



Jonathan McGillivray

Associate

Bay Adelaide Centre
333 Bay Street, Suite 625
Toronto, ON M5H 2R2

TEL +1.647.208.2677

FAX +1.888.734.9459

jonathan@demarcoallan.com

December 16, 2019

VIA RESS AND COURIER

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4
Attention: Registrar

Dear Ms. Long:

**Re: Hydro One Networks Inc. Transmission Rates Application
Board File No. EB-2019-0082**

We are counsel to Anwaatin Inc. (**Anwaatin**). Please find enclosed Anwaatin's submissions in the above-noted proceeding, filed pursuant to Procedural Order No. 3.

Sincerely,

A handwritten signature in black ink, reading "Jonathan McGillivray".

Jonathan McGillivray

- c. Linda Gibbons, Hydro One Networks Inc.
Charles Keizer and Arlen Sternberg, Torys LLP
Larry Sault, Anwaatin Inc.
Don Richardson, Shared Value Solutions Ltd.

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act*,
1998, S.O. 1998, c.15 (Sched. B), as amended (the **Act**);

AND IN THE MATTER OF an application by Hydro One
Networks Inc. for an order or orders made pursuant to
section 78 of the Act approving rates for the transmission
of electricity.

EB-2019-0082

SUBMISSIONS OF

ANWAATIN INC.

December 16, 2019

INTRODUCTION AND OVERVIEW

1. We are counsel to Anwaatin Inc. (**Anwaatin**) in the Ontario Energy Board (the **Board**) EB-2019-0082 proceeding to review an application by Hydro One Networks Inc. (**Hydro One**) for an order or orders made pursuant to section 78 of the *Ontario Energy Board Act, 1998* (the **Act**) approving rates for the transmission of electricity (the **Application**).
2. Anwaatin is a collective of Indigenous communities including Aroland First Nation (**Aroland**) and the Lake Nipigon First Nation communities represented through Waaskiinaysay Ziibi Inc. Development Corporation (**WZI**): Rocky Bay First Nation, Bingwi Neyaashi Anishinaabek, Red Rock Indian Band, Whitesand First Nation, and Animbiigoo Zaagiigan Anishinaabek (Aroland and WZI are collectively referred to herein as the **Anwaatin First Nation Communities**). The Anwaatin First Nation Communities are served by Hydro One and have significant, continuing electricity reliability challenges that negatively affect their aboriginal and treaty rights.
3. Anwaatin is generally focused on achieving reliable, affordable, and sustainable energy for the Anwaatin First Nation Communities. To that end, Anwaatin has been very active on other electricity transmission and distribution proceedings before the Board, including the EB-2016-0160 Hydro One transmission application, the EB-2017-0049 Hydro One distribution application, and the EB-2017-0335 settlement agreement between Hydro One and Anwaatin on a distributed energy resources (**DERs**) solution to the electricity reliability disparity in certain Anwaatin First Nation Communities (the **Settlement Agreement**).¹
4. Anwaatin provides these submissions with the aim of assisting the Board in understanding: (a) the continuing electricity reliability disparity in the portions of Hydro One's system serving northern Ontario and the Anwaatin First Nation

¹ Settlement Agreement as approved by the Board in EB-2017-0335 (motion to review and vary the Board's Decision in EB-2016-0160) and in EB-2017-0049, Ex. I, Tab 6, Schedule Anwaatin-1, as approved in the Board's March 7, 2019 Decision in EB-2017-0049.

Communities; (b) the role of DERs, including those provided for in the Settlement Agreement, in alleviating the reliability disparity; and (c) the status and direction of Hydro One's Indigenous engagement activities.

