EB-2022-0178

ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF an Application by Entegrus Powerlines Inc. to Amend Schedule 1 of an Electricity Distributor Licence.

ENTEGRUS POWERLINES INC.

REPLY ARGUMENT

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
Suite 1800, Box 754
181 Bay Street
Toronto, ON M5J 2T9

David Stevens
Patrick Copeland

Tel (416) 863-1500
Fax (416) 863-1515

Email: dstevens@airdberlis.com
pcopeland@airdberlis.com

Counsel to Entegrus

A. OVERVIEW

1. In its Argument in Chief filed on August 4th, Entegrus Powerlines Inc. (Entegrus) set out the reasons why its Service Area Amendment (SAA) Application should succeed.

2. On August 25th, each of OEB Staff (Staff), Hydro One Networks Inc. (Hydro One) and Formet Industries (the Customer) filed submissions opposing the relief sought.

3. This is Entegrus' Reply Argument responding to the submissions received from other parties and from Staff. For the purposes of this Reply Argument, Entegrus repeats and relies upon the evidence that it has filed in this case and upon its Argument in Chief. Unless otherwise noted, defined terms used in this Reply Argument have the same meaning ascribed to them in Entegrus' Argument in Chief.

4. The submissions from Staff and intervenors total more than 100 pages in length. Many of the issues raised by these parties, among other things, have already been addressed in Entegrus' Argument in Chief, are not supported by the evidentiary record, and/or fail to meaningfully grapple with the substantive positions advanced by Entegrus. Entegrus does not intend to, nor will it, respond to each and every argument or comment made in the submissions of others. But the lack of explicit reply by Entegrus to any such argument or comment should not be taken as agreement with the particular point.

5. The key questions addressed by the other parties, and the high-level response from Entegrus, are summarized below.

   (a) *Is the arrangement between Hydro One and the Customer a long term load transfer (LTLT)?*

   Staff and Hydro One argue that the arrangement where Hydro One serves the Customer is not a LTLT. The main reasons cited are that the Customer has always been billed by Hydro One, and that the M7 and M8 Feeders serving the Customer are effectively owned by Hydro One, not Entegrus. On the first of these items, Entegrus states that neither the Distribution System Code (DSC), nor the OEB's direction in other cases, require that a customer be billed by the "physical distributor" in order to be considered as an LTLT. In any case, the parties settled as between themselves by way of payments under the operating lease set out in the 1997 Letter. This situation clearly fits the definition of a load transfer, which is where a customer is served through the distribution network of another distributor. The suggestion that Hydro One effectively owns the M7 and M8 Feeders is wrong. It is very clear that the M7 and M8 Feeders are owned by Entegrus, operated by Entegrus and included in Entegrus' rate base and it is also clear that Entegrus is responsible for maintaining the integrity of the

Feeders and for paying a penalty to Hydro One if the Feeders are out of service for more than one minute. The distinctions drawn by Staff and Hydro One to argue that this is not a LTLT lack an evidentiary basis, a legal basis, or both. When the circumstances of this arrangement are viewed in context, it is clear that the substantive effect of the 1997 Letter was to create a LTLT.

(b) *Has the 1997 Letter been frustrated?*

The 2015 amendments to the DSC imposed a deadline to eliminate any LTLTs. It is Hydro One, as the geographic distributor, who should have brought the SAA Application. Entegrus notes, though, that Hydro One's position in this case underlines that it would never have done so, meaning that this Application would ultimately fall to Entegrus. In any case, the timing of this Application ought not to be, and cannot be, determinative if the arrangement is, in fact, an LTLT. There are many examples of OEB-approved LTLT elimination applications that were brought after the initial joint LTLT elimination applications between Hydro One and LDCs. The legal effect of the DSC prohibition is that the 1997 Letter can no longer be performed, meaning that it is frustrated. The fact that the parties have been observing the 1997 Letter up to the time of this Application does not alter that conclusion. In fact, the DSC requires that services under the LTLT be continued until the LTLT elimination application is determined. If the OEB determines that the arrangement is an LTLT that should be eliminated, the fact that the parties had been continuing to observe the 1997 Letter (which underpins the LTLT) up until now should not matter. The LTLT Elimination Policy is mandatory, and parties cannot opt-out of the scheme, whether intentionally or inadvertently. A pre-existing contract is not a defence against compliance with the DSC. This is not a case where, as the other parties allege, Entegrus has self-induced frustration of the 1997 Letter. It is the OEB's changes to the DSC in 2015, where a direction was provided to eliminate LTLTs by a certain date, that frustrated the 1997 Letter. Having been frustrated, the conditions precedent in the 1997 Letter (to obtain all necessary government and regulatory approvals) cannot be met, and the purchase option is no longer available.

