

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 an electricity transmission line
between Thunder Bay and Wawa, Ontario.

REPLY ARGUMENT OF HYDRO ONE NETWORKS INC.

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I INTRODUCTION AND OVERVIEW

1. This is the Reply of Hydro One Networks Inc. (“HONI”) to the written arguments and submissions of the other parties to the Combined Proceedings.
2. Written arguments and submissions have been received from the following parties:
 - a. NextBridge (“NB”);
 - b. Vulnerable Energy Consumers Coalition (“VECC”);
 - c. Ontario Energy Board Staff (“Staff”);
 - d. Consumers Council of Canada (“CCC”);
 - e. School Energy Coalition (“SEC”);
 - f. Power Workers’ Union (“PWU”);
 - g. Anwaatin Inc. (“AI”);
 - h. Métis Nation of Ontario (“MNO”);
 - i. Michipicoten First Nation (“MFN”);
 - j. Bamkushwada Limited Partnership (“BLP”);
 - k. Biinjitiwaabik Zaaging Anishinaabek (“BZA”).
3. As in HONI’s Argument in Chief (“AIC”), we will refer to the applications of HONI and NB for Leave-to-Construct as the “LTC applications” and the line for which both HONI and NB seek LTC as, generally, the “EWT” and the “EWT line”.
4. The comments of intervenors captured in their written arguments and submissions and HONI’s position on those comments are as follows:
 - i) HONI’s costs to construct the EWT are materially lower than those of NB. HONI’s total forecast project costs are \$642M. NB’s estimated costs range from \$777M to \$850M, the latter being the more realistic number.
 - ii) HONI’s Board has agreed to a not-to-exceed (“NTE”) price of \$683M, the details of which are set out below;
 - iii) The “risks” which some parties argue will increase HONI’s forecast costs are either non-existent (having to use an alternate route around Pukaskwa National Park), not likely to increase costs (Indigenous consultation and economic participation, and land rights) and unlikely to increase materially beyond what has been forecast;
 - iv) It is neither reasonable nor fair to burden the calculation of HONI’s project costs with costs that it did not cause and for which it is not responsible (system costs and NB’s sunk costs);
 - v) HONI’s project proposal is technically sound, meets all section 92 filing requirements, all applicable technical requirements, and will ensure a reliable supply of electricity in a cost-effective way;

- vi) The applicable in-service date is 2021, regardless of who builds the EWT; and HONI can meet that date and satisfy the environmental assessment requirements;
 - vii) HONI can satisfy the Indigenous consultation issues that are within the Ontario Energy Board's ("OEB") jurisdiction in that it can complete the consultation and secure appropriate commercial agreements before the 2021 in-service date and do so without changes in its forecast costs;
 - viii) HONI can and will offer employment and training opportunities to Indigenous youth on this and other projects; and
 - ix) HONI satisfies the statutory criteria set out in section 96 of the *Ontario Energy Board Act, 1998*¹ ("OEBA") while NB does not.
5. The merits of HONI's application are simple and clear. Approving the HONI Application will provide:
- i) Lower revenue requirement that translates into lower Uniform Transmission Rates for Ontario ratepayers, as well as lower ongoing maintenance costs;
 - ii) An unprecedented NTE price protecting ratepayers from any unforeseen construction risks;
 - iii) Reliable and quality electricity service to northwestern Ontario and Ontario as a whole through a technically efficient solution that optimizes the use of existing infrastructure;
 - iv) Ratepayers with a reliable and dependable workforce that will maintain and operate the facilities for the life of the asset;
 - v) Indigenous communities with opportunities for employment, training, and equity ownership in alignment with government policies
 - vi) The Province of Ontario with a superior alternative that complies with Ontario's *Planning Act* and has a significantly smaller environmental footprint, as a result of a narrower right-of-way and also a shorter route.
6. Rather than deal with each of the written arguments individually, this Reply is grouped into the following headings:
- Transmission Line Process
 - Considerations Under Section 96 of the OEBA
 - Environmental Assessment

¹ *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched. B.

- Indigenous Affairs
 - Conditions
7. The context for the consideration of the competing LTC applications was established by the OEB's transmission line process. HONI will review the parties' arguments about that process, and its implications, before turning to the other issues.

Transmission Line Process

8. In its AIC, HONI argued that consideration of the two LTC applications should not be considered separately from what it called the "Designation Process".² That process involved more than just the designation of a party to do the development work. The process in its entirety should more accurately be called the transmission line process.
9. The transmission line process involved the following components:
- a. The statements of Government of Ontario and OEB policy with respect to the development of transmission lines;
 - b. The designation phase, that is the phase in which one party was selected to undertake the development work at ratepayer expense;
 - c. The LTC phase.
10. The transmission line process was created pursuant to the OEB's policy entitled "Framework for Transmission Project Development Plans" ("EB-2010-0059"). As HONI noted in paragraph 14 of its AIC, one of the stated objectives of the policy was to "support competition in transmission in Ontario to drive economic efficiency for the benefit of ratepayers".³
11. Consideration of the LTC applications must be guided by the extent to which the LTC applications fulfil that policy objective. The process which the OEB implemented to carry out that policy objective, and which gave rise to the LTC applications before it, must be assessed according to the following criteria:
- a. Did it allow for effective competition?
 - b. Did it limit the ability to compete by creating, however unintentionally, unfair advantages for the chosen developer?
 - c. If it created unfair advantages, how can the OEB neutralize the effect of those advantages in order to achieve the policy objective of ensuring competition for the benefit of ratepayers.

² HONI AIC, pp 12-28.

³ HONI AIC, pp 14.

12. It bears repeating, because of its importance, that the OEB, in its Designation Decision, stated that “designation does not carry with it an exclusive right to build the line, or an exclusive right to apply for leave to construct the line”⁴. It is also important to note, as HONI did in its Response, that some parties which NB claimed support its LTC application clearly did not understand that the LTC application process was open to anyone, and that the selection of NB to do the development work did not mean that it had been selected to do the construction work⁵.
13. Several of the intervenors have, in their arguments, made submissions about the significance of the designation phase of the transmission line process.
14. NB, in paragraphs 5 and 6 of its Response, refers to one policy objective, namely to “encourage new entrants to transmission in Ontario bringing additional resources for project development” as, in effect, requiring that the entity building the transmission line must be someone other than HONI. To allow a new transmitter to build a line in Ontario without regard to cost and principally, if not solely, on the basis that it is a new entrant would violate the policy objective of the transmission line process. That consideration is also not within the scope of the OEB’s jurisdiction under section 96 of the OEBA.
15. NB, in paragraph 9 of its Response, asserts that “it has never asserted that the designation decision gave it the right to construct the project”. What it did do was to allow some of the groups supporting its LTC application to make that assumption, and to convey it to the government and to the public, without correcting them.⁶
16. In paragraph 10 of its Response, NB asserts that it has done nothing to “distort” consideration of the issues before the Board. HONI submits that in fact NB has done that, in two ways. First, it has continued to lead evidence, and make arguments, predicated on a 2020 in-service date when it has known for some time that that date was not achievable. Second, it has sought support for its application, and indeed sought assistance from two Ministers to by-pass the OEB’s LTC application process, by arguing that a 2020 in-service date was required, and that a 2020 in-service date was achievable, when it knew that both of those assertions were untrue.⁷
17. VECC, in paragraphs 1.4 and 1.5 of its argument, is sharply critical of the effects of the Designation Process implemented by the OEB. In paragraph 1.4, VECC makes the following statement:

The Board should also consider how the process was from the beginning fatally flawed – allowing participants in the designation process to put forward unrealistic project costs in hopes of landing rights to do the “development work”. A term so pliable that it came to mean whatever work was done prior to the granting of a leave-to-construct. The OEB did however impose monthly, and then

⁴ EB-2011-0140, “East-West Tie Line Designation Phase I Decision and Order” August 7, 2013, p. 4.

⁵ HONI Response dated October 31, 2018, paras. 79-82.

⁶ See, for example, the letters referred to in para. 79 of HONI’s Response.

⁷ Ms. Tidmarsh’s letter to Ministers Ryckford and Phillips, dated July 24, 2018, in which Ms. Tidmarsh promoted NB’s proposal on the basis that it met the 2021 in-service date.

quarterly reporting. However it appears that this reporting requirement had no practical objective of keeping the process on track. In fact, in the absence of any intervention by the regulator, periodic reporting ultimately served to give comfort to NextBridge that they were on track to becoming the successful project constructor. (Emphasis added)⁸

18. SEC, in paragraphs 1.2.4 and 1.2.5 of its argument is, criticized NB for using the OEB process to hide the increases in its construction costs. In paragraph 1.2.4 of its argument, the SEC states, “The Board and ratepayers were never previously made aware that its [NB] forecast costs had increased by approximately 70% to \$737M”⁹.