5. The Anwaatin First Nation Communities are among the most vulnerable of all Hydro One and Ontario electricity transmission customers and their aboriginal and treaty rights, including their traditional hunting, fishing and harvesting practices are impacted by an unreliable electricity grid. Anwaatin therefore relies upon the Board to fulfil its statutory mandate to *protect consumers' interests with respect to prices and the adequacy, reliability, and quality of electricity service*.²
6. These submissions are provided in an overarching policy and pragmatic context for First Nations in Ontario. That context includes:
 - (a) **energy poverty**: a disproportionate number of Ontario's First Nations live in energy poverty and are saddled with increasing and unmanageable energy costs;
 - (b) **pre-existing sovereignty**: Ontario's First Nations have pre-existing sovereignty that must be respected by all governments and cannot be ceded by treaty;
 - (c) **duty to consult and accommodate**: the duty to consult with and accommodate First Nations on decisions and major government discussions has been enshrined in the Constitution and affirmed by the Supreme Court of Canada; and
 - (d) **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)**: Canada has become a signatory to, and is in the process of adopting, the UNDRIP, which supports the First Nations rights.

² Ontario Energy Board Act, 1998, SO 1998, c. 15, Sched B, s 1(1).1.

Anwaatin asks the Board to consider these submissions in this overarching context to assist it and others in addressing the energy needs of First Nations set out herein.

SUBMISSIONS

7. Anwaatin's submissions follow the direction of the Board in its Decision and Order in EB-2016-0160 and address the Board's consideration of:
 - (a) the electricity reliability disparity in the portions of Hydro One's system serving northern Ontario and the Anwaatin First Nation Communities, and Hydro One's Transmission Business Plan;
 - (b) the role of DERs, including those provided for in the Settlement Agreement, in alleviating the reliability disparity; and
 - (c) the status and direction of Hydro One's Indigenous engagement activities.

(a) Reliability Disparity and the Transmission Business Plan

8. Hydro One's reliability data, including the data for the most recent three years, demonstrate a continuing reliability disparity in the Hydro One system serving northern Ontario and the Anwaatin First Nation Communities (five delivery points: Beardmore DS #2, Long Lac TS, Moosonee DS, Nipigon DC, Red Rock DS), as compared to the overall Hydro One system average. The below charts highlight this disparity across each of three datapoints: average outage duration (**SAIDI**), average outage frequency (**SAIFI**), and delivery point unreliability index (**DPUI**).³

³ The charts reproduced below can be found at Exhibit D, Tab 2, Schedule 1 of the Application and Technical Conference Undertaking Response JT1.27.

SAIDI (note: y-axes are not to scale):

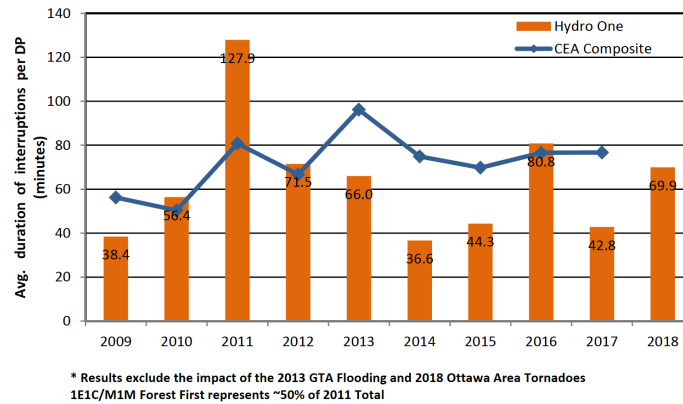
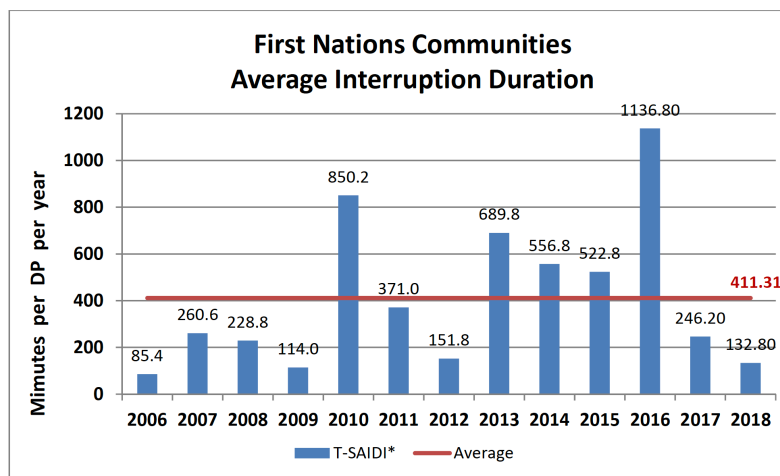
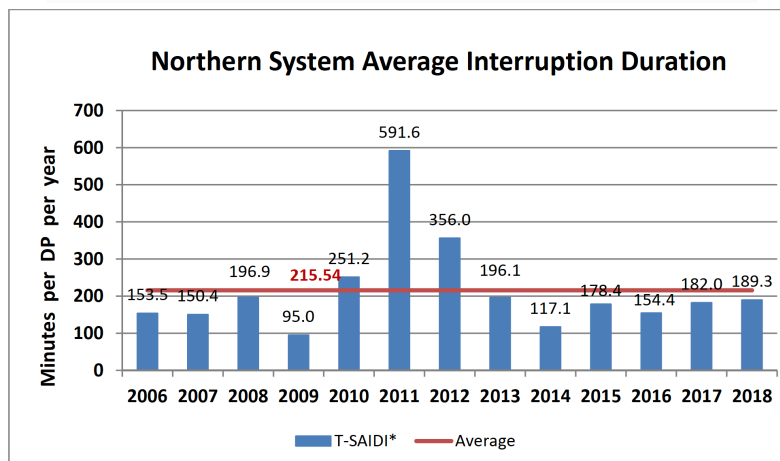


