Plat, ON P0T 3C0
Pic Mobert First Nation	PO Box 717 Mobert, ON P0M 2J0
Red Rock Indian Band (Lake Helen)	Box #1030 Nipigon, ON P0T 2J0
MNO Greenstone Métis Council*	PO Box 825, 211-401R 4th Ave Geraldton, ON P0T 1M0
Red Sky Métis Independent Nation	406 East Victoria Ave Thunder Bay, ON P7C 1A5
MNO Superior North Shore Métis Council*	26 Princess Street Terrace Bay, ON P0T 2W0
MNO Thunder Bay Métis Council*	226 May Street South Thunder Bay, ON P7E 1B4

** Please copy MNO head office on correspondence to MNO regional councils:

Métis Consultation Unit
Métis Nation of Ontario Head Office
500 Old St. Patrick Street, Unit D, Ottawa, Ontario, K1N 9G4
Fax: (613) 725-4225

This rights-based consultation list is based on information that is subject to change. First Nation and Métis communities may make new rights assertions at any time, and other developments (e.g. the discovery of Aboriginal archaeological sites) can occur that may require additional First Nation and/or Métis communities to be notified and/or consulted. If you become aware of potential rights impact on communities that are not listed above at any stage of the consultation and approval process, kindly bring this to the attention of the Ministry of Energy with any supporting information regarding the claim. The Ministry of Energy will then assess whether it is necessary to include the community on the rights-based consultation list above.

If you have any questions about this letter or require any additional information, please contact Shannon McCabe at 416-212-6704 or shannon.mccabe@ontario.ca

Sincerely,



Samir Adkar
Director
Energy Networks and Indigenous Policy

C: Elise Cross Director, Environmental Services Hydro One Networks Inc.

TAB 7

1 **OEB Staff Interrogatory # 7**

2
3 **Reference:**

4 EB-2017-0364 Evidence, Addendum to the 2017 Updated Assessment for the Need for the East-
5 West Tie Expansion, Reliability Impacts and the Projected System Costs of a Delay to the
6 Project In-Service Date, June 29, 2018 (prepared by the IESO)

7
8 In the Conclusion section, the IESO continues to recommend an in-service date of 2020 for the
9 East-West Tie Expansion. The IESO provides that its recommended in-service date is based on
10 applicable planning and reliability criteria to ensure the reliability needs in the Northwest are met
11 and to avoid the additional risks and associated costs of not having expanded transmission
12 capability between the Northwest and Southern Ontario.

13
14 **Interrogatory:**

- 15 a) Has the IESO's update in any way impacted Hydro One's proposed project or ability to
16 construct in the timeline that it is proposing? If so, please explain how and provide details.
17
18 b) What potential issues in Hydro One's proposal could potentially result in Hydro One's in-
19 service date being delayed past the end of 2022?
20

21 **Response:**

- 22 a) No, it has not.
23
24 b) **Hydro One fully intends to deliver the LSL Project by December 2021.** However, Hydro
25 One is cognizant of the fact that there could potentially be delays outside of Hydro One's
26 control. **For instance, a delay in obtaining EA Approval after August 2020 could result in the**
27 **in-service date being delayed past the end of 2022.** Hydro One has completed a sensitivity
28 analysis to illustrate the impact of a one, three, five, or twelve-month delays that an EA
29 approval would have on the in-service date and costs of the Project. This is provided in
30 Table 1 below. **Hydro One believes the likelihood of the EA being approved after August**
31 **2020 to be very low; therefore, an in-service date beyond December 2022 is also unlikely.**

Table 1 – EA Approval Date Scenario Analysis

		EA Delay			
Schedule - Preferred Route	Baseline	1 Month	3 Month	5 Month	12 Month
Submit Section 92 Application to OEB	Feb-2018	Feb-2018	Feb-2018	Feb-2018	Feb-2018
Projected Section 92 Approval	Jan-2019	Jan-2019	Jan-2019	Jan-2019	Jan-2019
Finalize EPC Contract with SNCL	Feb-2019	Feb-2019	Feb-2019	Feb-2019	Feb-2019
Environment Assessment and Consultation					
Obtain EA Approval from MOECC	Aug-2019	Sep-2019	Nov-2019	Jan-2020	Aug-2020
Ongoing Stakeholder Consultations	Dec-2021	Dec-2021	Dec-2021	Dec-2022	Dec-2022
Lines Construction Work					
Real Estate Land Acquisition	Mar-2020	Mar-2020	Mar-2020	Mar-2020	Mar-2020
Detailed Engineering	Feb-2019	Feb-2019	Feb-2019	Feb-2019	Feb-2019
Material Deliveries	Jul-2020	Jul-2020	Oct-2020	Dec-2020	Jul-2021
Construction Completion	Sep-2021	Oct-2021	Dec-2021	Nov-2021	Sep-2022
Commissioning Completion	Dec-2021	Dec-2021	Dec-2021	Dec-2021	Dec-2022
In Service Date	Dec-2021	Dec-2021	Dec-2021	Dec-2021	Dec-2022
Cost Impact (\$000s)	\$0	\$0	+\$1,359	+\$4,472	+\$14,761

TAB 8

1 **OEB Staff Interrogatory # 11**

2
3 **Reference:**

4 EB-2017-0364 Evidence, Hydro One's Application filed on February 15, 2018, Exhibit B, Tab 7,
5 Schedule 1, Page 1 and 3
6 Hydro One's Development Cost Estimates

7
8 Hydro One stated that the development costs are estimated at approximately \$12.2 million and
9 that the forecast is based on an October 2018 approval date.

10
11 **Interrogatory:**

- 12 a) Please provide an updated development cost estimate in the event that OEB approval is
13 received by end of November, or December 2018, respectively.
- 14
15 b) Please elaborate how the response in part (a) would change Hydro One's overall project
16 budget and completion date.
- 17
18 c) Does Hydro One have monthly or quarterly development cost estimates including major
19 components? If so, please provide those current estimates.

20
21 **Response:**

22 Prior to responding to these interrogatories, Hydro One would like to inform the OEB that the
23 Project cost estimate has been updated to reflect current information. Please also note that Hydro
24 One's updated development costs include costs up to the OEB's decision on Hydro One's Leave
25 to Construct application projected for January 2019, whereas in the original application in
26 February, there was a projection of an October 2018 decision on the application.

1 **DEVELOPMENT COSTS**

2
3 **The Project development costs provided** at Exhibit B, Tab 7, Schedule 1, have been amended in
4 as follows in Table 1 below:

5

	February 2018	September Update
Real Estate	\$3,813	\$3,442
Engineering & Design	\$2,034	\$4,317
Environmental Approvals	\$1,949	\$4,328
Regulatory & Legal	\$1,782	\$528
First Nations & Métis Consultation	\$983	\$1,990
Project Management	\$138	\$264
Other Consultations	\$217	\$423
Interest	\$100	\$195
Overhead	\$1,200	\$1,485
Total Development	\$12,215	\$16,972

6
7 These development cost have been updated to account for various changes that have occurred
8 since Hydro One filed its leave to construct application in February of 2018.

9
10 *Real Estate Costs – Development Phase*

11
12 Real Estate activities have been progressing favourably, generally in accordance with plan, but
13 slightly behind schedule. The development costs have decreased by (\$0.37 million). At the
14 outset, there was an approximate 8 week delay in contracting for field property agent services.
15 In addition there was an approximate 4 week delay in establishing meaningful property owner
16 contacts to launch direct field activities. These delays have contributed to the under expenditures
17 to plan through a delayed offer process.

18
19 *Engineering & Design Costs – Development Phase*

20
21 Engineering and Design Development cost have increased by \$2.30M due to the Development
22 phase being shifted from previously assumed LTC approval dated October 2018 to the now
23 assumed approval in January 2019. The total Engineering and Design cost, including both
24 Development and Construction phase costs, has increased by (\$0.75M) Consequently
25 Construction Management, Engineering, Design and Procurement costs have been decreased in
26 the Construction phase.

1
2 The extra work to be done in Development phase encompasses:

- 3 • Engineering survey of tower and foundation in Pukaskwa Nation Park
- 4 • Engineering work required to initiate geotechnical work in the field
- 5 • Engineering work required to define extent of construction permits
- 6 • Engineering work required so that firm offers can be obtained for fabrication and testing
7 of tower prototypes.

8
9 *Environmental Approvals Costs – Development Phase*

10
11 The increase in Environmental Approvals development costs of approximately \$2.4M can be
12 attributed predominately to the following:

- 13 • inclusion of some contingency costs in the updated cost, as the risk has been realized,
14 (\$150K); and,
- 15 • increases in approach to environmental approvals and scope of studies and consultation
16 (\$2.2 million).