(c) *Should the OEB consider the section 86(1)(b) issue?*

In the event that the 1997 Letter is not frustrated as a result of the LTLT Elimination Policy, Staff and Hydro One disagree as to whether the OEB should consider if it would approve the transfer of the M7 and M8 Feeders under the asset transfer approval provisions of section 86(1)(b) of the OEB Act. Staff indicates that this question is not before the OEB, since no request is made by Entegrus. Hydro One submits that if the OEB believes section 86 approval is required, then it is efficient to address this item now. Entegrus asserts that section 86 approval is needed before the ownership of the Feeders can transfer. Entegrus submits that it is appropriate for the OEB to consider whether leave would be granted for the sale of the M7 and M8 Feeders. Entegrus submits that it is unfair to criticize Entegrus for not making such an application, where the utility takes the position that no transfer would occur because the 1997 Letter is frustrated. That being said, if the OEB finds otherwise, then it is efficient for the OEB to provide guidance on this item now, while all interested parties are engaged. This will avoid the need for a subsequent contested proceeding. For the reasons set out at paragraphs 86 to 92 of the Argument in Chief, Entegrus submits that the OEB should indicate that it would not grant section 86(1)(b) approval for the transfer of the M7 and M8 Feeders to Hydro One. As explained, in addition to the existence of the requirement

to eliminate this LTLT as argued above, the inability to obtain a section 86 would similarly result in the frustration of the 1997 Letter.

(d) *Should the SAA Application be granted?*

Entegrus acknowledges that if the OEB declines to find that the 1997 Letter has been frustrated, then the requested SAA Application will not be granted. However, if the 1997 Letter is found to be frustrated, such that the M7 and M8 Feeders continue to be owned by (and would now be controlled by) Entegrus, then the OEB should grant the SAA Application. Contrary to the submissions from Hydro One and the Customer, there is substantial available (excess) capacity from the M7 and M8 Feeders which could be more efficiently used to serve both the Customer as well as other Entegrus customers in St. Thomas. This would save Entegrus ratepayers substantial costs versus the alternatives available for obtaining new capacity. On this point, the evidence is clear that Entegrus is facing capacity shortfalls that will have to be met and that Hydro One has effectively committed all other available capacity from the Edgeware Transmission Station (TS). The Customer complains that it will see reduced quality of service from Entegrus. The evidence does not support that conclusion. The Customer will have service available from more than the current two feeds, which will provide coverage in the event of a disruption from one source. While the Customer's costs may go up in the short term (though not nearly so much as Hydro One alleges), Entegrus would make appropriate mitigation arrangements to ensure that the Customer is kept whole. As of the time that Entegrus rebases its rates in 2026, such mitigation arrangements are expected to become unnecessary.

(e) *Alternatives if the SAA Application is not granted*

In Argument in Chief (at paragraph 125), Entegrus set out several alternatives for the OEB to consider if the SAA Application is not granted (including payment of outstanding rental amounts). Entegrus repeats those requests.

However, in the event that the OEB does not agree, then Entegrus makes the following further request. In part, this is informed by the fact that Hydro One's submission provided more clarity on the terms on which it would offer Entegrus the use of 5MW of excess capacity on the M7 and M8 Feeders if these were transferred to Hydro One from Entegrus.

Entegrus requests that in the event that the OEB finds that the 1997 Letter has not been frustrated (and no SAA is granted), and the alternate relief requested in the Argument in Chief is not granted, then the following should occur: (i) the M7 and M8 Feeders should be transferred at net book value ($116,431); (ii) the transfer will include the M7 and M8 wires and conductors, but not the associated poles; (iii) Hydro One will provide Entegrus with 5MW of capacity on either the M7 or M8 Feeder, at an effective cost consistent with what Hydro One has paid to Entegrus on a per MW basis – this would involve rate mitigation being applied until the end of the life of the M7 and M8 Feeders to reduce the standard charges that Hydro One proposes to apply in this unique situation; (iv) if rate mitigation assistance is not provided, then Entegrus would want to still have the option made available by Hydro One where Entegrus would pay to Hydro One a cost of $7,721 per month (this represents a cost that is far higher than what Hydro One currently pays to Entegrus, which is $5,528 per month for the capacity

of two full feeders versus the Hydro One proposal of $7,721 per month for around 1/3 of one feeder); and (v) Entegrus will be entitled to additional capacity on the M7 and M8 Feeders (at the same cost, including rate mitigation protection) in the event that the Customer's demand is reduced in the future pursuant to the terms of the May 2023 Letter purporting to set out a capacity allocation agreement between Hydro One and the Customer.