Figure 3: Comparison of Hydro One Duration of Sustained Interruptions to CEA Composite



SAIFI (note: y-axes are not to scale):

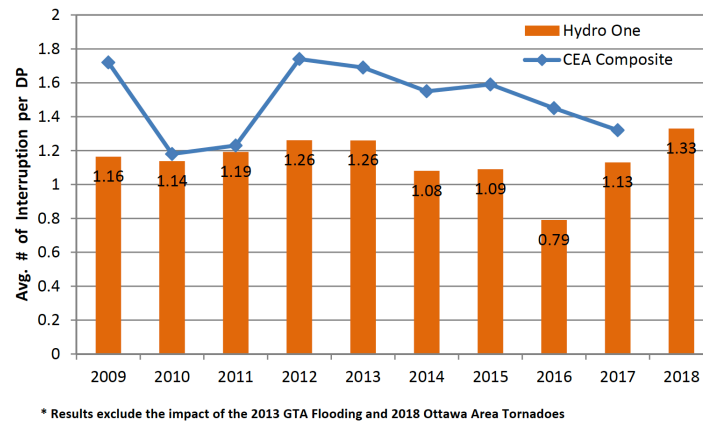
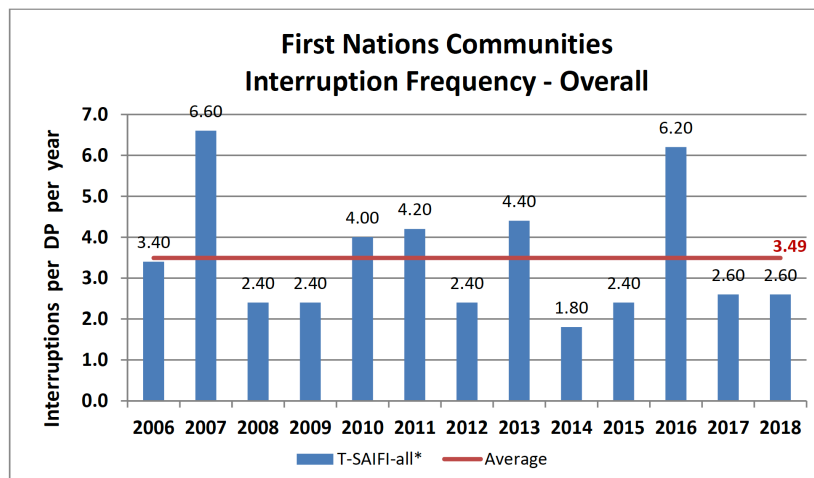
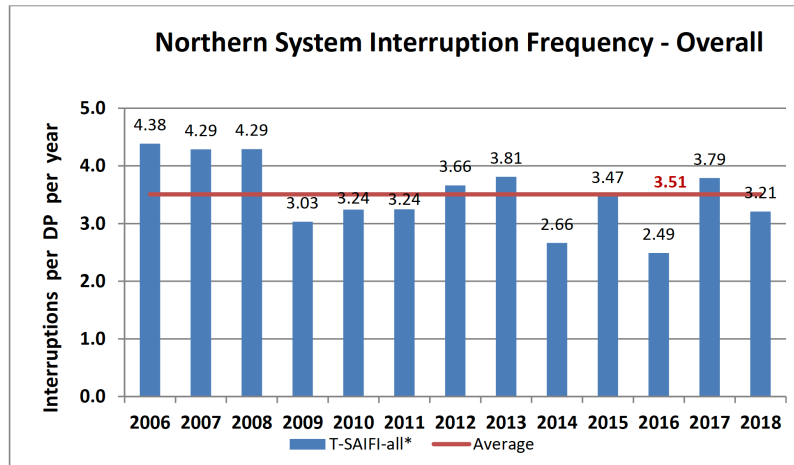