19. In paragraph 1.2.5 of its argument, SEC makes the following statement:

While it may not have known the exact increase in costs, it is simply not credible for NextBridge to claim it did not know that its costs would likely be significantly greater than what it had forecast at the designation proceeding. If it truly did not know, then that raises a broader concern regarding its oversight capabilities over the project.¹⁰

20. Finally, in paragraph 1.2.8, SEC argues the following:

If NextBridge had publicly informed the Board that the forecast costs that were part of the basis for it being designated were woefully inaccurate, then other potential proponents would have had time to consider if they wanted to bring forward their own leave to construct applications. Hydro One would have had ample time to undertake environmental assessment work and similar development activities, and to mitigate or eliminate the major problems with their application that are primarily due to the condensed time they have to prepare to potentially undertake such a large project.¹¹

21. SEC is also critical of HONI for the way in which HONI has handled its LTC application. SEC argues, in paragraph 1.2.9 of its argument, that had HONI filed its LTC application earlier it would have allowed the OEB to “design a process that would be most appropriate for competitive selection”.¹²

22. In paragraph 1.2.9 SEC argues that “Hydro One’s approach has robbed the Board of many of the benefits of a competitive process.”¹³

23. In making those latter arguments, SEC ignores the reality that HONI could not have known that an LTC application was viable until it saw how exorbitantly NB construction costs had increased. And by filing its LTC application, HONI has not robbed the OEB of the benefits of a competitive process, but rather has insured that ratepayers have the

⁸ VECC Argument, para. 1.4

⁹ SEC Argument, para 1.2.4

¹⁰ SEC Argument, para 1.2.5

¹¹ SEC Argument, para 1.2.8

¹² SEC Argument, para 1.2.9

¹³ SEC Argument, para 1.2.9

benefit of a compelling competitive alternative. HONI has, in other words, restored competition to the transmission line process, and in so doing helped to correct some of the “fatal flaws” in the process identified by VECC.

24. CCC’s argument makes submissions on what it calls the “impact of the OEB’s designation of NextBridge in this proceeding”.¹⁴
25. On page 6 of its argument, CCC cites the Board’s statements in EB-2010-0059 as, in effect, imposing an additional onus on a competing LTC application.¹⁵ On page 7 of its argument, CCC suggests that a party other than a designated developer seeking to construct the line must demonstrate that its proposal is “materially better in respect of one or more of the prescribed criteria than the designated transmitter’s proposal, including being materially better when considering all of the criteria in conjunction with one another”.¹⁶ The “materially better” onus is one invented by CCC: it appears nowhere in the Board’s Designation Decision, directly or by implication.
26. HONI submits that there is no basis for the contention that there is a different, and higher, onus on a person other than a designated developer seeking to construct the transmission line. The OEB’s Designation Decision, which came after the policy statement in EB-2010-0059 that the CCC relies on, made no reference, directly or by implication, to an additional onus. The statements in the Designation Decision, cited above, were simply that anyone could seek leave to construct the line.
27. At page 15 of its argument, CCC refers to HONI’s proposal as one to “ostensibly compete” with the NB application.¹⁷ That derisive reference to HONI’s application is surprising, coming from an organization that purports to represent the interests of residential consumers. Similarly, VECC in their submission, befuddles HONI by suggesting that the functionally equivalent lower cost LSL Project should not be pursued by the OEB because millions of dollars in savings provide *no substantive benefit* or are *not material in relationship to the UTR*¹⁸. Organizations which represent consumers should support genuine competition as a fundamental benefit to their constituents.
28. What none of the intervenors do in commenting on the effect of the Designation Decision, and on the process created by it, is to explore how the flaws they identify can and should be mitigated to ensure effective competition.
29. For example, NB has been allowed time to develop relations with Indigenous groups, a benefit which NB has augmented by entering into anti-competitive exclusivity agreements with Indigenous groups. As will be discussed below in the Indigenous relations section below, HONI has already embarked on consultation with all 18 communities and will be able to successfully comply with its duty to consult.

¹⁴ CCC Argument, p. 5

¹⁵ CCC Argument, p. 6

¹⁶ CCC Argument, p. 7

¹⁷ CCC Argument, p. 15

II CONSIDERATIONS UNDER SECTION 96 OF THE OEBA

30. In determining whether a leave to construct application is in the public interest, the OEB must consider only (1) the interests of consumers with respect to prices and the reliability and quality of electricity service; and (2) where applicable and in a manner consistent with the policies of the Government of Ontario, the promotion of the use of renewable energy sources¹⁹. Given that the two solutions being proposed are functionally equivalent, the parties have generally agreed that in deliberating between the two applications, the focus should be on the interest of consumers with respect to prices and the reliability and quality of electricity service.

The Interest of Consumers with Respect to Price

31. In establishing whether the public interest has been met with respect to price the OEB will need to review the costs of both HONI and NB. It will also have to evaluate the risks which some parties allege will increase HONI's costs. All of these matters, including HONI's NTE price, are considered in this section, beginning with HONI's costs.
32. HONI's costs are divided into the following categories:
- i) Construction costs;
 - ii) Land acquisition costs;
 - iii) Indigenous consultation costs;
 - iv) Environmental assessment costs.
33. HONI's total project cost is \$642M, consisting of \$625M of construction costs and \$17M of development costs.²⁰ This compares to what NB claims are its total project cost of \$777M.

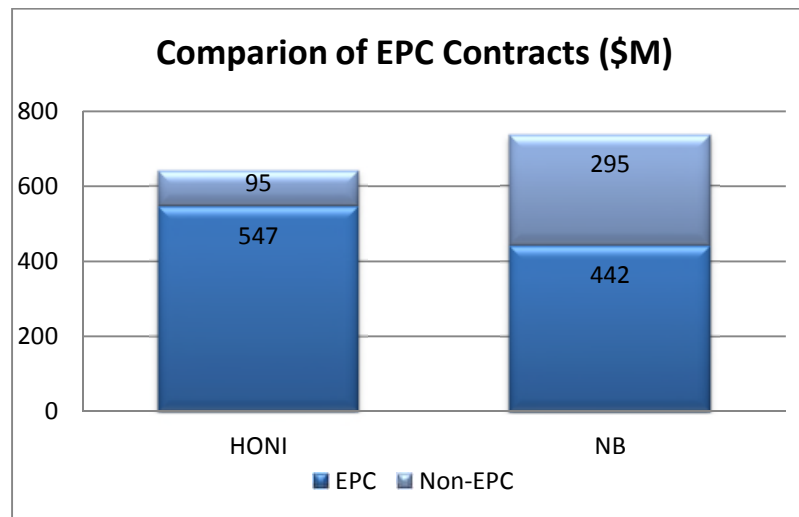
¹⁹ OEBA, s.96 (2)

²⁰ Exhibit I, Tab 1, Schedule 11

\$/million	HONI	NB
Development	17	40 ²¹
Construction	625	737
TOTAL	\$642	\$777

i) Construction Costs

34. HONI’s construction costs are significantly less than those of NB – \$112M less to be precise²². Intervenors have attempted to suggest that HONI’s costs are risky, e.g., a Class 3 estimate versus NB’s “cusp of” Class 1 AACE estimate. HONI disagrees.
35. Any perceived risk with the \$625M HONI construction cost is mitigated by a fixed-price EPC contract with SNC-Lavalin of \$547M, 85% of HONI’s total project costs. NB, conversely, has a fixed-price EPC contract with Valard that accounts for less than 60% of NB’s total construction costs of \$737M²³.



36. As SEC states in its argument,²⁴ and as outlined in Exhibit K5.1, NB is responsible for a greater proportion of the division of responsibilities between the project owner and EPC contract relative to the HONI EPC contract. That is not beneficial for Ontario ratepayers. For instance, NB’s \$295M non-EPC costs include costs associated with engineering and

²¹ NB through the Designation Process is allowed recovery of \$22.4 M; NB also is awaiting a decision of the allowance of the full \$40M

²² Exhibit K4.2 – HONI Construction Price of \$624.8M and NB Construction Price of 737M.

²³ It would appear that this translated to 57% of total project costs

²⁴ SEC Submission – Paragraph 2.2.16

the procurement of materials, neither of which is subject to a fixed price. NB has testified that the procurement of materials has not been secured and has only just shortlisted vendors²⁵. This exposes ratepayers to higher risks.

37. HONI's non-EPC secured costs to complete the LSL project represent less than 15% of its total project costs, or \$95M – this in itself is less risky. From a ratepayer perspective, specific to prices, this is a significant benefit and provides ratepayers with an assurance that is not afforded to them if the NB solution is pursued.
38. The HONI non-EPC costs of \$95M include costs associated with the acquisition of land rights, Indigenous consultation, environmental assessments, project management, interest during construction (IDC), capitalized overheads and a contingency amount.
39. The critique of HONI's costs, by NB and some intervenors, is that HONI's costs do not take account of what they term are "uncertainties" and "risks". At paragraph 19 of its Response, NB lists the potential risks to HONI's costs as being associated with such items as the failure to obtain necessary land rights; the failure to reach agreement with FNM communities; failure to obtain Parks Canada approval to traverse the Park; the failure to obtain a Declaration Order instead of an individual EA approval; and the failure to be permitted to rely on an approved NextBridge EA. HONI will deal with the alleged risk of failing to get Parks Canada approval in the Environmental Assessment section of this Reply, below.

ii) Land Acquisition Costs

40. With respect to the acquisition of land rights, there is no reason to believe that, if granted leave to construct, HONI could not successfully secure the necessary land rights and do so at a cost that would not exceed what is included in its existing forecast. HONI has already made significant progress in dealing with land acquisition matters.
41. HONI stands by its estimate of \$10.6M to acquire land rights during the construction phase of the Project.

iii) Indigenous Consultation Costs

42. An amount of \$3.6M is included as costs for Indigenous consultation within the \$95M non-EPC funding. Over the course of the construction schedule, the average rate of spend is approximately \$1M annually. This level of spending on Indigenous consultation, during the construction phase is consistent with other successfully completed HONI transmission projects.²⁶ Given that significant consultation has already been undertaken on the east-west tie line by both NB and HONI, the level of funding

²⁵ Transcript – Volume 5 – p. 41

²⁶ EB-2015-0216 – October 23, 2017 Report – Page 10

associated with Indigenous consultation embedded within the \$95M of non-EPC funding is reasonable.