17
18 Contingency costs realized of \$150K in the updated cost included additional activities identified
19 as potentially being required based on a very narrow scope of an EA amendment.

20
21 Additional costs attributed to changes in approach to environmental approvals and scope of
22 studies and consultation include:

- 23 • additional Stage 2 archaeology costs as differences in tower locations between
24 NextBridge and Hydro One designs became evident after additional studies were
25 completed along the route for tower siting
- 26 • a portion of the cost of the Parks Canada Detail Impact Assessment. Although either a
27 basic or detailed impact assessment is expected under CEAA, no additional cost was
28 originally included in the budget for this, as Parks Canada indicated they would allow use
29 of Hydro One's provincial EA documentation for review. However, this is now not the
30 case (as conveyed in July 2018 communication letter provided in Exhibit I, Tab 1,
31 Schedule 14) due to the more complicated scope and the addition of the Dorion route in
32 the Hydro One IEA, as outlined in the ToR
- 33 • a portion of the cost of the Dorion Route Alternatives. There were changes in the scope
34 of the Declaration Order/EA that resulted from the addition of the Dorion route
35 alternative. This increased costs for consulting, additional meetings, stakeholder
36 consultation, reporting, travel, and various studies (eg., additional visual assessment and

1 simulation around Dorion, biological, human health, cultural heritage, socio economic
2 etc.)

- 3 • a portion of about the cost of conducting an Individual EA Process concurrently with the
4 Declaration Order approach. Based on MECP feedback, the Individual IEA Process has
5 been undertaken in parallel with the Declaration order process. This results in additional
6 costs to cover the IEA process, the ToR, the increased scope and study area and different
7 processes. These cost include additional labour, consulting costs (studies for biological,
8 human health, cultural heritage, socio-economic etc.), disbursements for meetings,
9 consultations, documentation, reporting, travel.

10
11 *Regulatory & Legal Costs – Development Phase*

12
13 Regulatory and legal costs have decreased (-\$1.3M) as the original budget was based on the
14 assumption that the OEB hearings were going to be held in Thunder Bay, increasing both
15 internal, regulator, and intervenor funding costs. Additionally, with the combined hearing,
16 Hydro One now assumes that the OEB will follow a similar cost sharing approach that was
17 utilized in the NextBridge Motion to Dismiss Hearing where both transmitters will be
18 responsible for funding the procedural costs of the hearing.

19
20 *Indigenous Consultation Costs – Development Phase*

21
22 The Indigenous consultation estimate has increased by (\$1 million), which is a function of
23 increased consultation given the Environmental Assessment scope has changed from the
24 Declaration order to an Individual EA, as well as risks that have materialized and hence been
25 removed from project contingency. Although the preferred option remains the Declaration order,
26 the additional studies and resources required for an Individual EA have led to an increase in the
27 Indigenous Consultation budget to allow for the Indigenous communities to be meaningfully
28 consulted on the Project, including the EA. Also related to the change in the EA scope, Hydro
29 One is required to meet with 18 Indigenous communities and the Métis on a more frequent basis
30 than originally budgeted for. In addition, the following four Indigenous communities have
31 expressed an interest in the project and Hydro One has engaged them. Métis Nation of Ontario -
32 North Channel Métis Council, Métis Nation of Ontario – Historic Sault St. Marie Council,
33 Jackfish Métis Association, and the Ontario Coalition of Indigenous Peoples. Hydro One is
34 required to consult with any Indigenous community that expresses an interest on the Project,
35 hence the need for additional resources to accommodate the interest of these additional four
36 communities.

1 Additional costs are also associated with the need for further consultation with two of the First
2 Nations who have a real estate permit interest in the Project. Pays Plat and Michipicoten First
3 Nation have existing on reserve real estate permits that require negotiations which leads to
4 additional costs.

5
6 Hydro One's Indigenous Consultation project costs were developed in absence of the delegation
7 letter from the Crown (Hydro One requested it in November 2017 but did not receive until
8 March 2018) with regards to consultation and therefore had to be amended to reflect delegation
9 from the Crown. Hydro One anticipated that the Ministry of Energy would identify the depth of
10 consultation required for each of the 18 Indigenous communities and assumed that the 6 BLP
11 communities would be identified as requiring deeper consultation. Although this is something
12 the Ministry of Energy is required to provide as part of its MOU with Hydro One regarding
13 consultation on projects, the March 2, 2018 delegation letter identified all 18 Indigenous
14 communities as "rights-based" and therefore Hydro One was not provided with depth of
15 consultation required for each community but instead was directed to consult with all Indigenous
16 communities equally. This leads to additional time and costs than what was included in the
17 original Indigenous Consultation estimate.

18
19 *Project Management Costs – Development Phase*

20
21 Project Management cost have increased (\$0.1M) due to Development phase being shifted from
22 previously assumed LTC approval in October of 2018 to now assumed approval in January of
23 2019.

24
25 *Other Consultation Costs – Development Phase*

26
27 Other consultation costs have increased by \$0.2M due to the requirement to consult on the
28 Dorion Route alternative.

29
30 *Interest During Construction & Overhead Capitalization – Development Phase*

31
32 Interest during construction and overhead capitalization costs were initially budgeted and spread
33 among the various cost items provided in Table 2 of Exhibit B, Tab 7, Schedule 1. Hydro One
34 has a standard methodology for allocation of interest and applies an overhead capitalization rate
35 to all its projects to account for non-direct staff's time working on capital projects. This
36 overhead rate is determined by spreading a portion of overhead staff across budgeted capital
37 projects. In this update, we have shown both of these numbers as separate line items. The

1 increase in costs (\$0.4M) are a function of timing and the increase in the cost update as provided
 2 above.

3
 4 **CONSTRUCTION COSTS**

5
 6 The Project costs provided at Table 3 of Exhibit B, Tab 7, Schedule 1 for Project Costs have
 7 been amended as follows in Table 2.

8

Table 2 – Construction Costs (\$ thousand)		
	February 2018	Sept. Update
Construction	354,030	355,530
Site Clearing, Preparation & Site Remediation	104,339	104,339
Material	58,713	58,713
Project Management	5,802	6,085
Other Costs	9,451	9,451
Construction Management, Engineering, Design & Procurement	17,828	16,304
Real Estate	9,798	10,558
First Nations & Métis Consultations	1,133	3,615
Environmental Approval	819	2,423
Other Consultations	160	30
Contingency	10,775	5,401
Interest During Construction (“IDC”)	42,596	43,845
Overhead	8,502	8,506
Total Construction Cost	623,946	624,800

9
 10 *EPC Construction Costs: (Construction; Site Clearing; Material; Other costs; Construction*
 11 *Management, Engineering Design & Procurement)*

12
 13 Construction Management, Engineering, Design & Procurement cost has decreased (-\$1.5M) due
 14 to Construction phase being shifted from assumed November 2018 to now assumed February
 15 2019 and associated planned costs being allocated to the Development phase.

16
 17 The overall cost for the fixed-price EPC contract has not changed, across the development and
 18 construction phases. Through further development work on the project, it was identified by
 19 Hydro One that some relocation costs for the T1M section of line were not included in the total
 20 project estimate although they are included in the scope of EA activities. They have since been
 21 added into the Construction phase of the project at \$1.5 million. Of note, these costs are also not

1 included in the NextBridge application, and should be borne by the transmitter selected to
2 construct the project.

3 *Real Estate Costs – Construction Phase*

4
5 The cost increase for Construction of \$0.8M to the Original Application Estimated is attributable
6 to the delays outlined in the Development Costs rationale for Real Estate above.

7
8 *Project Management Costs – Construction Phase*

9
10 Project Management cost in Construction phase have increased slightly (\$0.3M) through this
11 phase.

12
13 *Indigenous Consultation Costs – Construction Phase*

14
15 Certain costs during the construction phase of the Project have been identified to have increased,
16 such as First Nations and Métis costs and Environmental Approval costs. However, these costs
17 have been off-set by the reduction in Hydro One's contingency costs. The rationale for these
18 increased costs are explained in the section above that deals with development costs.

19
20 *Environmental Approval Costs – Construction Phase*

21
22 The increase in Environmental Approval costs during the Construction phase of approximately
23 \$1.6 million can be attributed to a number of factors including:

- 24
- 25 • \$890K in contingency costs expected to be realized during the construction phase for
post-EA work such as permitting and additional approvals;
 - 26 • changes in the approach to environmental approvals, scope of studies and consultation as
27 a result of these activities continuing past the LTC date (approximately \$714K). These
28 items include: Parks Canada Detail Impact Assessment, Dorion Route Alternatives
29 studies, and conducting the Individual EA Process concurrently with the Declaration
30 Order approach. These additional scope activities are all described in the Development
31 Phase Environmental Approval cost increases above.