Figure 2: Comparison of Hydro One Overall Frequency of Interruptions to CEA



DPUI (note: y-axes are not to scale):

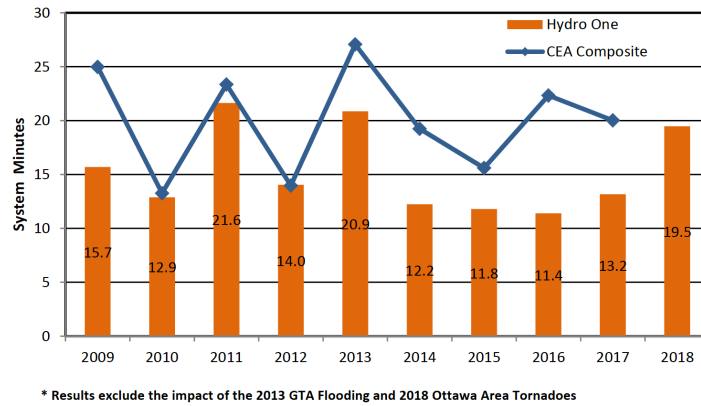
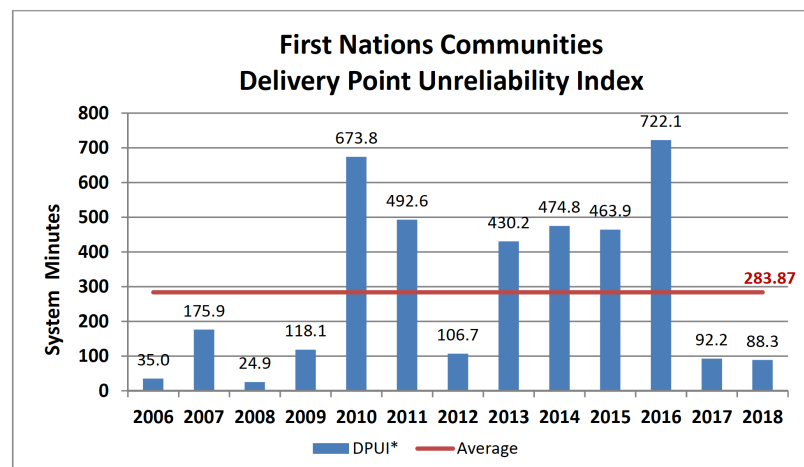
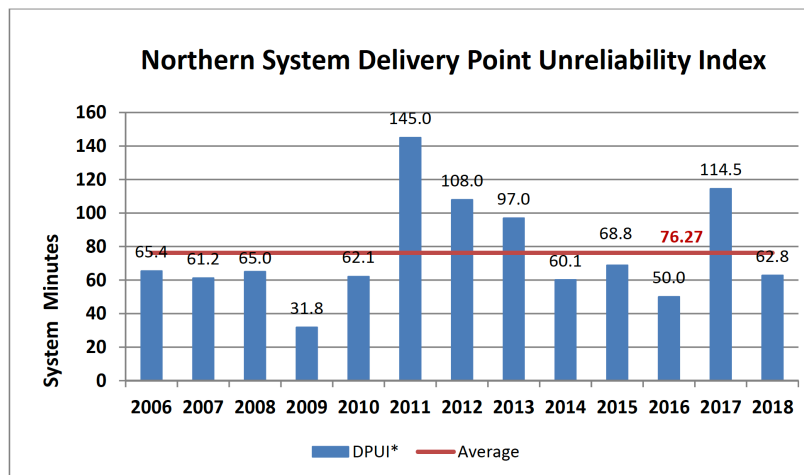