43. HONI submits that there is no reason to think that, if HONI were granted leave to construct, that appropriate commercial arrangements could not be struck with Indigenous groups or that such arrangements would cost more than the amount already included in HONI's cost forecast. It bears repeating that HONI has had extensive dealings with Indigenous groups across the Province, dealings that have resulted in commercial and other arrangements beneficial to Indigenous groups, HONI, and ratepayers. Further information on the Duty to Consult and Accommodate is discussed later in this Reply.

iv) Environmental Costs

44. HONI has forecast \$2.4M to be spent on environmental matters during the construction phase. HONI's estimate includes all remaining EA costs post-leave to construct and oversight of all environmental requirements. All foreseeable environmental permitting and approval costs during construction are included in the EPC contract.
61. EA work already completed by NB, applicable to the approximately 80% of the LSL route common to NB's preferred route, is part of the public record and has already been made available to HONI by MECP. Any confidential information within the NB EA studies completed, such as the results of traditional knowledge studies or certain information gained from consultation with Indigenous communities, is not required, as information is being collected from these sources directly by HONI as it pertains to the LSL project. This is well underway and the cost of this activity is included in the overall project cost.

HONI's Not-To-Exceed Price

45. As noted in the Introduction and Overview section of this Reply, HONI's Board of Directors has agreed to offer a NTE price.
46. Intervenors and Board Staff have asked HONI if it would consider a NTE price if granted leave to construct approval. HONI now offers a NTE price of \$683M. This NTE price is subject to certain conditions which are similar to those proposed by Board Staff²⁷.
47. HONI agrees to a \$683 million NTE price subject to the following:
- OEB orders that all NB EA documentation be transferred to HONI, subject to any documentation that may be confidential such as TEK studies.
 - The not-to-exceed price excludes coverage for a genuine force majeure event, e.g., an earthquake.

²⁷ Staff Submission – October 31, 2018

- Significant costs associated with unforeseeable government intervention or direction would be subject to a prudency review for potential recovery of costs.
 - Approval of the EA by August 15, 2019. In the event the EA approval is not approved by August 15, 2019, HONI will be allowed to recover up to an additional \$14.761M.
48. HONI's not-to-exceed price will not include recovery of any system or sunk costs for the reasons discussed below.

System Costs and Sunk Costs

49. Several parties have argued that HONI's forecast costs must be increased by the addition of 1) system costs and 2) NB's sunk costs. HONI disagrees, for the reasons set out below.

System Costs

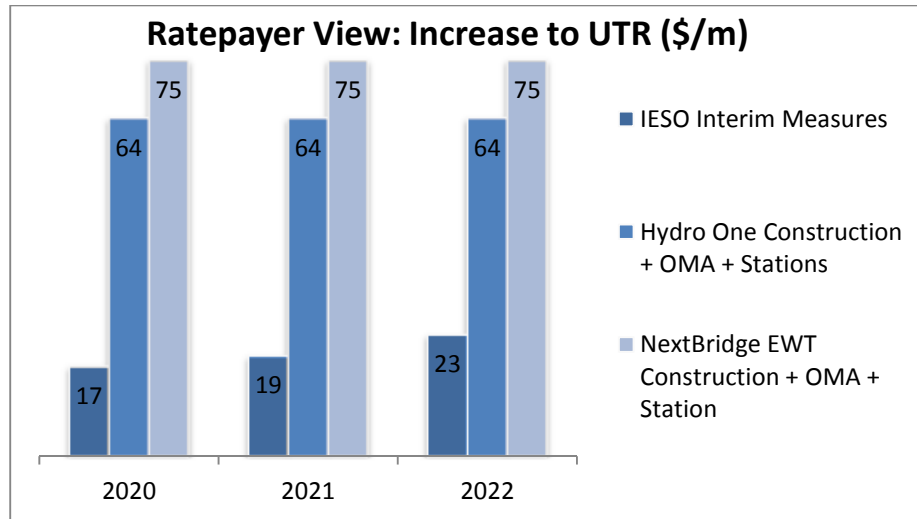
50. Several intervenors have argued that, in comparing NB's and HONI's forecast construction costs, HONI's costs should be increased by including what is referred to as "system costs", and NB's "sunk costs". HONI submits that it is not appropriate to burden HONI with those costs.
51. System costs are those which may be incurred to ensure a reliable supply in 2021 and 2022, because the EWT will not be in service. The IESO has forecast that those costs could be \$19M and \$23M, respectively.
52. HONI believes the IESO assessment is conservative and the actual cost of delayed in-service date can be significantly less than IESO's estimation.
53. PWU in paragraphs 27 and 28 notes that the IESO's potential costs of delay may be overstated, since the analysis implicitly assumes the cost of any additional capacity is the lifetime levelized cost of new local generating capacity. Additionally, the PWU notes that the Potential Capacity Costs used in Table 2 of the IESO Addendum Report, which have been the figures considered by parties in the analysis relating to the system delay costs, are based on the high \$180/kW-year assumption. These figures are close to the ceiling of the price range and do not reflect that cheaper options are available. Demand response was cleared at \$80/kW/year in 2018, and the IESO does not know the cost of continuing expiring generators or acquiring capacity from Manitoba or Minnesota. The IESO indicated that it believed the existing generators with expiring contracts are still in good condition and should be available to be re-procured.
54. But even if the OEB were to accept that some system costs were possible, and in the range posited by the IESO, that does not mean that HONI is responsible for those costs or

that those costs should be added to HONI's construction costs or recovered at all from HONI. The delay in the in-service date for the east-west tie line is due to the MECP decision to link the EA and permits for the Stations with the work on the east-west tie line. The in-service date for this line, as a result of the MECP decision, is now 2021 regardless of who builds it.

55. Moreover, the system costs have been misrepresented by intervenors as a punitive cost that ratepayers will incur. HONI submits that the opposite is true when taking into consideration the balancing of costs with reliability and quality of service as required by s. 96(2) of the OEBA. The IESO evidence is that should a capacity shortfall materialize, the IESO can reliably operate the Ontario transmission system by utilizing interim measures in the years 2021, and 2022. The total potential cost of the delay in each year, as aforementioned, is \$19M, and \$23M²⁸. These costs would then be recovered through the global adjustment mechanism, as documented by the IESO in interrogatory responses and reiterated by VECC in its submissions²⁹. Contrary to NB's assertions these costs are not additions to the capitalized costs of HONI, but are rather treated as one-time costs.
56. Whether any system costs are incurred or not, ratepayers will not be harmed. The evidence on the record is that the annual transmission revenue requirement will increase by approximately \$65M per annum if the HONI proposal is approved and by \$78M per annum if the NB proposal is approved. These increases are reasonable in the face of the reliability concerns associated with the drop-dead date of 2023 documented repeatedly by the IESO. However, prior to January 1, 2023, given that the IESO has stated that it can reliably operate the system with interim measures, the OEB must consider whether the public interest is better served by utilizing the IESO interim measures to reliably operate the Ontario transmission system. The difference in annual revenue requirements up until the end of 2022 is provided in the figure below.

²⁸ Addendum to the 2017 Updated Assessment for the EWT Need – July 26, 2018 – Table 2

²⁹ VECC Submissions – October 31, 2018 - para. 2.18



57. It is the Board’s duty to ensure that prices are not being increased without any significant benefit in reliability and quality of service. HONI acknowledges the IESO’s recommendation for a 2020 in-service date, but the record is clear that neither proponent can meet that date and there are options to utilize the IESO’s interim measures to reliably operate the Ontario transmission system.
58. HONI submits that its forecast project costs should not be burdened by the addition of system costs.

Sunk Costs

59. With respect to sunk costs, NB will seek to recover its development costs, beyond those approved in the Designation Decision, and some portion of its construction costs. The total of the sunk costs is approximately \$78M³⁰.
60. Both NB and the Intervenor, when comparing the construction costs of HONI and NB, argue that NB’s sunk costs should be added to HONI’s costs. SEC, at paragraph 2.4.8 of its argument asserts boldly:

These \$38.9M in sunk and windup costs should then be attributable to the [sic] HONI for the purposes of comparing costs of each application.³¹

61. The logic of that argument is that the increase in HONI’s forecast construction costs becomes a reason why the NB application should be preferred over that of HONI. But sunk costs were not caused by HONI and have no bearing on HONI’s construction costs.

³⁰ Transcript, Vol. 6, p. 194

³¹ SEC Argument, para. 2.4.8

62. The argument that HONI's costs should be burdened by sunk costs derives from the structure of the transmission line process which was so sharply criticized by, among others, VECC. It is an artificial advantage, which accrues to NB, and which prejudices the chances of a competing bidder. More broadly, it prejudices the achievement of the policy goal of having effective competition in the interests of ratepayers.
63. Allowing one proponent's excessive sunk to be used against another proponent's bid encourages excessive spending, distorts the assessment of the two construction proposals, and provides one proponent with a competitive advantage with little risk to it. NB, by imprudently incurring extra costs before LTC approval, would gain in two ways. First, It has the advantage that it may get approval for increased costs and therefore increase rate base; and, more importantly from a cost comparison perspective, these same costs can be used against a lower-cost competitor, namely the HONI proposal, to artificially inflate the costs of any competitive proposal. This is a no-risk exercise to NB.