32
33 *Contingency – Construction Phase*

34
35 Estimated contingency has been reduced (-\$5.4M) due to a number of risks being materialized,
36 mostly related to Environmental Approval and Indigenous Consultation. Interest during

1 construction and contingency cost have been updated to reflect the changes in the updated
 2 construction costs provided above.

3
 4 Hydro One's total Project costs are now approximately \$642M, an increase of less than 1% from
 5 the original filing and still considerably less than the original NextBridge estimate of \$777M.

6 a) An updated development cost estimate is provided as Table 3 of this response. Hydro One
 7 now expects that LTC approval will be obtained by the end of January, 2019. If approval is
 8 received by end of November or end of December, refer to Figure below for expected
 9 development costs.

10

Table 3 - Life to Date & Forecast Development Cost (\$000s)							
	Feb 15, 2018 (S.92)¹	Life to Date (31/08/2018)	End of Sept 2018	End of Oct 2018	End of Nov 2018	End of Dec 2018	End of Jan 2019
Real Estate	3,813	1,235	1,735	2,235	2,735	3,035	3,442
Engineering and Design	2,034	1,277	1,523	2,234	2,798	3,202	4,317
Environmental Approval	1,949	727	1,527	2,327	3,137	3,528	4,328
Regulatory & Legal	1,782	253	303	353	403	453	528
First Nations and Metis Consultations	983	57	357	657	1,157	1,490	1,990
Project Management	138	110	125	161	197	228	264
Other Consultations	217	223	273	323	373	402	423
Interest	100	18	16	25	35	46	195
Overhead	1,200	512	110	235	258	153	1,485
Total Development Cost	12,215	4,412	5,969	8,550	11,093	12,537	16,972

11
 12 b) There would be no change to the overall project costs. Refer to Exhibit I, Tab 4, Schedule 3
 13 for a scenario analysis that assesses the impact of regulatory approval delays will have on
 14 total project costs.

15
 16 c) Please refer to a) above.

¹ Updated to identify interest and overheads separately

OEB Staff Interrogatory # 12

Reference:

EB-2017-0364 Evidence, Hydro One's Application filed on February 15, 2018, Exhibit B, Tab 7, Schedule 1, Page 3
Hydro One's Development Cost Estimates

Hydro One submitted that the development costs of approximately \$12.2 million should be eligible for recovery in rate base, if Hydro One is selected to construct the new line.

Interrogatory:

- a) Is Hydro One prepared to absorb the cost variances above \$12.2 million in the event that the development costs rise over the \$12.2 million forecast? Please explain.
- b) Using the categories of development costs in "Table 2: Development Costs" in the evidence (Exhibit B, Tab 7, Schedule 1, Page 3), please provide the actual development costs incurred by Hydro One to date.
- c) To the extent that actual development costs for any category exceed the amount that Hydro One anticipated that it would have incurred to this point, please explain the reason for each exceedance and steps that Hydro One has taken to mitigate each cost exceedance.
- d) Given Hydro One was not the designated proponent at the time of the designation, please explain why in Hydro One's view, ratepayers should pay for any development costs incurred by Hydro One, if Hydro One is ultimately selected by the OEB to build the line.

Response:

- a) If granted leave to construct, Hydro One would seek to recover any development over the current estimate of \$17.0M that ultimately helps achieve an overall Project that is significantly less expensive than the current \$777M alternative proposed by NextBridge. In other words, as described in Exhibit B, Tab 7, Schedule 1, Hydro One would seek approval of its development costs since the benefits significantly outweigh the costs.
- b) Please refer to Exhibit I, Tab 1, Schedule 11, part a)
- c) The actual LTD cost do not exceed the amount Hydro One anticipated up to this point (Aug 31, 2018)

TAB 9

ONTARIO ENERGY BOARD

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 Upper Canada Transmission, Inc. under section 92 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 (Schedule B) for an Order or Orders granting leave to construct a new double circuit 230 kV electricity transmission line between Thunder Bay and Wawa;

AND IN THE MATTER OF an Application by Hydro One Networks Inc. pursuant to s. 92 of the Act for an Order or Orders granting leave to upgrade existing transmission station facilities in the Districts of Thunder Bay and Algoma.

**SUBMISSIONS OF HYDRO ONE NETWORKS INC.
(NEXTBRIDGE DEVELOPMENT COSTS)**

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SUBMISSIONS OF HYDRO ONE NETWORKS INC.

I Introduction and Overview

1. These are the submissions of Hydro One Networks Inc. (“HONI”) in the application of NextBridge (“NB”) to allow it to recover from ratepayers a portion of its development costs for the East-West Tie (“EWT”).
2. In the EB-2011-0140 “*East-West Tie Line Designation Phase 2 Decision and Order*” dated August 7, 2013 (the “Designation Decision”), the Ontario Energy Board (“OEB”) approved the recovery by NB of \$22.2 million in development costs. NB now seeks the recovery of an additional \$17.8 million in development costs, for a total of \$40.2 million. We will refer to the \$17.8 million hereinafter as the “Excess Development Costs”. We will also refer hereinafter to the process leading to the Designation Decision as the “Designation Process”.
3. For the reasons set out below, HONI submits that NB should only be able to recover Excess Development Costs that satisfy the following tests:
 - (1) The Excess Development Costs were caused by circumstances that could not be foreseen at the time of the Designation Decision and were out of NB’s control;
 - (2) There is objective evidence that the Excess Development Costs were prudently incurred; and
 - (3) The amount of Excess Development Costs that satisfy the first two tests can be precisely determined.
4. In addition, and again for the reasons set out below, HONI submits that the recovery of any Excess Development Costs should be subject to certain conditions.
5. These submissions are in the following parts:

- (1) An analysis of the tests which HONI submits the OEB should apply in considering whether to allow the recovery of any portion of the Excess Development Costs;
- (2) A description of the context which HONI submits should govern how those tests are applied; and
- (3) A consideration of the individual Excess Development Costs.

II The Tests

6. HONI submits the OEB must first determine what tests it will apply in determining how much, if any, of the Excess Development Costs it will permit NB to recover from ratepayers.

7. HONI will divide its consideration of the tests into two parts. In the first HONI will analyse what NB proposes that the tests be. In the second HONI will set out what it submits are the correct tests.

(1) The NextBridge Tests

8. In its Argument-in-Chief (“AIC”) NB refers to the decisions of the Supreme Court of Canada (“SCC”) in the cases of *Ontario (Energy Board) v. Ontario Power Generation Inc.* 2015 SCC 44 (the “OPG case”) and *ATCO Gas and Pipelines Ltd. v. Alberta (Utilities Commission)* 2015 SCC 45 (the “ATCO case”) and suggests that those cases establish the tests the OEB should apply in deciding whether to allow it to recover the Excess Development Costs.

9. In the OPG case, the SCC distinguished between forecast costs and committed costs. The latter are costs which a utility has already spent, or has entered into a binding commitment or subject to other legal obligations that leave it with no discretion.

10. NB argues that the Excess Development Costs are committed costs. On that basis, and relying on the ATCO case, NB asserts that the OEB should apply what the SCC described as the “no hindsight prudence test” that is a test which turns on the circumstances that existed when the costs were incurred.

11. NB then argues that the circumstances that should govern the consideration of the Excess Development Costs are the following:

- (1) Ontario Power Authority's ("OPA") recommendation in September of 2014 that the in-service date be extended;
- (2) The extension of the development period from 18 to 48 months;
- (3) Unbudgeted costs, consisting of costs for Indigenous participation and land acquisition; and
- (4) Denial of access to Pukaskwa National Park and route changes.

12. HONI will, below, address these four circumstances. It is HONI's position that none of these circumstances, whether alone or in combination, allow the OEB to conclude that the Excess Development Costs should be eligible for recovery. In addition, none of these circumstances, alone or in combination, allow the OEB to conclude that the Excess Development Costs were prudently incurred.

13. HONI submits that NB's reliance on the OPG case and the ATCO case is misleading and distorts the tests which HONI submits the OEB should apply in considering the Excess Development Costs.

14. HONI submits that the analysis of costs in the OPG and ATCO cases is not useful in the consideration of the Excess Development Costs. Among other things, those Costs are not committed costs in the sense in which that term is used in those cases.

15. HONI submits that the Excess Development Costs must be considered in the unique circumstances created by the Designation Process. Using the framework created by that Process, the Excess Development Costs must be seen not as committed costs, but as costs which exceeded permitted amounts and which, with the exception of one category, were incurred either because NB had underestimated its development costs in the Designation Process or decided not to include the costs in the Designation Process. HONI submits that the costs in both of those latter categories are solely the responsibility of NB and should not be recovered from ratepayers unless NB led evidence to prove otherwise.