Figure 4: Comparison of Hydro One Delivery Point Unreliability Index to CEA Composite



9. The Board has a statutory mandate to protect consumers' interests with respect to prices and the adequacy, reliability, and quality of electricity service.⁴ This mandate includes protecting Indigenous customer's interests with respect to transmission reliability. Anwaatin submits that the Board should require Hydro One to take active steps to improve transmission system reliability in northern Ontario and the Anwaatin First Nation Communities, including through deployment of DERs, which Anwaatin submits are a valid transmission reliability resource (see part (c), below).
10. The reliability data in evidence in this proceeding demonstrate that a reliability disparity continues to exist between the overall Hydro One system, the northern Hydro One system, and the Anwaatin First Nation Communities. Hydro One's own data clearly indicate that the Anwaatin First Nations Communities' unreliability (DPUI) is 372 per cent worse than their northern neighbours in the 2006 through 2018 period and 461 per cent worse than their northern neighbours this decade (2010 through 2018).
11. Specifically, SAIDI data demonstrate lower reliability in the northern system and the Anwaatin First Nation Communities in several years, including 2016 through 2018. Mr. Jesus confirmed that Hydro One's data on overall SAIDI in 2016 through 2018 demonstrates lower reliability in the northern part of the system and in the Anwaatin First Nation Communities, as compared to the overall system.⁵ The trend is particularly pronounced in 2016 and prior years, with some improvement illustrated in the data for 2017 and 2018. Mr. Jesus also confirmed that Hydro One's data on overall SAIFI in 2016 through 2018 demonstrates lower reliability in northern part of Hydro One's system and in the Anwaatin First Nation Communities.⁶ Mr. Jesus also agreed that the DPUI illustrates a general

⁴ *Ontario Energy Board Act, 1998*, SO 1998, c. 15, Sched B, s 1(1).1.

⁵ Hearing Transcripts, Volume 2, 49:1-25.

⁶ Hearing Transcripts, Volume 2, 48:17-21.

progressive downward reliability trend between the overall system average, the northern average, and the Anwaatin First Nation Communities average.⁷ The Anwaatin First Nations Communities' reliability is worse than their northern neighbours and much worse than the Ontario average.

12. According to Hydro One, elevated SAIDI in the Anwaatin First Nation Communities in 2016 was primarily driven by issues on circuit A4L impacting Longlac TS and Beardmore DS #2. Further, Mr. Jesus confirmed that the cause of poor SADI and SAFI was predominantly in Hydro One's control: insulator failures, tree contact, and a faulty CPU card.⁸
13. The Anwaatin First Nation Communities face disproportionate and significant impacts as a result of the reliability disparity that gave rise to the Board's prior directions in its decisions. Anwaatin community hardships and negative impacts associated with poor electricity reliability and extended outages include:
 - full loss of most refrigerated foods;
 - loss of significant quantities of frozen meat, fish, and game birds, representing months of protected hunting and harvested food upon which First Nation families depend for their livelihoods;
 - lost hunting and harvesting time as a result of the necessity of dealing with the prolonged outage, and the need to find ways to replace lost meat, fish, and game birds with new protein sources through additional hunting and harvesting;
 - loss of significant quantities of frozen blueberries used for sustenance as well as for cash sales to supplement family incomes;
 - significant time needed to engage in the traditional practice of honouring the bodies of harvested animals whose meat is spoiled and wasted by taking the