NextBridge's Costs

64. NB's argument, reduced to its essence, is that the OEB can rely on its stated cost estimate of \$737M because NB has, as set out in paragraph 26 of its Response, undertaken "a very detailed and complete design and investigation work to be ready to proceed with the EWT Line Project. NB has a signed EPC contract that properly apportions accountability and oversight for project work between the owner and the contractor".³²
65. HONI states, with respect, that those assertions are essentially puffery and do not reflect the underlying realities.
66. As HONI details in paragraphs 44 to 51 inclusive of its AIC, NB's witnesses repeatedly stated throughout 2018 that changes in NB's construction schedules would result in increased costs. At the hearing, that story was changed to say that NB had changed the schedule but without any changes in costs. That change fundamentally undermines any confidence the OEB can place in the credibility of NB's cost forecast.
67. Staff, at page 11 of its argument, noted this contradiction. It made the following observation:

In cross-examination, NextBridge was either unable or unwilling to provide an estimate of the cost increase that may result from shifting its construction schedule from the Fall of 2018 to the Spring of 2019, despite previously indicating that the costs of such a change would be "significant". Moreover, NextBridge conceded that it had not even asked Valard what the potential costs of such a change would be.³³
68. HONI agrees with SEC's following submission, at paragraph 2.2.4 of its argument:

³² NB Response, para. 26

³³ Staff Argument, p. 11

SEC submits NextBridge's reluctance to update its construction cost forecast, even though both the environmental assessment ("EA") and leave to construct dates that were built into its original schedule have sufficiently changed, is an indicator that the real forecast cost sits at the +10% amount. This means the starting point for a cost comparison is a forecast construction cost of an additional \$73.8M.

69. As noted above, NB has repeatedly said that changes in its schedule create the risk of increased costs. NB now claims that that risk has now magically disappeared. It has not. The differences between HONI and NB are, first, that HONI has recognized risks and has provided some scenario analysis around those risks while NB has not, and second, that the risks HONI ostensibly bears have been quantified, while the risks NB bears have not. That NB's risks have not been quantified makes those risks no less real and no less important to a true comparison of the respective costs. HONI should not be penalized for being more transparent and more rigorous in its analysis.
70. As noted above, NB argues, in support of the credibility of its construction costs, that its EPC contract is preferable to HONI's EPC contract. NB relies, in particular, on the fact that the structure of the contract is such that it will more closely supervise the activities of the construction firm.
71. HONI has earlier noted that its EPC contract offers greater protection to ratepayers because 85% of the costs are fixed and are the responsibility of the contractor. Interface risks between the owner and the EPC contractor, such as those between engineering and construction, are reduced in the HONI Application. SEC made a similar observation, at paragraph 2.2.17 of its argument, "The benefit of a higher percentage of activities and costs included within the fixed price contract is that the project owners, and potentially ratepayers, have greater protection from issues that arise such as construction difficulties and forecast error."³⁴
72. With respect to NB's argument about the supposed virtue of its ability to oversee the actions of its contractors, SEC observes at paragraph 2.2.20 of its argument, in HONI's view correctly, that "that has nothing to do with the cost differences, and has nothing to do with its project management costs. In fact, Hydro One has budgeted more in both absolute dollars, and as a percentage of the overall budget, to project management."³⁵
73. In addition, the merits of the NB EPC contract, and of NB's confidence in it, are open to question. In that context, HONI agrees with the SEC comments that appear in paragraph 2.2.22 of its argument, as follows:

In contrast, the NextBridge-Valard EPC contract is not as iron-clad as one would have expected based on Mr. Mayers' comments regarding the Hydro One-SNC-Lavalin contract. While NextBridge testified at length that it had reviewed the revised project schedule with Valard and it had assurances that only the

³⁴ SEC Argument, para. 2.2.17

³⁵ SEC Argument, para. 2.2.20

milestones and not the costs would change, it admitted that it did not have this assurance in writing. Not only does NextBridge have no such assurance in writing from Valard, its own evidence is that there is not a single internal document referencing the assurance. With no Valard witness on the witness panel, there is nobody to verify the position of the contractor that there is no change in the budget based on the changes in the project milestones. Nobody on the witness panel had ever discussed the issue of cost changes with Valard. This was a surprising revelation considering that Valard will be reporting to NextBridge, not NextEra. SEC submits the Board should approach the assurance with caution.³⁶

74. NB repeatedly told the OEB that an OEB decision was required by a certain date in order to ensure that NB construction costs did not increase *substantially*. According to NB, this cost increase has not happened. On the last two days of the oral hearing, NB repeatedly told the OEB that their costs are on the cusp of a Class 1 estimate and that their final construction costs, despite all the delays, will still be +/- 10%. At the very end of the last day of the oral hearing, NB provides, for the very first time, that if they had not accelerated the schedule, they would be able to bring the price down without providing any evidence to substantiate this claim. This trust us approach has failed ratepayers before, and the OEB should not allow it to happen again.
75. As noted above, NB's project costs should be considered to be \$810M. The \$810M does not reflect all of the risks NB faces and so may well increase. There are still outstanding issues regarding construction start times, permits, indigenous consultation and other risks that are related to NB's application. As documented in paragraph 97 of the HONI AIC, crews may need to stop-work and remobilize due to NB's schedule not abiding to environmental restrictions, , and whilst these risks have not been quantified by NB they are nevertheless real, significant, and would be borne by the Ontario ratepayer.
76. Very late in the EA process, specifically, in September of 2018, NB changed its project construction schedule to the more accelerated construction schedule in its environmental assessment³⁷. Evidence provided by NB has not clearly shown how timing windows for clearing activities can be accommodated, permitting a summer 2019 construction start date.
77. The NB proposal also does not take into account the need to relocate the TIM facilities, which will increase the cost of the NB proposal and will impact NB's construction schedule. Typically, a s. 101 application to the OEB is filed with a leave to construct application. HONI cannot, based on the current record, tell when NB plans to file its s. 101 application, nor will HONI presuppose whether the OEB will approve a leave to construct application knowing full well that a s. 101 application will be sought by NB and contested by HONI due to the safety and reliability implications of not relocating the

³⁶ SEC Argument, para. 2.2.22

³⁷Table 4-4 found at:

http://www.nextbridge.ca/~media/Microsites/Nextbridge/Documents/EWT_Amend_EA_September2018/EWT_Amend_EA_Section_04_Project-Description_September2018.pdf?la=en

lines. These concerns are documented in HONI's AIC. Additionally, if NB is unsuccessful in obtaining s.101 approval, there is no EA approval in place for the relocation of T1M with the current NB EA. If Class EA is required for the T1M line relocation it could take another 12-18 months to complete after the NB EA is approved in February of 2019.

78. On the matter of OM&A, NB attempts to suggest that the OM&A difference is quite modest³⁸. The difference is \$2.4M annually, savings to ratepayers that will materialize if the HONI solution is selected.
79. Board Staff suggests in its submissions that having just one facility for emergency maintenance and response, situated at one end of a very long line, and with contractors supporting restoration activities, may be less than optimal. Negotiation of a shared services agreement with HONI is one means that could potentially reduce annual OM&A costs while at the same time provide reliability and quality service for customers.³⁹
80. HONI submits that it is apparent that NB has not fully thought out or costed how it plans to operate the line following construction to ensure that reliability is maintained. The market price of the services NB will require from their future contracted parties for O&M costs is unknown and untested, and not clearly reflected in evidence. NB has not had any discussions with HONI to assess what that model could potentially look like, and the model and cost are therefore unknowns for purposes of comparing the applications. It is premature to think the costs would be lower than what NB has reflected, and in fact likelier that they will be higher, given the costs that NB has excluded for Operating, and what seems to be a service level arrangement with Valard (standbys for personnel & equipment from other areas, etc.) which, again, has not been costed in NB's OM&A estimate.

Price Implications – the Ratepayer View

81. Staff's submission provided a rate impact analysis at page 28. Although HONI disagrees with Staff's use of Scenario's 1-4 on Table 3 of the submission, HONI has refiled Staff's Table 3 to correct certain calculations. The following corrections were made:
 - The revenue requirement for all Ontario transmitters was used, versus just HONI's transmission revenue requirement.
 - The calculation should have been for the network pool revenue requirement and should not include the transformation and connection rate pool revenue requirements.
 - The half-year rule for in-service additions was applied.
 - Current ROE, depreciation and tax rates were used, versus a 10% average

³⁸ NB Argument October 31, 2018 – Paragraph 33

³⁹ OEB Staff submission, October 31, 2018 – Page 29

	NextBridge		Hydro One			
	Base Case	Base Case	OEB Staff Scenario 1	OEB Staff Scenario 2	OEB Staff Scenario 3	OEB Staff Scenario 4
Scenario Assumptions						
Route Length (km)	443	403	403	403	443	443
Cost Per KM (\$M)	\$1.75	\$1.59	\$1.64	\$1.69	\$1.63	\$1.77
I/5 year	2021	2021	2022	2022	2021	2022
OM&A Costs (\$M)	4.7	1.5	1.5	1.5	2	2
Capital Costs (\$M)	\$777.0	\$642.0	\$662.0	\$683.0	\$721.1	\$781.9
System Impact (\$M)	\$36.0	\$36.0	\$59.0	\$59.0	\$36.0	\$59.0
In-Service Year Impact						
Total Incremental Revenue Requirement (Year 1) including system impact	\$81.70	\$72.08	\$96.15	\$97.29	\$76.84	\$103.11
Network Pool Revenue Requirement (\$M 2018 Rates)	\$893.56	\$893.56	\$893.56	\$893.56	\$893.56	\$893.56
Per cent incremental Network Revenue Requirement	9.14%	8.07%	10.76%	10.89%	8.60%	11.54%
Current Typical Hydro One (R1) Customer bill based on 750 kWh/ Month (From OEI)	\$178.00	\$178.00	\$178.00	\$178.00	\$178.00	\$178.00
R1 Retail Transmission Rate – Network Service Rate (approved EB-2016-0081)	\$0.0064	\$0.0064	\$0.0064	\$0.0064	\$0.0064	\$0.0064
Monthly Impact on R1 Customer based on 750kW	\$0.44	\$0.39	\$0.52	\$0.52	\$0.41	\$0.55
Annual Impact on R1 Customer based on 750kW	\$5.27	\$4.65	\$6.20	\$6.27	\$4.95	\$6.65
Per cent Impact	0.25%	0.22%	0.29%	0.29%	0.23%	0.31%
Subsequent Years post in-service year						
Total Incremental Revenue Requirement (subsequent years)	\$65.20	\$52.19	\$53.76	\$55.42	\$58.93	\$63.73
Per cent incremental Network Revenue Requirement	7.30%	5.84%	6.02%	6.20%	6.59%	7.13%
Current Typical Hydro One (R1) Customer bill based on 750 kWh/ Month (From OEI)	\$175	\$175	\$175	\$175	\$175	\$175
R1 Retail Transmission Rate – Network Service Rate (approved EB-2016-0081)	\$0.0064	\$0.0064	\$0.0064	\$0.0064	\$0.0064	\$0.0064
Monthly Impact on R1 Customer based on 750kW	\$0.35	\$0.28	\$0.29	\$0.30	\$0.32	\$0.34
Annual Impact on R1 Customer based on 750kW	\$4.20	\$3.36	\$3.47	\$3.57	\$3.80	\$4.11
Per cent Impact	0.20%	0.16%	0.17%	0.17%	0.18%	0.20%