(2) **The Correct Tests**

16. HONI submits that NB's claim for the recovery of development costs should be considered using the following tests:

- (1) Whether, and if so to what extent, Excess Development Costs are those which NB underestimated in the Designation Process or failed to include in the forecasts in the Designation Process;
- (2) Whether the Excess Development Costs could not have been foreseen at the time of the Designation Process and were out of NB's control;
- (3) Whether Excess Development Costs were caused by the extension of the development phase as opposed to being incurred in that phase;
- (4) Whether allowing NB to recover Excess Development Costs would be contrary to OEB policy, in that it would undermine the integrity of the competitive Designation Process and be unfair to other parties in that Process;
- (5) Whether there is sufficient evidence, or indeed any evidence, upon which the OEB can conclude that the Excess Development Costs were prudently incurred; and
- (6) Whether the OEB can identify the precise amount of the Excess Development Costs eligible for recovery.

17. The tests which the OEB applies must consider the impact, on what we will call the integrity of the competitive Designation Process, of allowing NB to recover Excess Development Costs. The parties to the Designation Process were expected to provide their best estimates of their development costs. NB should, barring evidence of exceptional circumstances, be considered to be bound by its Designation Process cost forecasts approved by the OEB.

18. The unique circumstances of the Designation Process and Decision also distinguish this case from the ordinary practice of allowing successful applicants a "band of tolerance" of plus or minus 10% for their estimated costs. Because of the unique circumstances

of this case, NB should be responsible for costs which it failed to include or which it underestimated in the Designation Process. To now allow NB to recover costs that it underestimated or failed to include is unfair to the other parties and undermines not just the integrity of the Designation Process but the OEB's policy of promoting competition in the provision of transmission.

19. HONI submits that NB has filed no evidence upon which the OEB can find that the additional costs have been prudently incurred. HONI acknowledges that there is argument that one category of the Excess Development Costs was caused by a factor that could not have been forecast at the time of the Designation Proceeding and which was beyond NB's control. That category consists of the delay in the in-service date, the consequent need for NB to maintain an infrastructure over the extended development period, and the denial of access to Pukaskwa National Park. However, even for costs in that category, NB has failed to provide evidence by which the OEB can assess the prudence of the amount of the costs. The OEB is not required to, and should not, speculate as to whether all or a portion of the costs, caused by this factor, were prudently incurred. Finally, NB's evidence of the amount of costs in that category is vague and imprecise.

20. Regardless of how the tests which NB must meet are formulated, its overriding obligation is to satisfy the OEB that the Excess Development Costs were prudently incurred. To do so it must provide objective evidence by which the OEB can assess prudence. It is not sufficient for NB to assert that the costs were necessary. It is also not sufficient for NB to assert that it had what it characterizes as rigorous cost controls in place. It is not sufficient, in other words, to make self-referential assertions about the supposed prudence of its expenditures, assertions which NB repeats endlessly, in its pre-filed evidence, in its testimony at the hearing, in its Undertaking responses, and in its AIC.

21. In applying these tests, the OEB must determine what constitutes prudence. In the particular circumstances of this case, and in particular the context created by the Designation Process and the Designation Decision, HONI submits that there should be no presumption of prudence. The Designation Decision effectively put a cap on the development costs NB could recover. There can be no presumption that costs in excess of that cap were prudently incurred.

On the contrary, the opposite presumption should apply. NB must first prove that the Excess Development Costs were caused by circumstances beyond its control, and that because of that, costs could not have been forecast in the Designation Process, and that such costs were prudently incurred.

22. Throughout its pre-filed evidence, and in answers to questions in cross-examination, NB uses the word “prudent” to describe all of its actions in the extended development period. It would appear that NB’s use of the word is intended to have the OEB conclude two things. The first is that any actions of NB should be deemed to be prudent. An example of this is the use of the word to describe the decision to use the extended development period to enter into land acquisition agreements. (Exhibit B, Tab 16, Schedule 1, p. 4)

23. The second is to have the OEB conclude that, because NB applied cost controls, the expenditure must, therefore, be deemed to be prudent. The fact of cost controls does not mean that a cost was necessary or prudently incurred. (Exhibit B, Tab 16, Schedule 1, p. 4)

24. Much of what NB suggests is “prudent” is self-referential. An example of this is NB’s description of its Indigenous participation agreements. NB describes the context for those agreements as follows:

And so you can see in this response the extent of experience that both NextEra and Enbridge have in negotiating Aboriginal participation deals and working with First Nations and Métis communities to strike participation deals, and so the collective experience of our organizations went into determining if those costs were prudent. (Transcript, EB-2017-0182/EB-2017-0194 Vol. 1, p. 124)

25. A rough paraphrase of that statement is that, if NB deems something prudent, then the OEB must do so.

26. As an aside, the statement that NB has such vast experience in negotiating Indigenous participation agreements gives rise to the question of why NB chose not to include an estimate for the costs of such agreements in the Designation Process estimates. The risk in doing so, of course, is that they would have been bound by those estimates. In addition, they might not have been chosen as the designated developer because their cost estimates were too high.

27. NB suggests that, because the OEB was aware that Indigenous participation costs were not included in its Designation Process forecasts, and yet approved NB for the designation work, implies that the OEB, having been made aware of those costs, must now be taken to have implicitly approved them as reasonable. The OEB did not do so. The correct interpretation is that NB voluntarily assumed responsibility for costs in that category.

28. The OEB, in its Phase 1 Decision and Order, stated that transmitters seeking designation should be aware that development costs in excess of budgeted, Board-approved costs would not necessarily be recovered from ratepayers and would be subject to a prudence review, which will include consideration of the reasons for overages. It was based on this understanding of risks that all transmitters submitted their proposed development budgets as part of the Phase 2 designation proceeding. These words of direction are reiterated by the OEB in its Decision and Order on NB's original application for approval of schedule and costs related to the development of the East-West Tie transmission line. The OEB goes on in that decision to explicitly state the "OEB does not accept that development costs not anticipated as part of the original project premise are automatically afforded the same assurance of recovery as the originally budgeted development costs...". (EB-2015-0216 – *Ontario Energy Board Decision and Order* – November 19, 2015, p. 8)

29. To find otherwise would be to conclude that the OEB granted NB *carte blanche* to spend whatever it wanted. That cannot have been either the OEB's intention or the effect of its decision

III The Context Which Governs How the Tests Should be Applied

30. The context for the application tests of the prudence of NB's Excess Development Costs is established by the following:

- (1) The Designation Process, including the Designation Decision;
- (2) The change in the in-service date;
- (3) The change in the route for the EWT.

(1) The Designation Process

31. HONI submits that the objective of the Designation Process was to encourage competition of the development of the EWT. HONI submits that, in making its decision about whether to allow recovery of some or all of the Excess Development Costs, and indeed in making a decision on NB's leave to construct application, the OEB must give effect to that objective.

32. HONI submits that it is important to keep in mind that, in seeking to recover the Excess Development Costs, NB is going beyond what was contemplated in the Designation Process, that it is operating outside of the rigours of a competitive process. NB had sought to do so for the construction phase as well, by taking the extraordinary step of trying to preclude the OEB from considering a competitive bid for the construction of the EWT.

33. The Designation Decision was the culmination of a process whereby six parties bid on the right to do the development work for the EWT. The parties forecast costs for the development work in specified categories. The successful proponent would be allowed to recover its forecast development costs. The OEB made no provision for a review of the prudence of the forecast development costs. It was the fact of competition that was deemed sufficient to ensure that the forecast costs were reasonable.

34. The importance of competition to the Designation Process was made clear in the Designation Decision when the OEB stated:

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. (Designation Decision, p. 30)

35. The OEB stated that, in evaluating the applications for designation in the area of costs, it would rank the applications by considering factors which included the "clarity and completeness of the cost estimate" and the "thoroughness of the risk assessment and mitigation

strategy”. (Designation Decision, p. 31) That “completeness” was a determining factor dictates that, if for no other reason, the OEB should hold NB to a higher standard in seeking to recover costs which are greater than those approved in the Designation Decision.

36. HONI submits that, because of the competitive process, it would be unfair to the other proponents in the Designation Process, and contrary to the stated objectives of that Process, were the OEB to now allow the successful bidder to recover additional costs.

37. The issue of fairness, and of preserving the integrity of the Designation Process, arises in NB’s reliance on the concept of “scope change”. NB defines the concept as follows:

So scope change would be an underlying - we discuss what scope change means in the evidence in our - in our 2015 filing. But we call - scope change would be that there was something incremental above the scope we were originally designated to do, so something above that we intended that we had to do something additional. (Transcript, EB-2017-0182/EB-2017-0194 Vol. 1, p. 149)

38. NB uses as examples of “scope change” the requests of the MOECC and the MNRF for alternative assessments (Transcript, EB-2017-0182/EB-2017-0194 Vol. 1, p. 150) and increases in the scope of the economic data collection. (Transcript, EB-2017-0182/EB-2017-0194 Vol. 1, p. 149)

39. It is clear that NB’s use of the term “scope change” attempts to conflate two different things. The first is work, and related costs, for matters which were covered in the Designation Decision but which cost more than NB estimated. NB should not be able to recover costs for such matters.