⁷ Hearing Transcripts, Volume 2, 51:14-52:4

⁸ Technical Conference Undertaking Response JT1.28.

harvested animal parts that spoiled during the long outage to the bush to be buried and honoured with tobacco;

- increased sightings of, and dangers from, bears foraging at landfills for spoiled meats that are not subject to traditional methods of disposition;
- financial challenges for families with elders and caregivers who rely on traditional food sources to nourish their families with traditional meals, but who were forced to replace traditional food sources with store-bought foods, and use very limited household incomes to purchase food instead of paying for other family necessities; and
- additional financial expenditures in Aroland First Nation, community and Band Council in order to organize and purchase a community freezer with a back-up generator to provide elders and caregivers with assurance that harvested foods will be protected from substandard transmission performance.⁹

14. Hydro One states that its Transmission Business Plan for 2019 through 2024 will deliver the following outcome: “improving system and customer reliability to restore top quartile reliability performance as compared to the company’s Canadian peers.”¹⁰ Anwaatin supports the orientation of the Transmission Business Plan in this respect but notes that this outcome is focused on Hydro One’s overall system and does not expressly commit to improve reliability in Hydro One’s northern system or the Anwaatin First Nation Communities. Mr. Jesus confirmed that most of the circuits and supply to northern Ontario is through long radial lines that do not have the redundancy of southern Ontario multi-supplied circuits.¹¹
15. The reliability data in evidence in this proceeding demonstrate that a reliability disparity continues to exist between the overall Hydro One system, the northern

⁹ EB-2016-0160, Exhibit K13.2, Anwaatin Intervenor Evidence, para 21.

¹⁰ Exhibit A, Tab 3, Schedule 1, page 11.

¹¹ Hearing Transcripts, Volume 2, 45:25-28 and 46:18-24.

Hydro One system, and the Anwaatin First Nation Communities. Even so, Anwaatin acknowledges limited reliability improvements in the northern system and the Anwaatin First Nation Communities in the most recent years and is encouraged by progress that Hydro One may be making to improve reliability following Anwaatin interventions and Board decisions addressing same.

16. Anwaatin submits that additional Indigenous monitoring and reporting on the conditions of the lines serving the Anwaatin First Nation Communities and Hydro One's northern Ontario system, may assist Hydro One and the Board in monitoring and improving reliability in these areas. The Board may also wish to expressly direct Hydro One to achieve stated reliability improvement targets in the Anwaatin and Northern service areas.

(b) Settlement Agreement and DERs as a valid transmission reliability resource

17. Anwaatin submits that DERs offer a valid transmission resource that can assist in improving reliability and alleviating the northern and First Nations reliability disparity. The potential of DERs as a reliability resource was the subject of the Board approved Settlement Agreement in relation to Anwaatin's motion to review and vary the Board's last Hydro One transmission decision (EB-2017-0335).
18. The Settlement Agreement includes two phases. Phase 1 is focused on improving reliability to the communities served by Hydro One's F2 Feeder in the Nakina region in order to provide measurable improvement to the reliability of electricity supply in these communities as compared to the five-year historical average SAIDI and SAIFI values. The Aroland First Nation Battery Electric Storage System (**BESS**) project is well underway in this respect and will be completed in Q1 2019. Phase 2 is focused on WZI, with the objective of completing technical assessments of non-wires solutions for WZI communities in order to determine

whether cost-effective and technically feasible means may be used to improve reliability in the area.