82. HONI disagrees with Staff’s presentation of Scenarios 1 through 4 for the following reasons:

- HONI disagrees that additional system costs should be applied to either NB and HONI to calculate revenue requirement, for the reasons set out in the system cost section above.
- Scenario 1 is dismissed because it is already established that HONI can use any publicly available NB EA work and already been provided this information by MECP. The \$20M estimate provided was based on an Individual EA that has had no consultation done. That is not the starting point for HONI’s LSL Project and is a response to a hypothetical situation which evidence has shown is not possible.
- For Scenario 2, Staff has included costs (\$40.8M) to route around the Pukaskwa National Park (“the Park”), but there is no evidence on record that HONI will not be allowed to go through the Park, nor is HONI asking for leave to construct around the Park. Regardless, this specific risk is borne by HONI within the \$683M NTE price.
- For Scenario 3, NB has included all \$79.1M of NB sunk costs incurred to date. Burdening HONI with some or all of NB’s sunk costs is unreasonable and unfair, for the reasons discussed in the sunk costs section of this Reply Argument..
- Scenario 4, the most illogical of the four, is an analysis where HONI cannot use the NB EA work (an increase of \$20M). Despite this, HONI would still have to pay all the NB costs incurred to date (an increase \$79.1M); and HONI would not be allowed to go through the Park (an increase of \$40.8M). In addition to all these “what ifs”, system costs of \$59M that are be added to the HONI costs because of the assumption that the LSL would be in service in 2022.

83. Even in the impossible event that all of the events outlined in OEB Staff Scenario 4 materialize, Staff has calculated that the total cost of the LSL Project would be \$781.9M. Notably, this is less than 1% more than Staff’s Base Scenario for NB’s Project estimate

of \$777M and considerably less than the likelier NB cost that is estimated to be 10% higher than \$777M, or \$850M.

Reliability and Quality of Service

84. There are two components to the issue of reliability: the in-service date, and the design and construction of the EWT line itself.

85. HONI will deal with the two components separately.

(i) The In-Service Date

86. HONI submits that it is now clear that despite NB's efforts to confuse the issue, the in-service date for the EWT line is 2021, and not 2020.

87. HONI further submits that the delay in the in-service date is not the fault of HONI's work on the Stations project. It is the recent position of MECP to require a Class EA and to refuse issuance of station permits and approvals that is responsible for the delay to 2021. The effect of this is that the earliest in-service date for the station work, required for line connection, is end-October 2021. Therefore, the earliest date that either proponent can connect the stations and in-service the line is end-October 2021.

88. NB asserts, in paragraph 41 of its Response, that it "does not say that an in-service date of 2020 is mandatory because of the OIC". It may not say that now, although it has said that in the past and has permitted its supporters to say it without challenge. HONI submits that a good deal of the ostensible public support for NB's LTC application is built on two errors. The first error is that the 2020 date is required, either by the IESO or the Government. The second is that NB was chosen, in 2013, to construct the line. One or both of those claims have been made in correspondence proffered by NB as evidence of public support of its LTC application. NB made no apparent effort to correct the errors.

89. The significance of NB's evidence failure to ensure that its communications with putative supporters, and indeed with the government, were scrupulously fair and balanced is that a perception has arisen that HONI has somehow acted inappropriately in filing its LTC application and that doing so has unfairly prejudiced NB. That perception is wrong. An application by a competing constructor was contemplated and desired by the OEB in its Designation decision. And, as HONI has asserted in its Response, the filing of its application has restored, to the transmission line process, the prospect, and indeed the reality, of genuine competition in the interests of ratepayers.

90. VECC, in its argument, alleges that HONI's work on the Stations could be speeded up. That position is a variation on the canard that HONI has somehow slow-walked on the Stations in order to delay work on the EWT line.

91. VECC concedes, in paragraph 2.11 of its argument that "there is no evidence that Hydro One has acted maliciously". It then goes on to assert "it is clear they are not particularly motivated to aggressively schedule the station work". There is no evidence that the work

on the Stations has been delayed by HONI in any respect. The delay is wholly attributable to the MECP's decision to link the work on the Stations with the EA approval of the EWT line.

92. NB, in its response, makes the same unfounded argument, and does so on the strength of assertions by Mr. Mayers that, *from his allegedly vast experience in building Stations in Northern Ontario*, the work on the Stations could be speeded up. Mr. Mayers' testimony on that point is self-serving and worthless. He has no such experience, nor does NB.
93. On page 21 of its argument, Staff states that it "does not take issue with Hydro One's updated stations project schedule. The delay is related to EA approval, which falls into the MECP's jurisdiction". In paragraph 64 of the PWU submission, the PWU outlines that the duration of the HONI stations work has not changed since it was originally filed in July of 2017. NB expressed no concerns with the duration of the station project schedule until the final oral hearing in October of 2018.
94. In paragraph 4.1.8 of its argument, SEC states that "the delay in the Stations Project is due to a decision from the MECP to link the issuance of any permits required for construction to the issuance of the NB EA".

(ii) Construction and Design

95. Allegations are made, in the arguments of NB and CCC, that there are defects in HONI's design with the EWT, that these defects constitute risks, and so should be a factor in the OEB's decision whether to grant HONI's LTC application.
96. HONI states that there are no defects in its design for the EWT line.
97. The IESO has found that HONI's proposal meets all applicable reliability standards.
98. Staff, at page 29 of its argument, makes the following statement:

OEB staff does not take issue with the System Impact Assessment (SIA) and Customer Impact Assessment (CIA) reports for either the NextBridge-EWT or Hydro One-LSL Application and does not object to either proposal from a reliability or service quality perspective.⁴⁰

99. In paragraph 3.1.5 of its argument, SEC states as follows:

Based on the expert assessment of the IESO, there does not appear to be a practical difference in the reliability between the two projects. Both are "reliable enough". NextBridge has not tendered any evidence to demonstrate that customers are willing to pay an additional cost for whatever theoretical difference there may be. From the perspective of the

⁴⁰ Staff Argument, page 29

reliability of tower design, the issues do not appear to favor one project over the other.⁴¹

100. SEC, in paragraph 3.1.7 of its argument, notes that Mr. Mayers, on behalf of NB, originally testified that NB was not taking the position that HONI had failed to meet any of the minimum technical requirements. SEC then notes that Mr. Brott on behalf of NB appeared to take a different position. In addressing that evident conflict in the positions of NB, SEC stated that all it “can reasonably conclude is that if the issue were a material concern, one would expect that it would have been raised by the IESO in the LSL Project SIA, which it did not do.”⁴²
101. CCC, in its argument, makes three references to what it refers to as the reliability risks associated with HONI’s proposal, to the long term reliability issues that have been raised with respect to HONI’s quad circuit tower design” (page 13) and with what it refers to as the “intuitive risks” associated with the quad circuit design (page 15).⁴³
102. HONI has no idea what it meant by an “intuitive risk”. HONI, in its May 7, 2018, evidence filing, provided a detailed response to the unfounded allegations that there was some defect in its quad circuit tower design. That evidence indicated that the design meets the applicable design codes that are mandated for this particular project and environment, and thoroughly modeled to insure the proper reliability in extreme conditions.
103. The OEB’s section 92 application process does not require that the components of a design be either tested or approved before an LTC application is filed. The evidence is that the quad circuit towers, to which similar have been used by HONI in other parts of the Province without difficulty, will be load tested before manufacturing to take into account both the connections and steel that will be used for the general manufacturing of the towers. Testing insures that the factors of safety and conservatism that is inherent in all modeling of structures does not lead to an over-designed structure.
104. CCC has ignored HONI’s evidence on the reliability of the quad circuit tower design and has provided no evidence that the design is improper. Quite to the contrary, HONI’s May 7, 2018 evidence demonstrates the compliance of the quad circuit towers with applicable standards and design codes. CCC’s position should therefore be disregarded.
105. At Paragraph 2.15 and 2.16 of the VECC Submission, VECC suggests that HONI will secure a 15-day outage in mid-August of 2021 during which HONI, through the EPC contractor SNC-Lavalin, would use two heavy lift helicopters to fly in and assemble 87 towers. VECC goes on to utilize some back of the envelope calculations to suggest that the effort would be “herculean” and therefore improbable. HONI disagrees with VECC’s assertions and is confident in the construction plan. Regardless, this risk is included within the NTE price..