40. The second are changes in what the project covers, things which could not have been anticipated in the Designation Process and so could not have been included in the approved estimates. HONI submits that NB bears the burden of leading evidence as to the matters and the costs in this second category, in addition to the burden of satisfying the OEB that such evidence demonstrates that the costs were incurred prudently.

41. HONI acknowledges that there may be extraordinary circumstances, which could not have been foreseen at the time of the Designation Process, which might lead to an increase in

development costs, and which might be, for that reason, eligible for consideration of recovery. HONI submits that, on the evidence NB has provided, there are only two matters in this category, namely the need to maintain an office and related infrastructure during the extended development period and the need to find an alternative route around Pukaskwa National Park. HONI submits that NB must satisfy the OEB as to what matters are genuinely new and could not have been anticipated before examining whether Excess Development Costs for those matters were prudently incurred.

42. HONI submits that preserving the integrity of the competitive process requires the OEB to deny, in particular, NB's request to recover the cost of the First Nations and Métis participation.

43. With respect to First Nation and Métis participation, the OEB said the following in the Designation Decision:

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.

(Designation Decision, p. 15)

44. As the Designation Decision makes clear, NB had a plan for First Nations and Métis participation, including a plan for “includes economic participation components such as employment, education and training, procurement and contracting, strategic community investment, and access to other supporting programs”. (Designation Decision, pp. 17-18) NB chose not to include the costs for that participation in the estimates it filed. Doing so would have put it on the same competitive basis as the other participants, with the attendant risk that its overall costs would have prevented it from becoming the successful developer. It should not now be, in effect, rewarded for doing so.

45. NB argues that the OEB, in approving it as the Designated Developer, by necessary implication allowed NB to recover costs for Indigenous participation, even though the amount of those costs had not been forecast. HONI submits that that is incorrect. The correct interpretation of the OEB's decision is that, by failing to include the costs of Indigenous participation in its forecast, NB was taking responsibility for costs incurred in that category. To find otherwise would mean that the OEB is implicitly acknowledging that its Designation Decision was unfair to the other participants.

(2) The Extension of the In-Service Date

46. At several points in its AIC, NB relies on the argument that the need to meet a 2020 in-service date required the expenditure of additional development costs. For example, NB asserts that "Prudent project management dictates that activities that might have been delayed to the construction phase of the project needed to be pursued prior to the filing of a leave to construct application in order for the 2020 in-service date to be achieved". (AIC, p. 18 of 21)

47. In its AIC, NB continues to suggest that the March 2016 Order-in-Council ("OIC") tied the priority project declaration to a 2020 in-service date. NB knows that that is incorrect. In its *Decision and Order* in EB-2017-0364, dated July 19, 2018, at page 7, the OEB found the exact opposite, namely that the "priority project declaration [in the OIC] is not tied to a 2020 in-service date". NB cannot, in support of its request to recover Excess Development Costs, rely on the OIC as obligating it to meet a 2020 in-service date. NB could not rely on the argument about the status of the 2020 in-service date in support of its attempt to have HONI's LTC application dismissed. It cannot do so with respect to the Excess Development Costs either.

48. In the letter to the OEB dated September 30, 2014, the then-OPA extended the in-service date to 2020. Had the in-service date not been extended, NB would have had to have completed its development work prior to the date of the filing of the LTC application in the early part of 2015. HONI acknowledges there is an argument that NB can recover costs, demonstrated to have been prudently incurred, that were caused by the extension of the in-service date. It is not, however, legitimate for NB to claim costs for activities that could have, and indeed should have, been completed by the date the LTC application was originally to have been filed. Costs incurred after the original LTC application filing date but not caused by the extension should not

be eligible for recovery. A prime example of costs in this category is Indigenous consultation costs, discussed below.

49. In at least one case, NB improperly took advantage of the extended development period to undertake activities and incur costs for doing work which should have been undertaken in the construction phase. NB's evidence is that it "saw the opportunity to gain some benefits from the extension of the development period by prudently taking advantage of additional time available to deal with land acquisition". (Exhibit B, Tab 16, Schedule 1, p. 9) NB acknowledges that certain of these activities were going to be pursued in the construction phase but were "pulled forward into the development phase and started in 2016". (Exhibit B, Tab 16, Schedule 1, p. 9)

50. HONI submits that agreements for land options were premature given that NB had not been granted leave to construct. Costs in this category were not caused by the extension of the in-service date, were not part of the development phase, and should not be eligible for recovery.

51. On September 30, 2014, the OPA informed the OEB that there was merit in delaying the in-service date of the EWT expansion project because to do so would allow for additional time to develop the EWT project, with a focused aim of reducing costs. (EB-2017-0364 – *Hydro One Additional Evidence* – Attachment 15 – May 7, 2018) As noted at the beginning of this section, at several points in its AIC, NB relies on the argument that the need to meet a 2020 in-service date required the expenditure of additional development costs. These additional development costs have not resulted in any reduction to the overall project cost. Despite having 5 years to develop this project, NB has yet to deliver an approved EA, a potential for expropriation remains quite probable, NB has yet to reach an agreement with Hydro One on line-crossing issues and, most likely most important for ratepayers, the NB projected cost estimate has ballooned to almost double the original cost. Needless to say, NB completely missed the target on the focused aim of reducing costs by extending the development period.

(3) Route Change

52. Changes in the routing are an inevitable part of an undertaking such as the EWT. The question for the OEB is whether the route around Pukaskwa National Park was of such a

nature or magnitude to warrant special treatment as a genuine scope change. NB led no evidence in support of that proposition.

III Specific Cost Claims

53. In Exhibit B, Tab 16, Schedule 1, Attachments 1-10 inclusive, NB itemizes the Excess Development Costs for which it claims recovery. Attachment 11 summarizes the claims. HONI will not deal with each of the items set out in those attachments. Instead it will deal with the aggregate amounts in the largest categories of costs, which include the following:

- (a) Environmental and regulatory approvals;
- (b) Land rights;
- (c) First Nations and Métis consultation;
- (d) Other consultation;
- (e) Project management; and
- (f) First Nations and Métis land acquisition and participation.

(a) Environmental and Regulatory Approvals

54. According to Exhibit B, Tab 16, Schedule 1, Attachment 11, the OEB-approved costs, that is the costs approved in this category in the Designation Decision, are approximately \$3.6 million. NB states that the extended development period incremental costs in this category are approximately \$4.2 million, for a total of \$7.8 million.

55. NB attributes these additional costs to two principal factors. The first is unexpected additional requests by the MOECC and the MNRF. The second is the additional work required by route changes, principally that around Pukaskwa National Park. In fact the two factors are related, in that some of the additional requests by the MOECC and the MNRF were related to the original route and some related to the changed route.

56. NB argues that its original estimate for environmental assessment costs was arrived at as follows:

So in NextBridge's collective experience, so NextBridge and NextEra and the projects we've worked on in North America, we used that extensive experience to put together the budget for the 22.4 million dollars that included the environmental budget. (Transcript, EB-2017-0182/EB-2017-0194 Vol. 1, p. 76)

57. HONI notes, in passing, that this statement suggests that the estimate of the environmental budget was based solely on the experience of NB. In a response to an Undertaking, NB disclosed, first, that its estimate was based on the analogue of the Bruce-to-Milton project and, second, on the expert advice from an environmental consulting firm [Dillon Consulting, hereinafter referred to as "Dillon"]. Had those matters been disclosed in testimony, they could have been explored in cross-examination.

58. NB's defence of its environmental budget has changed over the course of the proceeding. In Exhibit JD1.2, a response to an Undertaking given at the July 5, 2018 hearing on the subject of development costs, NB revealed that it had used the HONI Bruce-to-Milton EA "as a template for the designation application EA scope of work, which did not include the need for an alternative assessment".

59. Whether the use of the Bruce-to-Milton EA as a template was reasonable, or prudent, is thus a critical issue. NB defends the use in part by saying that it "received advice from its environmental consultant that it did not anticipate NextBridge would need to prepare an alternative assessment in relation to the EWT Line project". (Exhibit 1.JD1, NextBridge, CCC.1)

60. As noted above, NB's statements, set out in the preceding two paragraphs, were not subject to cross-examination. The statements were made in response to Undertakings. NB could have, but evidently elected not to, produce its environmental consultant to explain, and defend, its advice on this point.