19. With respect to Phase 1, Hydro One states that “upon in-service of the project, [it] will monitor and evaluate its performance for a period of time deemed necessary to determine if the expected reliability benefit was achieved.”¹² Mr. Jesus indicated that the period of time “deemed necessary” would be one to three years.¹³ Mr. Jesus indicated that battery electric storage systems are now part of the “standard package” that Hydro One’s planners use to identify solutions for solving reliability problems and that it is “on [Hydro One’s] roadmap” to include more BESS where it makes economic sense to do so.¹⁴ Anwaatin supports this measure, particularly as it may be applied in Indigenous communities
20. Further, Dr. Lowry confirmed that, over the long-term, there are potential savings on transmission costs for all customers related to distributed energy resources.¹⁵ Dr. Lowry confirmed that customer IR, as it is currently employed in Ontario, does not incentivize containment of capital expenditures through DERs and related peak load management and transmission reliability improvements.¹⁶ Anwaatin requests that the Board address this specific failure in the Hydro One transmission context and expand its consideration and approval of low cost DERs as eligible transmission resources for the benefit of Hydro One transmission customers, and particularly those with reliability challenges.
21. The Board previously approved storage as an “agnostic” transmission resource to address electricity reliability issues in Indigenous communities. The Board should facilitate an expansion of Hydro One’s leadership on the use of DERs as a

¹² Exhibit I, Tab 9, Schedule 1, p. 3.

¹³ Hearing Transcripts, Volume 2, 56:15-21

¹⁴ Hearing Transcripts, Volume 2, 56:22-28.

¹⁵ Hearing Transcripts, Volume 9, 90:26-91:10.

¹⁶ Hearing Transcripts, Volume 9, 91:25-92:5.

transmission asset/solution to other Indigenous and reliability-challenged energy communities. Anwaatin requests that the Board direct Hydro One to promptly proceed with Phase 2 of the Settlement Agreement in order to determine whether DERs and non-wires solutions may be employed as a valid transmission resource to alleviate the reliability disparity in the WZI portion of Hydro One's northern system.

(c) Engagement by Hydro One with Indigenous customers on transmission rates

22. In its Decision and Order on Hydro One's last transmission rates application, the Board directed Hydro One to "[b]egin the customer engagement process sufficiently in advance of filing the application, include LDCs (to determine practical ways to seek some input from their end users), incorporate timely and meaningful input from First Nations representatives, and ensure that information presented to customers is unambiguous and easy to understand."¹⁷
23. The importance of customer and stakeholder engagement in setting transmission rates is reflected and embedded in the Filing Requirements for Electricity Transmission Applications (the **Filing Requirements**). Specifically, s. 2.3.2 of the Filing Requirements requires Hydro One to address: (i) how customers were engaged in order to determine their needs; (ii) what their needs are; and (iii) how the Application responded to any identified needs. The definition of "customer" in the Transmission System Code allows for the needs of end-use customers to be reflected either directly (for transmission-connected loads) or indirectly, through their distributor, for distribution-connected loads.
24. Anwaatin submits that Hydro One did not implement the direction from the Board and incorporate timely and meaningful input from First Nations representatives. While Hydro One did commence consultations with Indigenous customers and

¹⁷ EB-2016-0160, Decision and Order, Revised November 1, 2017, p. 25.

rights holders, it did not ensure that the information presented was unambiguous and easy to understand.

25. Hydro One's response to Undertaking J7.1 provides a schematic timeline of Indigenous engagement and key milestone dates in the process of approving and preparing the Application. Hydro One filed the application on March 21, 2019. Although it held a series of "additional engagements" with First Nations and Métis between June 11, 2018 and June 19, 2019¹⁸ and a provincial engagement session with First Nation communities on February 21, 2018,¹⁹ it is not evident to Anwaatin that Hydro One conducted engagement with Indigenous communities to collect timely and meaningful input specifically **on the Application** before filing it.
26. Mr. Lyle moreover confirmed that his engagement with customers on behalf of Hydro One would not constitute reliable or statistically significant representation of First Nations' customer needs and preferences. To the extent that he engaged with local distribution companies that serve First Nations, Mr. Lyle confirmed that such engagement cannot be considered the "definitive word on how First Nations feel".²⁰
27. When Hydro One did hold engagement sessions with Indigenous communities (separate and apart from the filing of the Application), it failed to ensure that the information presented to Indigenous customers and other stakeholders was unambiguous and easy to understand. Mr. Chum confirmed that confusion and lack of understanding are often present in engagements with Indigenous communities:

MS. DeMARCO: And just to be clear, to give credit where credit is due, Mr. Chum, this is significant improvement from prior activities. This confusion is actually following some education of a number of communities; is that fair?

¹⁸ Undertaking Response J7.1.

¹⁹ Undertaking Response J7.1.

²⁰ Hearing Transcripts, Volume 7, 40:21-41:3.

MR. CHUM: What communities are you referring to?

MS. DeMARCO: Indigenous communities.

MR. CHUM: This confusion is following education of these communities?

MS. DeMARCO: Customer engagement process actually is facilitating education.

MR. CHUM: Oh, it is, absolutely, it is, yes, yes, and this has started a number of conversations with communities directly between Hydro One and the customers we serve.

MS. DeMARCO: So we have come a little way, but there is still a bit of confusion, fair to say?

MR. CHUM: Yes. Again, it is a very complex system, and there's changes in leadership all the time, and so it's an ongoing dialogue to educating them.²¹

28. Anwaatin submits that further work is required on the part of Hydro One in order to sufficiently engage and consult with Indigenous communities on the Application in a clear and unambiguous manner.
29. Hydro One acknowledges in its financial disclosure that its operations and activities may give rise to the Crown's duty to consult and potentially accommodate Indigenous communities and that the procedural aspects of that duty may be delegated to Hydro One. Further, a perceived failure by the Crown or Hydro One to sufficiently consult an Indigenous community may give rise to a legal challenge against the Crown or Hydro One.²² Mr. Chhelavda and Mr. Berardi confirmed that these elements of the duty to consult may constitute a material risk factor with possible material adverse effects on the business, and therefore warrant disclosure in Hydro One's Management's Discussion and Analysis (MD&A).²³

²¹ Hearing Transcripts, Volume 7, 51:6-24.

²² Exhibit A, Tab 6, Schedule 6, Attachment 2, p. 50.

²³ Hearing Transcripts, Volume 4, 180:2-181:5.

30. Anwaatin submits that, in order to implement the Board's direction in the EB-2016-0160 Decision and Order and ensure that Ontario's Indigenous communities are not "out of sight, out of mind" in Hydro One transmission processes, the Board should require Hydro One to include a related First Nations consultation metric on the Transmission Scorecard. Anwaatin is of the strong view that a defined First Nations consultation metric is required to ensure that the importance of Indigenous engagement and the duty to consult and potentially accommodate, as noted in Hydro One's financial disclosure, is reflected in the implementation of Hydro One's transmission planning.

REQUESTED RELIEF

31. Anwaatin requests that the Board:

- (a) facilitate additional Indigenous monitoring and reporting on the conditions of the lines serving the Anwaatin First Nation Communities and Hydro One's northern Ontario system and may wish to expressly direct Hydro One to achieve stated reliability improvement targets in the Anwaatin and Northern service areas;
- (b) direct Hydro One to proceed with Phase 2 of the transmission Settlement Agreement and encourage Hydro One to expand the use of DERs to Indigenous customers experiencing long-term reliability issues; and
- (c) require Hydro One to include a related First Nations consultation metric on the Transmission Scorecard to ensure that the importance of Indigenous engagement and the duty to consult and potentially accommodate are reflected in the implementation of Hydro One's transmission planning.

ALL OF WHICH IS RESPECTFULLY
SUBMITTED THIS 16th DAY OF
DECEMBER, 2019.



Lisa (Elisabeth) DeMarco
DeMarco Allan LLP
Counsel for Anwaatin



Jonathan McGillivray
DeMarco Allan LLP
Counsel for Anwaatin