⁴¹ SEC Argument, para 3.1.5

⁴² SEC Argument, para. 3.1.7

⁴³ CCC Argument, pages 13 and 15

106. VECC seems to have misinterpreted the evidence provided in Exhibit I, Tab 1, Schedule 2. As described in this exhibit the outage which has been requested and discussed with the IESO is a 15-day outage in mid-August 2020 (as opposed to the 2021 VECC stated). One of the reasons for this early outage is the flexibility to enable a second outage in 2021 as a contingency in the event that unlikely circumstances prevent the completion of the entire scope within the 15-day outage. However, HONI and SNC-Lavalin are confident that the 15-day outage window is more than adequate to complete the entire scope as described in the exhibit. The tower erection productivity experienced on past projects has been 35 structure erections per day per helicopter. Given these are quad circuit structures and require two lifts, productivity was factored down to a very conservative estimate of an average of seven complete structures per day per helicopter. To increase the certainty of completing the works within the outage window, the use of two helicopters was budgeted, therefore requiring about seven of the 15 days for setting the new structures. The remaining eight days are utilized for removing and reinstalling conductors as well as removing the old structures. Regardless, this risk is included within the NTE price.

Environmental Assessment

107. HONI's in-service date for its LSL is end of year, 2021. NB will not be able to achieve an in-service date that is any earlier than end of October 2021 due to MECP's requirement that the Wawa TS Expansion now proceed through a full Class EA.
108. Evidence provided by NB does not demonstrate how the windows for clearing activities can be accommodated, and how summer 2019 construction start date. Regardless, new requirements for the Wawa station negate the benefits of an early construction start.
109. As such, the EA process has no appreciable difference on the scheduled in-service date as between the two proponents.
110. To be helpful to the Board, HONI has updated the schedule originally provided in Exhibit I, Tab 1, Schedule 14, Attachment 1, to reflect changes that were discussed at the oral hearing and new information provided by MECP. Please refer to Attachment 1 of this Reply Argument.

Declaration Order

111. A Declaration order is an expedited process that is intended for situations such as the LSL, where there is no reason for a party to incur the time and expense of a full individual EA and no benefit to the environment, when the route has been studied and environmental impacts already assessed.
112. There is no evidence to suggest that, if HONI is designated to build the line, MECP would not work cooperatively with HONI to ensure that timelines are expedited, particularly, with direction from the Government regarding the required in-service date. Such circumstances are precisely when declaration orders are used.

113. NB's EA approval is expected in February of 2019. NB argues that the EA work is complete and no further work is required.
114. NB cannot withdraw its EA application without significant risk to its ability to recover its development costs. It will not put recovery of those costs at risk simply because it is not the successful proponent for the line. In any event, it would also be inappropriate for NB to withdraw the EA application, given that the EA was done for the benefit of developing the tie line project, not for the benefit of NB.
115. There is no evidence to suggest that MECP would not proceed with the NB EA approval regardless of which proponent is granted leave to construct. Indeed, it is likely that the Government would require MECP to do so, as stated by several intervenors.
116. A six-month schedule for completion of a declaration order is appropriate and HONI will receive its declaration order in October, 2019. It is important to note that MECP's evidence does not contradict this or suggest that this is not possible. The route has been studied extensively and HONI itself has been completing studies to address any gaps required to support a declaration order.

Individual EA

117. HONI has already commenced the Individual EA process. This is not a project or a route that has never been studied. Indeed, most of the route has been significantly studied through the NB EA.
118. Despite NB's numerous attempts to suggest that its EA development work is "off-limits" and cannot be used by HONI, there is no evidence to support this position. The EA is available to the public under the Environmental Assessment Act and MECP has already granted access to HONI to NB's EA studies.
119. While MECP may consider the LSL, technically, to be a "new project", there is no basis to conclude that that MECP would not take into account all of the extensive, existing information to expedite the approval process, particularly, when it is no longer dealing with competing projects. MECP's own evidence was that it is not unusual to have one proponent take over a project from another and MECP approves the "undertaking", not the proponent.
120. While MECP has stated that HONI's schedule is "ambitious", at no time has MECP stated that the schedule is impossible or cannot be achieved. Indeed, there is no such evidence on the record.
121. HONI's schedule for completion of an Individual EA is appropriate. The route has been studied extensively and HONI itself has been completing studies to address any gaps required to support its individual EA. Regardless this risk is included within the NTE price, with potential for recovery of prudent incremental costs associated with EA approval delays beyond August 2019, in accordance with the scenarios provided in Exhibit I, Tab 1, Schedule 7.

Park Approval

122. HONI has an existing line and footprint in the Park, and has a licence with Parks Canada.
123. The Park route is the preferred route from an environmental impact perspective and from a cost perspective.
124. NB had initially wanted to proceed through the Park but was unable to do so for legal reasons. HONI is not in the same position and alone has the legal right to enhance its existing line through the Park.
125. The evidence from HONI, uncontested, is that there is essentially no risk that it will be denied access to the Park. HONI has led voluminous evidence on its extensive dealings with Parks Canada for more than a year, during which there has been no indication that Parks Canada would not permit access to the Park. All of the comments submitted are purely hypothetical and speculative with absolutely no evidence that this route cannot be successfully pursued. Regardless this risk is included within the NTE price.

Stations Approval

126. Based on MECP's recent position that a Class EA is required for the Wawa Transformer Station Expansion and assuming the process can be completed in no more than six months, as suggested by MECP, the Stations work will now be delayed such that there is no chance of an in-service date of 2020 any proponent (see attached schedule for Wawa TS).
127. This inability for the line to be in-service by 2020 was already the case because of MECP's position last summer that it would not issue permits or approvals relating to Marathon TS Expansion until the EA for the line was approved (see attached schedule for Marathon TS).
128. The Wawa Station Expansion, unlike the LSL line, has not commenced its EA process. HONI was only verbally notified of the need for a Class EA on October 26, 2018 and HONI received written confirmation from MECP on November 8, 2018.
129. MECP states that it is willing to expedite the Class EA process for the Wawa Transformer Station Expansion, reducing a 12-18 month process to a 6 month process. This is clear evidence that MECP can work with proponents to shorten and expedite timeframes. There is every reason to expect it to do so with either a declaration order/individual EA/stations permits and approvals.
130. The linking by MECP of the Stations permits and the EA approval for the LSL (rather than the line itself) was only stated for the first time by MECP at the combined hearing. HONI has not disregarded that evidence, as suggested by NextBridge.
131. HONI has evaluated the impact of MECP's recent position on the schedule for the LSL. The attached schedule clearly shows that HONI will be able to achieve an-service date of end-of-year 2021. Most significant is that the LSL in-service date is within months of

the in-service date that now applies to NB due to the recent decision of MECP to require that Wawa TS proceed with the Class EA process.

132. Notwithstanding the ability of HONI to meet an in-service date of 2021, it will continue to engage in further discussions and collaboration on the necessary approvals with MECP.
133. MECP has been working to advance the process for HONI. Indeed, at the combined hearing, MECP advised of a change in position whereby permits and approvals for the Stations may now be submitted to expedite the process. Previously, MECP wrote to HONI asking it to refrain from submission of those permits and approvals.

Summary

134. In summary, NB will definitely not be able to achieve an in-service date that is earlier than the end of October 2021 due to MECP's requirement that Wawa TS proceed through a full Class EA. HONI's in-service date for its LSL is approximately two months later, at the end 2021. As such, the EA process has no appreciable difference on the scheduled in-service date as between the two proponents.

Duty to Consult

135. Arguments have been filed by five Indigenous intervenors. They represent some, though not all, of the eighteen Indigenous groups which HONI was directed to consult with.
136. All of the arguments filed by Indigenous groups address the constitutional duty to consult. The existence of that duty is not an issue. HONI recognizes it and respects it. What appears to be issues are:
 - a. The content of the duty in the circumstances of the LTC application; and
 - b. The role of the OEB in relation to that duty.
137. It is important to reiterate, at the outset, that a long history of relationships based on cooperation and respect exists between HONI and the Indigenous communities it serves, and HONI is fully committed to continuing such cooperation in the future. HONI has consistently acted in accordance with its recognition that Indigenous rights and interests must be respected and given the due deference, consultation and accommodation enshrined by case law and the Constitution.⁴⁴
138. Assertions by a few of the intervenors that HONI has not and cannot perform its work in accordance with the duty to consult are unfounded.
139. Despite the harsh tone of some of the Indigenous groups' arguments, HONI has prepared this reply in the hopes that it can maintain productive and positive consultation with all Indigenous communities if it is granted leave to construct the LSL. In addition, given Hydro One directly serves 88 First Nation communities and thousands of Métis customers across the province, Hydro One will continue working with the Indigenous

⁴⁴ Anwaatin argument para. 29

communities and people we serve today, those impacted by this project, and future projects in a respectful and cooperative way.