61. When NB was asked, in an interrogatory posed in its first set of interrogatories, to provide "copies of all internal studies, reports and analyses that served as the basis for the decision to use the Bruce-to-Milton EA as a template for the designation EA scope of work", its response was that "NextBridge has not been able to locate copies of any internal written studies,

reports or analyses that served as the basis for the decision to use Bruce-to-Milton as a template for EWT Line Project EA work scope”. (Exhibit 1.JD1, NextBridge, HONI.6)

62. That NB cannot find any of its own written material on such an important component of its development phase budget is, frankly, surprising. HONI assumes that, on an issue as important to the forecast cost of the EA, NB would have kept a copy of its own internal analyses. When asked to produce copies of all reports, studies and analyses of the external environmental consultant on the use of the Bruce-to-Milton EA as a template, NB responded that it “has not been able to locate copies of Dillon reports, studies or analyses on the use of Bruce-to-Milton EA as a template”. (Exhibit 1.JD1, NextBridge HONI.6) Whether Dillon has such material, and could have produced it if asked by NB to do so, cannot now be known.

63. HONI submits that the last-minute introduction of the reliance on the Bruce-to-Milton EA as an explanation for NB’s forecast development phase EA cost, combined with NB’s failure to produce evidence on which the OEB can conclude that it was prudent to do so, deprives the OEB of the ability to reach that conclusion.

64. NB argues that it was faced with unexpected requests for more work from the MOECC and the MNRF. NB described the impact of those requests, as follows:

And so once we began developing the project and having conversations with Ministry of Natural Resources and Forestry and other regulatory bodies, the Ministry of Environment and Climate Change, more and more asks outside of what our experience has been were included. And this is a very large linear infrastructure project in Northern Ontario and one of those has not been undertaken in quite some time. So there was a lot of extra work that the Ministry of Natural Resources and Forestry and the Ministry of Environment and Climate Change had asked for.

And so in our collective experience as NextBridge, both NextBridge and NextEra, we had not seen such a large ask for this amount of permitting to be done prior to permitting in the construction phase -- these amount of field studies, sorry, to be done prior to the construction phase.

(Transcript, EB-2017-0182/EB-2017-0194 Vol. 1, p. 76)

65. It is common knowledge that, throughout an EA process, a proponent will receive numerous requests for additional studies and information from the MOECC. This is particularly the case in northern, remote, or sensitive areas. NB, given its claims regarding NextEra's experience and knowledge resulting from past projects, should have and would have been aware that such requests would be received, even if NB had not retained an environmental consultant for the EWT project. However, NB, in its Undertaking response, acknowledged that it relied on the services of recognized and experienced EA experts, Dillon, who presumably would have advised NB to anticipate and budget for numerous requests for additional work that would arise throughout the EA process. Dillon should also have recommended to NB that it provide for a large contingency when estimating EA costs due to the unpredictability of the number and types of studies or information requests that might be made by the MOECC. Whether Dillon provided that advice can now never be known.

66. NB's suggestion that there is something unique or more onerous for EA projects in northern Ontario is also something that NB should have anticipated, especially with the assistance of Dillon. Mining projects in northern communities are as complex, if not more so, than other projects, and it is well-known among environmental EA experts that the EA process in the north will also be more complex than other projects. None of this should have come as a surprise to NB, even without advice from Dillon.

67. HONI submits that NB led no independent evidence to support its claim that the costs associated with the EA process could not have been anticipated or were unexpected. In order to properly substantiate its assertions in this regard, NB could have, and indeed should have, led expert evidence to the effect that this particular EA was unusual and that the requests received by MOECC were highly irregular in number and nature. No such evidence was presented. In fact, NB conceded that comments provided by regulators were not unique or unusual, they were simply not anticipated because the scope had not been required for the Bruce-to-Milton project. (EB-2017-0182 - Exhibit IJD1.NextBridge.HONI.6 Part d) – August 24, 2018)

68. NB states that it submitted terms of reference for a class environmental assessment but was told that an individual class assessment was required, a change which NB

described as one of the “types of extenuating additional things” that happened during the development phase that caused the increase in costs. (Transcript, EB-2017-0182/EB-2017-0194 Vol. 1, pp. 80-81)

69. HONI submits that the requirement for an individual environmental assessment is something NB’s expert advisors, Dillon, should have known. There is no explanation provided by NB for its assumption that the EWT was eligible for a class environmental assessment, particularly given that the *Electricity Projects Regulation* (O. Reg. 111/01) specifies an individual environmental assessment for a transmission project of this nature. Even if, astonishingly, Dillon did not know that, a simple check with the MOECC at the outset would have clarified the requirement. Ratepayers should not be required to pay the costs of correcting such an obvious error.

70. Some portion of the additional costs in this category, those arising from the change in the route around Pukaskwa National Park would seem on the surface to be eligible for recovery. However, NB is unable to identify the amount of costs in this category that are attributable solely to the route around Pukaskwa National Park. (Transcript, EB-2017-0182/EB-2017-0194 Vol. 1, p. 151.) In one Undertaking response the estimate is arbitrarily computed to be 11% of \$15.8M, or \$1.7M – based on the increase in distance caused by the re-route, an additional 50 km over a 450km total route. (EB-2017-0182 – NextBridge Undertaking Responses – Exhibit JD 1.6 – July 23, 2018 – p. 3) Conversely, in response to interrogatories (EB-2017-0182 – NextBridge Interrogatory Responses - Exhibit I.JD1.NextBridge.HONI.3 – August 24, 2018), NB clarified that all activities tagged in Exhibit JD 1.2 “Affected by Project Delay” and “Affected by Major Re-Route” meant that the referenced activity was affected by the Project delay and/or a major re-route. (EB-2017-0182 – NextBridge Undertaking Responses – Exhibit JD 1.2 – July 23, 2018 – pp. 7-41)

71. Summing all those activities up results in the re-route either individually, or in combination with the delay, increasing costs by approximately \$5.8M alone to a maximum of approximately \$12.2M. Whatever that amount is, there is no evidence upon which the OEB can conclude what the costs were, nor if they were prudently incurred

72. HONI submits that there is no basis upon which the OEB can conclude that a portion of the costs in this category are *prima facie* eligible for recovery because they could not be expected. In addition, there is no basis upon which the OEB can conclude that the costs, even if they could not be expected, were prudently incurred.

(b) Land Rights

73. The OEB-approved costs in this category in the Designation Decision were approximately \$2 million. The Excess Development Costs in this category are approximately \$3.8 million.

74. HONI has noted earlier that the costs in this category were not caused by the extension of the in-service date. By NB's own admission, the costs in this category were moved from the construction phase. HONI notes, in passing, that notwithstanding NB's decision to "pull forward" costs in this category from the construction to the development phase, NB's land rights costs in the construction phase have increased by \$5.5 million. (Exhibit 1.B. NextBridge Staff 24)

75. Finally, there is no evidence that the costs incurred in this category are prudent.

76. HONI submits that the costs in this category should not be recovered.

(c) First Nations and Métis Consultation

77. The OEB-approved costs in this category in the Designation Decision are approximately \$1.7 million. The Excess Development Costs in this category are \$1.5 million.

78. NB acknowledges that the additional costs in this category were not caused by the extension of the in-service date. Rather, NB decided that, in its view, "one of the key things that we deemed was critical and vital for the project was to continue doing Indigenous consultation over the extended development period". (Transcript, EB-2017-0182/EB-2017-0194 Vol. 1, p. 103)

79. NB characterized its activities in this category, during the extended development period, as follows:

So precisely what we did was the same things, just more of it for consultation. There is the same type of activities, but just on a continuum, there was more consultation, more capacity funding, more discussions, more meetings.

(Transcript, EB-2017-0182/EB-2017-0194 Vol. 1, p.108)

80. In addition, HONI submits that it would be unfair to allow NB to recover the costs of the extended First Nations and Métis consultation. The parties to the Designation Process would have based their estimates for the cost of consultation based on the time line that ended with the filing of an LTC application in late 2014 or early 2015.

81. In addition, NB has provided no evidence that these additional costs were prudently incurred.

82. NB seems to have assumed that all costs of consultation with Indigenous communities would be recoverable because consultation is required. Ms Tidmarsh stated:

We deemed it prudent and important to keep up our consultation, especially since we were actually directed by the Crown to do so
(Emphasis added)
(Transcript, EB-2017-0182/EB-2017-0194 Vol. 1, p. 107)

83. NB provided no evidence that the Crown directed NB to undertake additional consultation during the extended development phase.

84. That NB is required to consult does not mean that all of its costs for doing so can be deemed to be prudent and recoverable from ratepayers. NB is obligated to provide evidence that the costs were prudently incurred.