140. With regard to employment and contracting, Hydro one and its construction partner SNC-Lavalin are committed to maximizing Indigenous employment and contracting opportunities on this project. Substantial economic participation opportunities in the forms of employment and Indigenous contracting are an important aspect of our project and we fully intend to maximize these opportunities for Indigenous communities and businesses. In addition, Hydro One is in a unique position to provide lasting employment opportunities throughout its network across the province for skilled Indigenous workers, beyond the construction of this Project
141. The honour of the Crown entails a Duty to Consult, and if necessary, accommodate, Indigenous groups where their interests or rights may be adversely affected (the “Duty”). HONI has been delegated by the Minister of Energy procedural aspects of the Duty, and HONI has engaged with every affected Indigenous group identified by the Ministry of Energy.
142. The Duty is an ongoing process that is meant to be continuously fulfilled—including, and as HONI has previously stated—after the commencement of a particular project. With respect, the Duty is not a goal post which must be bypassed before the OEB makes a decision on the LTC Application. Nor is it an entitlement that allows any particular group to have a veto over matters within the Crown’s (or a Board’s) jurisdiction.
143. HONI respectfully reiterates its position that the OEB does not have the legislated authority to fulfil the Duty. While the SCC has held that regulatory bodies *may* fulfil the Duty, the National Energy Board (“NEB”) and the OEB are not comparable in the facts of this particular case. In *Hamlet of Clyde River (Hamlet) v Petroleum Geo-Services Inc.* (“*Clyde River*”) and *Chippewas of the Thames First Nation v Enbridge Pipelines Inc.* (“*Chippewas*”), the SCC was careful to specify that whether or not a particular regulatory body may fulfil the Duty in a particular set of circumstances will be decided by that body’s statutory powers and ability to accommodate in the circumstances of the case before it.⁴⁵
144. In those cases, the SCC found that the NEB had the power to implement the Duty as the NEB possessed the procedural powers necessary to implement consultation, and the remedial powers to, where necessary, accommodate affected claims or treaty rights. The cases were not a complete endorsement of the NEB’s (or any regulatory body’s) processes and ability to discharge the Duty. Rather, depending on the facts of a project and the required depth of consultation, a body might not have the necessary statutory powers required to fulfil the Duty. As such, a determination of whether the OEB has the jurisdiction to carry out the Duty must be based on the OEB’s legislated powers and the particular circumstances of this case.

⁴⁵ *Clyde River* at para 30; *Chippewas* at para 32.

145. However, and with respect, the powers of the NEB and the OEB differ in ways that make the latter unsuitable to exercise the Duty in this case: the OEB does not have the same power with respect to finality of decisions (OEB decisions allow for an appeal to the Divisional court⁴⁶) or environmental approvals (the NEB has jurisdiction over the EA process, while the OEB does not⁴⁷), and the broad-reaching powers of the NEB to require studies and assessments which do not appear to reside with the OEB. Most importantly, there is a specific legislated intent that exists in the *Act* that did not exist for the NEB in *Clyde River* and *Chippewas*—the *Act* provides certain factors in section 96(2) that the OEB *shall only* consider when determining *what is in the public interest*. The OEB has previously agreed with this assessment of its jurisdiction to discharge or assess the Duty⁴⁸, and this view has not been overturned in even the most recent decisions of the OEB on this topic.⁴⁹
146. HONI agrees that there is an obligation to consult and that HONI has been delegated to the procedural aspects of it, namely that consultation take place. The OEB has not been delegated the authority to determine whether consultation has taken place, let alone whether the substantial components of the duty have been fulfilled. It remains with the Crown, which is to say the relevant ministries of the MOE and the MECP. Two of the Indigenous groups have, in their Written Submissions, suggested that the OEB has the authority to determine whether the duty to consult has been fulfilled. HONI states that it is clear that the OEB does not have that authority. However, if the OEB were to undertake a consideration of whether it has that authority, it would, at a bare minimum, have to hear submissions from the Crown, represented by the relevant ministries.
147. In paragraph 24 of its Written Submission, BLP describes HONI as a latecomer to the process, with the result that it cannot match NB's in-service date of December, 2020. As BLP is no doubt aware, the in-service date, regardless of who builds the EWT, is 2021. The extended date is a result of decisions made by the MECP about the relationship of the EA processes for the EWT line and HONI's Stations work.
148. As noted elsewhere in this Reply, the OEB, in its Designation Decision, recognized that there could be competing applications to build the EWT line. That HONI is late is a function of the structure of the process created by the OEB and by the fact that NB filed to disclosure, until the last moment, its cost to construct the line.
149. It is HONI's position that the filing of its LTC application is consistent with the policy goals of the transmission line process and restores an essential element of competition to that process. HONI, and other parties, acknowledge that the transmission line process has created advantages for NB which HONI now must overcome. HONI has suggested ways in which those advantages can be mitigated to benefit ratepayers and Indigenous groups.

⁴⁶ Section 33 of the *OEB Act*

⁴⁷ (and it belongs, rather, to the MECP)

⁴⁸ *Hydro One Networks Inc., Lambton- Longwood Leave to Construct*, EB-2012-0082 at p. 12.

⁴⁹ EB-2017-0319, Decision and Order of the Ontario Energy Board on Enbridge Gas Distribution Inc.'s Application for the Renewable Natural Gas Enabling Program (October 18, 2018) at 23-25.

150. Staff reviews the jurisdictional issues related to Indigenous consultation on pages 6 and 7 of its argument. HONI agrees with Staff's view on the limits of the OEB's jurisdiction.
151. Two of the submissions from Indigenous groups seek to expand the ambit of the OEB's jurisdiction.
152. The MNO, in paragraph 30 of its Written Submissions, argues that the OEB must consider whether NB and HONI have discharged "the procedural aspects of consultation delegated to them by the Crown".
153. However, in paragraph 40 of its Written Submission, the MNO argues that the OEB "has the duty and the authority to consider section 35 [of the *Constitution Act, 1982*], including the adequacy of the consultation and accommodation efforts with First Nations and Métis communities". That, HONI submits, is incorrect.
154. The MNO's argument on jurisdiction is, in HONI's submission, clouded by two factors. One is the assertion that HONI had pre-judged the impact of its project on the Métis' rights and interests by taking the position that the BLP communities had a more direct interest in the project. As HONI has repeatedly said, that was based not on an assumption by HONI, but on the BLP's own description of its interests.
155. The second, and more important factor, is the MNO's desire to protect a commercial arrangement it has reached with NB. The MNO's arguments about the scope of the OEB's jurisdiction are, in that context, in essence a cover for the attempt to protect a commercial interest. The duty to consult was never intended to be used to preserve commercial relationships.
156. BZA's submissions on jurisdiction are, by contrast, motivated not by a desire to protect a commercial interest but by a desire to have the OEB compel one of NB or HONI to enter into a commercial arrangement with BZA.
157. In paragraph 13 of its Submission, BZA argues that the OEB "must consider the adequacy of Indigenous consultation when making a determination on the competing section 92 leave to construct applications". It bases that argument on its interpretation of the jurisprudence on the duty to consult, an interpretation with which HONI, and Staff, disagree.
158. BZA also argues that the OEB has assumed jurisdiction by way of its procedural orders and its 2013 Designation decision. With respect, the OEB cannot, by its procedural orders or otherwise, assume a jurisdiction it does not have.
159. In paragraph 30 of its Submission, BZA makes its objective clear in arguing that, in assessing the adequacy of consultation and accommodation, one consideration is why BZA is not being offered equity in the EWT projects.
160. HONI submits that the OEB does not have the jurisdiction to assess the adequacy of consultation, let alone have the jurisdiction to require HONI or NB to enter into an equity arrangement with any Indigenous group.

161. BZA asserts, in paragraph 1 of its Submission, that the OEB should make any order granting LTC conditional upon obtaining the consent of BZA prior to construct. That is an assertion that BZA should have a veto.
162. None of the other Indigenous groups assert that they have a veto. That is perhaps not surprising in light of the fact that the Supreme Court of Canada has said they do not. But the practical effect of BZA's argument about the nature of the duty to consult, and the time it would take to fulfil that duty, is a veto. HONI submits that the OEB should not allow Indigenous groups to do indirectly what they cannot do directly.
163. BLP's argument, reduced to its essence, is a desire to protect a commercial arrangement. HONI submits that the language of the duty to consult, of the Crown's honour, and of the honourable treatment of Indigenous groups, should not be used to disguise the effort to protect a commercial interest.
164. The reality is that HONI's attempt to reach commercial arrangements with BLP and the MNO have been blocked by exclusivity arrangements. There is no reason to believe that absent those exclusivity arrangements, HONI could not make satisfactory commercial arrangements with both groups, and do so in a timely way.
165. The argument of MFN represents an attempt, by its lawyer, to introduce information that should have been filed, under oath, as evidence. For that reason alone, the argument should be dismissed in its entirety. The attempt to introduce the information, in argument, is an abuse of process.
166. The argument of the MFN contains a number of material misstatements which HONI feels compelled to correct lest they stand unchallenged. Those misstatements include the following:
 - a. The lawyer for MFN asserts that HONI has no right to use the existing line on MFN land. That right has existed since 1984 under a permit issued under the *Indian Act*. That right has not lapsed;
 - b. The lawyer for MFN states that HONI has not had discussions with MFN about the proposed EWT line. That is not the case.
167. Most, if not all, of the information that the MFN lawyer tries to introduce through her argument is irrelevant to the issues to be resolved in the LTC applications. She concedes that point when, in paragraph 13 of her argument, she states that "no one is suggesting that resolving the dispute over the legitimacy of the Existing Line on MFN's Reserve is the mandate of the Board."
168. HONI does not believe that there is in fact a legitimate basis for a dispute over its right to operate the existing line. The point, however, is that the MFN lawyer is trying to use the occasion of the LTC applications for a collateral purpose, namely to make the resolution of a dispute she alone believes exists a pre-condition to the granting of HONI's LTC application. HONI repeats that the attempt to do so is an abuse of process and should be rejected.