85. HONI submits that the additional costs in this category should be disallowed.

(d) Other Consultation

86. The OEB-approved costs in this category in the Designation Decision are approximately \$500,000. NB states that incremental costs in the extended development period in this category are approximately \$1.1 million.

87. The costs in this category are attributable to NB's view that stakeholders should be kept advised of the delay in the construction of the EWT. There is no evidence that the costs in this category were necessary, let alone prudently incurred. NB conducted four rounds of open houses despite only being required to complete three. NB documents that NB staff representation at several open houses outnumbered attendees, almost tripling the number of attendants at one open house. (EB-2017-0182 - Exhibit I.JD1.NextBridge.STAFF.2 – August 24, 2018)

88. HONI submits that the costs in this category should be disallowed.

(e) Project Management

89. The OEB-approved costs in this category in the Designation Decision are approximately \$1.3 million. NB states that incremental costs in the extended development period in this category are approximately \$3.7 million. (Exhibit B, Tab 16, Schedule 1, Attachments 9 and 11)

90. The sheer magnitude of the costs in this category demands particularly scrupulous attention.

91. These are costs for work which was to have been completed by the early part of 2015, the original date for the filing of the LTC application. These are costs, then, for work which should have been captured by the estimates approved in the Designation Decision. That NB spent nearly three times the amount, on project management, in the extended development period, than had been approved in the Designation Decision strongly suggests that NB grossly underestimated the costs in this category in the Designation Process. To allow NB to recover this remarkable excess would be unfair and would undermine the integrity of the Designation Process.

92. NB describes the project management costs for the extended development period as merely a continuation of work that had been done before the OPA's letter. In the words of Ms Tidmarsh: "there was nothing new or outside of the scope". (Transcript, EB-2017-0182/EB-2017-0194 Vol. 1, p. 114)

93. HONI acknowledges that, *prima facie*, some costs may have been necessary to maintain NB's infrastructure, over the extended development period, are recoverable. However, there is no evidence that the enormous increases in costs were necessary, let alone prudently incurred.

94. While HONI acknowledges that some costs in this category should be recoverable, there is no evidence upon which the Board can conclude how much should be recoverable. As is the case in the other categories of cost claim, the OEB should not guess as to the amount that can legitimately be claimed in this category.

(f) First Nations and Métis Land Acquisition and Participation

95. For the reasons set out in paragraphs 42-45 inclusive, above, HONI submits that the costs in this category should not be recoverable.

IV Conclusion

96. HONI acknowledges that, *prima facie*, some costs for the extension of the development period should be eligible for recovery. Unfortunately, based on the evidence that NB has chosen to lead, the OEB cannot determine what that amount should be. The OEB should not be left to guess which of the costs caused by the delay were prudently incurred, and should be allowed to be recovered by NB.

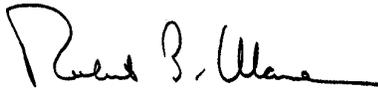
97. In theory, the OEB might also allow the recovery of costs for having to explore alternative routes following denial of access to Pukaskwa National Park. That said, the OEB has no evidence as to what those costs were and whether they were prudently incurred.

98. HONI submits that the OEB should attach conditions to the recovery of any Development Costs. The recovery of Development Costs should be on the condition that all reports, and in particular the results of all environmental assessment work should be made public and available to anyone. HONI submits that this should include Indigenous consultation agreements, Indigenous participation agreements, and the results of Indigenous environmental assessment work. Neither NB nor any of the Indigenous groups who are parties to this proceeding have provided evidence as to why any information about Indigenous participation,

including environmental assessment work, should be kept in confidence if the costs are to be recovered from ratepayers.

99. Given that the deciding of the right to develop was explicitly distinguished from the right to construct, it is clear that the Development Phase of the project was always intended to be for the benefit of the project, not for the exclusive benefit of the designated developer. Among other things, to find otherwise would mean that the OEB intended that the competition for the construction phase of the project would require all competitors to redo work that had already been done, a finding which would be illogical. Furthermore, to find otherwise would mean that the OEB intended that competition for the construction phase of the project would be inherently biased against anyone but NB. That cannot have been the OEB's intention or the effect of the Designation Decision.

All of which is respectfully submitted.



Robert B. Warren
Counsel to Hydro One Networks Inc.
September 19, 2018
11983512.6

TAB 10

1 **OEB Staff Interrogatory # 10**

2
3 **Reference:**

4 EB-2017-0364 Evidence, Hydro One Undertaking Response JT2.21
5 Hydro One's Construction Cost Estimates

6
7 In response to undertaking JT2.21 filed on May 25, 2018, Hydro One provided construction cost
8 estimates for the route using the same cost categories as in Table 2 of NextBridge's response to
9 CCC #8. In its undertaking response, Hydro One provided explanations for cost variances where
10 in Hydro One's view the variances were substantial.

11
12 **Interrogatory:**

- 13 a) With respect to costs of materials and equipment, Hydro One's estimate is approximately
14 34% lower than NextBridge's. Please specify and explain the cost reduction driven by each
15 of the following factors:
- 16 i. Optimized tower design
 - 17 ii. Shorter length of the line
 - 18 iii. Global purchasing power
 - 19 iv. Any other factors
- 20
- 21 b) Please advise as to how Hydro One calculated the materials and equipment cost of
22 approximately \$58 million and any assumptions on which that calculation was based?
- 23 i. Is any portion of the \$58 million amount part of the proposed fixed price EPC
24 contract with SNC-Lavalin? If so, how much?
- 25
- 26 c) With respect to the "Land Rights" cost category, Hydro One's estimate is significantly lower
27 than that of NextBridge. Please explain:
- 28 i. In detail how Hydro One calculated a land rights cost that is only 41% of the estimate
29 provided by NextBridge?
 - 30 ii. Why the estimated costs of the Land Rights do not vary whether Hydro One goes
31 through or around Puskaskwa National Park? Are there not additional land rights
32 costs that would be incurred if Hydro One has to go around the Park?
 - 33 iii. What are the "instruments" that Hydro One is considering in acquiring land rights?
34 What are the cost associated with each of these instruments?
 - 35 iv. What is the basis for Hydro One's belief that it will reach "voluntary settlements"
36 with the vast majority of property owners?
 - 37 v. What are the total estimated costs associated with voluntary settlements?

1 vi. What are the total estimated land rights acquisition costs for the properties where
2 voluntary agreements could not be reached?

3 vii. What is Hydro One's timing in acquiring land rights?
4

5 d) Hydro One allocated over \$18 million to the First Nation and Métis Participation cost
6 category. Hydro One noted that this funding was accounted for in the Site Clearing,
7 Preparation & Site Remediation cost category in Exhibit B, Tab 7, Schedule 1, Table 3 and
8 that the funds have been redistributed for the purpose of comparison in response to JT.2.21.

9 i. Please identify and define categories of economic participation included in First
10 Nation and Métis Participation and dis-aggregate and itemize the total estimated cost
11 of \$18,450,000 shown in response to JT.2.21.

12 ii. Please explain the rationale for accounting for the First Nation and Métis
13 Participation costs in the Site Clearing, Preparation and Remediation cost category in
14 Exhibit B, Tab 7, Schedule 1, Table 3.

15 iii. Are there any potential participation costs that are not included in the \$18 million
16 amount? If so, please explain what they are?
17

18 e) Hydro One's estimated costs for Site Clearing and Access are 38% lower than NextBridge's.
19 Hydro One noted that the variance is due to a much smaller environmental footprint.

20 i. Please explain why this is the case and how Hydro One's estimates were calculated.

21 ii. Please explain why the site clearing costs are substantially lower than NextBridge's
22 even for the HONI-NextBridge "Bypass" Route?
23

24 f) Hydro One's contingency is about \$10.8 million and is exclusive of \$54 million of risk and
25 contingency in the fixed-price EPC contract.

26 i. What are the risks categories covered by the \$10.8 million contingency?

27 ii. What are the risks categories covered by the \$54 million contingency in the EPC
28 contract?

29 iii. What are the risks that are not covered by the \$10.8 million contingency?

30 iv. What are the risks that are not covered by the \$54 million contingency?
31

32 **Response:**

33 a) As explained in Exhibit JT2.21, Hydro One does not have detailed information on the
34 NextBridge costs which served as inputs to Table 2. Hydro One's response therefore can
35 provide only Hydro One's beliefs about the variance from NextBridge's costs.

1 Hydro One's response is based on material only, including tower steel, foundation steel,
2 conductor, wire, hardware and anchors. Equipment used in the construction is included in
3 the separate Construction and Site Clearing, Access categories.