169. The MFN's lawyer asserts that HONI is a "squatter". She attempts to disguise that assertion through the use of an analogy. HONI is not a squatter. HONI's use of the existing line is based on a long-standing permit.
170. HONI submits that it can and will fulfil the delegated procedural aspects of consultation in a timely, respectful, and appropriate way after being granted LTC.
171. Anwaatin's argument is irrelevant in two respects. The EWT line will have no direct impact on the Anwaatin community. Second, the in-service date for the EWT will be 2021, regardless of who builds it. The outcome of the applications will have no direct impact on the issues Anwaatin raises.
172. The OEB's jurisdiction to consider matters related to Indigenous consultation is limited to assessing the potential impact on the achievement of a 2021 in-service date and on the costs of construction. HONI's history of successful consultations with Indigenous groups indicates that consultation can be complete well before the in-service date and at a cost that has been included in HONI's forecasts.

SNC-Lavalin

173. NB has, in its Response, regrettably decided to make comments critical of SNC-Lavalin. NB refers to certain SEDAR filings, trying thereby to create the impression that SNC-Lavalin is subject to ongoing proceedings regarding alleged corruption and bribery that may impact its ability to enter into some government contracts. NB supports that comment by reference to pages 106 and 107 of Transcript, Volume 1. NB's reference to the SEDAR filings is a backhanded way of suggesting that somehow an allegation of corrupt activities in a foreign country should disqualify SNC-Lavalin from doing the construction work.
174. If the OEB examines those transcript pages, it will see that counsel to NB never asked the witness from SNC-Lavalin, Mr. Karunakaran, whether the proceedings regarding alleged corruption and bribery would have any impact on SNC-Lavalin's ability to enter into the contracts relevant to the LTC application, or its ability to carry out the work.
175. The allegations referred to by NB have no connection to the current proceedings before the OEB and SNC-Lavalin's ability to fully perform its obligations for the EWT project. SNC-Lavalin's ability to fulfil those obligations are supported not only by its technical strength but also by its financial strength as demonstrated in its financial statements.
176. Finally, HONI notes that, as a responsible public company, SNC-Lavalin's parent company has disclosed any material matters to its shareholders and the public in its financial statements, demonstrating its commitment to full transparency and its commitment to continued ethical business practices in full compliance with its legal obligations.

Conditions of Approval

177. If HONI is selected as the proponent to construct the line, various parties have suggested imposing conditions on HONI's approval. The conditions can be summarized into the following categories:

Implementation of a not-to-exceed price

178. HONI has agreed to accept a NTE price to construct the Lake Superior Link Project subject to the conditions as set out above. Therefore, HONI accepts the condition of a NTE price.

Execution of HONI's EPC contract and Engineering Sign-Off

179. Board Staff requests that HONI's executable EPC contract be signed without material changes and that HONI's LSL formal sign-off and approval from a Professional Engineer in Ontario. HONI accepts the conditions posed.

Standard OEB Conditions of Approval

180. HONI accepts the standard OEB Conditions of Approval.

Duty to Consult and Accommodate

181. Various intervenors on behalf of indigenous communities have suggested that HONI must discharge its duty to consult and accommodate before construction can commence. HONI proposes that the standard OEB conditions of approval should address this suggested condition and that no additional conditions of approval should be required to address these concerns.

182. The MNO suggests that construction on the LSL cannot begin unless and until an economic participation agreement has been reached with the MNO that is equal or superior to the MNO-NB Agreement.

183. HONI submits that such a condition would be outside the purview of the OEB and that such accommodation measures cannot be understood and detailed at this time because exclusivity agreements have hindered these discussions.

Reporting Requirements

184. Staff and other intervenors have suggested various reporting requirements related to both the LSL and the EWT Stations project. In addition to the standard reporting requirement to notify the OEB of material changes, HONI accepts quarterly reporting on both Projects with respect to both cost and schedule.

Conclusion

185. HONI submits that its LTC application satisfies the requirements of section 96 of the OEBA and should be granted.
186. HONI further submits that NB's LTC application does not satisfy the requirements of section 96 of the OEBA and should be dismissed.

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HYDRO ONE REVISED SCHEDULE – NOVEMBER 6, 2018
(CHANGES FROM SEPTEMBER 24, 2018 SUBMISSIONS NOTED IN *BOLD*)

Terms of Reference (TOR) – Lake Superior Link (LSL) Individual Environmental Assessment (EA)		Comments/Status/Explanation of Change
Submit Notice of Commencement of Preparation TOR to MECP	May 2018	Complete
Community Information Centre #1	Week of June 11, 2018	Complete
Draft ToR submitted to MECP	June 11, 2018	Complete
Revised Draft ToR submitted to MECP	August 3, 2018	Complete
Submit ToR to MECP	August 31, 2018	Complete
ToR formal review period and Minister's decision	September 7 to December 10, 2018	Extended from November 30, 2018 due to additional time provided for ToR review by Indigenous Communities (per OEB evidence)
LSL Declaration Order (DO)		
Environmental Studies	March - October, 2018	Note: Some studies within Pukaskwa National Park boundaries to be completed in Spring 2019
Community Information Centre #2	Week of December 10, 2018	On track
Submission of Declaration Order to MECP	March 31, 2019	Extended two months from original date of January 31, 2019 based on OEB testimony that NextBridge IEA approval will be extended from December 2018 to February 2019
Minister's Decision	October 15, 2019	Extended from August 15, 2019 for reasons noted above
LSL Individual EA		
Environmental Studies	March - October, 2018	Note: Some studies within Pukaskwa National Park boundaries to be completed in Spring 2019
Submit Notice of Commencement of Initiation of EA to MECP	November 16, 2018	On track
Community Information Centre #2	Week of December 10, 2018	On track

Draft EA review, revise	March 31, 2019	Extended two months from original date of January 31, 2019 based on OEB testimony that NextBridge IEA approval will be extended from December 2018 to February 2019
Submission of EA to MECP	May 8, 2019	Extended from March 8, 2019 for reasons noted above
Minister's Decision and EA Approval	December 7, 2019	Extended from October 7, 2019 for reasons noted above
Federal Detailed Impact Assessment (DIA) – Pukaskwa National Park - LSL		
Draft Environmental Evaluations Report Updated	January, 2018	Complete
Construction Execution Plan	February, 2018	Complete
PNP review of draft ToR of Environmental Assessment (anticipated to meet requirements of Detailed Impact Assessment)	August, 2018	Complete – based on increased study area to accommodate comments from stakeholders, Parks Canada requested information be segregated into a document pertaining to the Park area only (no additional work; repackaging only)
Draft ToR of Detailed Impact Assessment (Park only)	September 2018	Complete
Final ToR of Detailed Impact Assessment	November 2018	Revised from October submission date to allow additional consultation planning
Draft Detailed Impact Assessment	March 2019	Revised from January; will be submitted subject to completion of remaining studies within Park Boundaries
Final Detailed Impact Assessment	July, 2019	Revised from February to allow additional studies in Spring
Detailed Impact Assessment Approval	October 15, 2019	Revised from August 15, 2018; Review will be completed earlier, but final approval will be concurrent with Provincial approval (Declaration Order timing noted)
PNP Approval	October 15, 2019	Revised from August 15, 2018 for reason noted above
Construction - LSL		
Implement the Project and Monitor Compliance	October 2019-December 2021	Revised from original start and end dates of August 2019-Dec 2021 for reasons noted above; assumes Declaration Order scenario; construction start may be December 2019 assuming the IEA scenario
In-service of LSL line and connection to stations	December 2021	On track

Station Related Work (Lakehead Transformer Station (TS))		
Drainage Environmental Compliance Approval (ECA) received	<i>April 1, 2019</i>	No EA requirements to delay issuance of permits as all work within existing TS and MECP has not to date linked to line work; and permits already submitted to MECP and on track to be received
Station Readiness (infrastructure) and connection from towers into station	<i>April 19, 2021</i>	On track – to be co-ordinated with other stations
Station ready for In-Service	<i>May 29, 2021</i>	On track
Station Related Work Marathon TS		
Re-submission of ECA permit application	<i>November 2018</i>	Requires resubmission of ECA application based on recent revised advice from MECP in October, 2018.
NextBridge EWT IEA approval obtained	<i>March 1, 2019</i>	Expected completion in February 2019 based on OEB testimony
Drainage ECA received	<i>October 2019</i>	Note that MECP has indicated a one-year service standard for ECA applications, however, it is anticipated that an 11 month approval could be achieved with some expediting on the part of MECP
HONI EA approval obtained for LSL (Declaration Order)	<i>October 15, 2019</i>	On track
Tree cutting commencement	<i>October 15, 2019</i>	On track
Station Readiness (infrastructure) and connection from towers into station	<i>April 19, 2021</i>	On track – to be co-ordinated with other stations
Station ready for In-Service	<i>June 14, 2021</i>	On track

Station Related Work Wawa TS		
Direction from MECP to Hydro One regarding Screening Level EA and Part II Order Request	<i>November 8, 2018</i>	MECP position of Wawa as a “pre-condition to the implementation of another larger and more environmentally significant project” as rationale for rejection of the Screening level EA for Wawa.
NextBridge EWT IEA approval obtained	<i>March 1, 2019</i>	Expected completion in February 2019 based on OEB testimony
Completion of EA related obligations for Wawa TS	<i>June 1, 2019</i>	Based on MECP indication that if a Full Class EA is required, this could be completed in 6 months; note that this process would still be subject to Part II Order requests (MECP indicated verbally they would commit to expedite this process but written direction has not yet been received)
Tree cutting commencement	<i>October 1, 2019</i>	On track
Station readiness	<i>December 7, 2020</i>	On track
Connection from towers into station	<i>April 19, 2021</i>	On track – to be co-ordinated with other stations
Station ready for In-Service	<i>October 28, 2021</i>	On track