- 4 i. Hydro One's tower designs differ greatly from NextBridge's, particularly in the
5 guyed tangent towers, which account for 80% of the towers used in the LSL line:
6 Hydro One's towers were optimized for weight to enable them to be lifted by an
7 erecting helicopter in a single lift. Compared to NextBridge's Y-guyed tangent
8 structures, Hydro One's design keeps the conductors closer to the centreline, enabling
9 a lighter structure and a narrower right-of-way. This design is also optimized for
10 helicopter stringing.
- 11 ii. The Hydro One preferred routing is approximately 10% shorter than the NextBridge
12 route, resulting in the use of less material, e.g. number of towers and foundations,
13 length of conductor, OPGW and steel wire.
- 14 iii. SNC-Lavalin has developed projects around the world and in so doing has experience
15 in sourcing materials from various countries, enabling preferred pricing due to the
16 volumes and purchasing power from repeated project development.
- 17 iv. Given the lack of detailed information on the NextBridge costs, Hydro One is
18 unaware at this time of any other factors.

19
20 b) The approximately \$58M in materials was estimated through competitive market price RFPs
21 for the materials proposed for the entire project. The quantities were derived from bills of
22 material for the preferred LSL route.

- 23 i. All of the \$58M amount is part of the fixed price EPC contract with SNC-Lavalin.
24

25 c) Hydro One has no knowledge as to how NextBridge developed its estimate. Therefore,
26 Hydro One cannot explain why NextBridge's estimate is much higher. What Hydro One can
27 do is to provide the following information.

- 28
29 i. Hydro One's land rights cost estimate is based on the following components:
- 30 • 113 patented properties wherein Hydro One would acquire fee simple or easement
31 rights, representing less than 30% of the land rights area required. These land
32 rights were estimated using market and injurious affections studies specific to the
33 LSL project and land use types affected. Included in the market value payment
34 are incentive payments set through Hydro One's Land Acquisition Compensation
35 Principles (LACP);
 - 36 • The remaining land area requirements, which are greater than 70% of the land
37 rights area required, are to be secured through licences and leases entailing

- 1 recurring payments. These payments are in accordance with prevailing rent
2 schedules with MNRFP and Parks Canada;
- 3 • Business loss/disruption estimate based on an overview of the line and the
4 frequency of occurrence on past projects;
 - 5 • Land rights within First Nation reserves, which are less than 3% of the land rights
6 area required, are to be secured through permit with annual payments based on
7 market value and payments in lieu of taxes, similar to the existing transmission
8 occupations;
 - 9 • In support of the land rights acquisitions, the cost estimate includes studies,
10 capacity funding, agent and legal fees, and surveys;
 - 11 • Temporary rights for off-corridor access and facilities, including storage yards, fly
12 yards and camps.
- 13 ii. The route around Pukaskwa National Park would result in approximately 14%
14 additional Crown land area and two fewer impacted parcels. The cost difference is
15 largely for the annual rights payment to the MNRFP, which would increase by the
16 equivalent 14% (approximately \$10K annually).
- 17 iii. Hydro One will be acquiring the following rights (stated costs exclude incentives,
18 capacity funding, agent, legal and surveys):
- 19 • Permanent Land Rights lump sum payment (i.e. easements, fees simple, railway
20 crossings and MTO encroachments) - \$1,763K
 - 21 • Permanent Land Rights recurring payments (i.e. MNRFP land use permit, Parks
22 Canada licence and First Nation transmission permits)
- 23 iv. The acquisition of land rights is based on market and injurious affection studies
24 specific to the LSL project setting and impacted land use types. Included in market
25 value payments are incentive payments from Hydro One's LACP, which provides a
26 significantly greater payment than market, being greater than three times market for
27 the median property. These incentives would be lost to the property owner if
28 expropriation were to occur. Therefore, Hydro One has a high success rate in
29 achieving voluntary settlements: approximately 90% on Bruce to Milton and 100%
30 on both Supply to Essex County Transmission Reinforcement and Barrie Area
31 Transmission Upgrade, which were Hydro One's three most recent major transmission
32 projects.
- 33 v. Hydro One has assumed 100% voluntary settlement based on the response to part c)
34 iv) above. The total cost for voluntary settlements is \$10,978K.
- 35 vi. In its risk assessment, it identified expropriation which was assessed as a low
36 probability. Expropriation has been identified in the Risk Registry and costs have not
37 been included in the Real Estate estimate. The results of Bruce to Milton were

1 considered and adjusted downwards to a total of 10%, or 8 of the impacted patented
2 properties (“IPP”), wherein Hydro One has the ability to expropriate. The cost of
3 expropriation of these properties has been estimated at \$2,400K.

4 vii. based on a construction start of Q3 2019, Hydro One is seeking to achieve all
5 voluntary settlements by May 2019.

6 d)

7 i. The cost for Indigenous businesses to execute Site Clearing, Preparation and Site
8 Remediation services has not been disaggregated. This estimate represents a genuine
9 pre-estimate from previous projects and an assessment of capacity for this project. Hydro
10 One will continue to strive to maximize the utilization of Indigenous labour within the
11 construction of the works and does not envisage any material impact on the overall
12 construction price.

13 ii. Through previous project experience it is understood that Site Clearing, Prep, and
14 Remediation contract opportunities would typically be executed by Indigenous
15 businesses, either on their own or in partnership with other Indigenous or non-Indigenous
16 businesses, which is why the First Nation and Metis participation was accounted for in
17 this category.

18 iii. No.

19
20 e)

21 i. The difference is due to the ROW space required due to (1) the design and (2) the
22 location when paralleling the existing EWT, as well as (3) the reduction in linear length
23 due to going through Pukaskwa National Park. When comparing designs, the need for
24 ROW width for Hydro One is 150’ compared to the 210’ width that NextBridge says it
25 requires. Hydro One then takes into account the proximity to Hydro One’s existing EWT
26 line, which reduces Hydro One’s 150’ requirement to 120’. Additionally, the Park route
27 reduces the length by 40km.

28 ii. The site clearing costs are substantially lower even with the bypass route because the
29 Hydro One corridor width is smaller than that of NextBridge, resulting in a difference of
30 approximately 450 hectares difference in clearing area.

31
32 f)

33 i. Refer to current Risk Registry, provided at Exhibit I, Tab 5, Schedule 15.

34
35 ii. The EPC Contract with SNC-Lavalin covers an extensive scope of EPC work associated
36 with this project, which is detailed in JT2.22 – Appendix A – Scope of Work - Division
37 of Responsibility, however at a high level is outlined for ease below:

- 1 a. Project Management and Project Controls for the EPC Project
- 2 b. Engineering:
 - 3 i. Development and design of structure types
 - 4 ii. Selection of centerline and structure spotting on the right of way
 - 5 iii. Design of assembly and hardware details
 - 6 iv. Geo-technical interpretation and design of foundations
 - 7 v. Specifications for procurement of materials
- 8 c. Procurement:
 - 9 i. Procurement of all materials (e.g. lattice tower steel, conductor, hardware
 - 10 and assemblies, etc.)
 - 11 ii. Establishment and administration of all subcontracts for services utilized
 - 12 in the construction of the project
- 13 d. Construction
 - 14 i. Establishment of temporary facilities associated with the project (e.g.
 - 15 construction person camps, site offices, material laydown yards, fly yards,
 - 16 etc.)
 - 17 ii. Establishment of temporary access roads to the ROW
 - 18 iii. Clearing and brushing of the ROW
 - 19 iv. Construction of the foundations associated with the transmission line
 - 20 v. Assembly, erection and stringing of the transmission line
 - 21 vi. Restoration and site remediation associated with the de-mobilization of the
 - 22 construction works

23
24 In developing a fixed price to cover the scope of works associated with the EPC contract,
25 a risk and contingency allowance is derived to cover differences in quantities,
26 construction execution techniques, variances in production rates, etc., associated with the
27 level of definition at time of bid to those experienced during project execution. Changes
28 to the EPC Contract price will only occur for items that are outside of the scope of the
29 EPC Contract and given the broad and encompassing nature of the EPC Contract between
30 Hydro One and SNC-Lavalin, many of the interface risks between engineering,
31 procurement and construction activities would fall under the scope of SNC-Lavalin. In
32 other project delivery methods chosen by other owners or developers, where there are
33 elements of the engineering and procurement being handled by the owner, the risk of
34 construction costs impacts increases for changes or delays associated with the
35 engineering and material supply, resulting in price adjustments which would be borne by
36 the rate payer

- 1 iii. As the Project has progressed, Hydro One has updated its contingency since some risks
2 that were originally anticipated have not materialized and/or some have. The updated
3 contingency estimate for the Hydro One-specific portion of the LSL project is now
4 \$5.4M. The risks not currently covered by Hydro One's contingency remain those
5 identified in Exhibit B, Tab 7, Schedule 1, of the prefiled evidence.
6
7 iv. Please refer to the response to ii above.