6. In the body of this Reply Argument, Entegrus expands on each of these items.

B. THE ARRANGEMENT IS AN LTLT

The Substantive Effect of the 1997 Letter

7. The substantive effect of the 1997 Letter is a key issue in dispute. If the 1997 Letter established a LTLT arrangement between (what is now) Entegrus and Hydro One, Entegrus submits that the LTLT Elimination Policy has legally frustrated the agreement. The consequence of such a finding would relieve the parties of any obligations thereunder, including Entegrus' compulsory transfer of the currently under-utilized Feeders to Hydro One at a fraction of their replacement value (which is estimated at $3 million to $4 million, or around $40 million if Entegrus must build its own new station)[1]. As stipulated in the 1997 Letter itself, the arrangement is expressly contingent on Hydro One (then Ontario Hydro) "obtaining all requisite internal and governmental or statutory approvals".[2] This, Entegrus submits, can no longer be obtained.

8. Hydro One and Staff argue in their respective responding arguments that a LTLT was not, in fact, created by virtue of the 1997 Letter, such that there could be no frustration of contract on that basis. Entegrus disagrees.

9. At a high level, load transfers occur where one distributor (the geographic distributor) permits another (the physical distributor) to service a customer located in the former's service area. The physical distributor's assets are used to service the affected customer(s) located within the geographic distributor's service area.[3] This is the arrangement which the 1997 Letter seeks to make permanent.

[1] See Entegrus Application, Section 5.5.1, and Argument in Chief, para. 50.
[2] See Entegrus Application, Attachment 3.
[3] OEB Notice of Proposed Amendments to DSC re LTLTs, February 20, 2015, pages 1 – 2.

The Geographic and Physical Distributors At Issue

10. There appears to be no dispute that Hydro One is the geographic distributor for the Customer (although the Customer is located within a conspicuous carve-out within Entegrus' St. Thomas service territory in terms of the current Entegrus licence). There is, however, a dispute amongst the parties as to who is the physical distributor for the Customer.

11. Entegrus maintains that it is the physical distributor on a number of bases. Entegrus owns the M7 and M8 Feeders. Entegrus is responsible for their maintenance, operation, and reliability.[4] The Feeders are included in Entegrus' rate base.[5] Entegrus is responsible to (re)pay Hydro One a full month's rent if the Feeders fail for more than one minute.[6] The Feeders are controlled by Entegrus, as set out in the STEI Transmission Agreement with Hydro One.[7] Entegrus is liable for any negative consequences of the Feeders, including any resulting litigation, and is to indemnify Hydro One in respect of same.[8] The very nature of the 1997 Letter, whereby Hydro One was granted an option to purchase the Feeders from Entegrus, confirms that Entegrus owns the Feeders and is, therefore, the physical distributor.

12. In sum, the key hallmarks of a LTLT arrangement are plainly engaged in these circumstances. The suggestion that Hydro One is the effective owner of the Feeders[9] is contrary to the overwhelming weight of the evidence that confirms the exact opposite is true. Hydro One could have, but chose not to, build the Feeders itself, such that it became reliant on Entegrus' assets to serve the Customer within Hydro One's current service territory.

No Requirement for a Physical Distributor to Bill a Customer Directly

13. Despite the above-noted (largely) uncontroverted facts, both Hydro One and Staff dispute that Entegrus is the physical distributor for the Customer. In doing so, they place undue reliance on the fact that it is Hydro One, rather than Entegrus, that bills the Customer.[10] This

[4] See Entegrus Application, Attachment 3.
[5] See Entegrus Response to Hydro One Interrogatory #9. See also Entegrus Response to Hydro One Interrogatory #2.
[6] See Entegrus Application, Attachment 3.
[7] See Entegrus response to Hydro One Interrogatory #2(a).
[8] See Entegrus Application, Attachment 3.
[9] Staff Submission, page 5.
[10] Staff Submission, pages 5-6 and Hydro One Submission, paras. 15-17.

is an artificial, and improper, consideration that cannot drive, let alone determine, the analysis.

14. Neither the DSC (being the source of the LTLT Elimination Policy) nor the OEB's directions in other cases regarding LTLTs require that the physical distributor directly bill the customer(s) at issue in order for a LTLT to exist. In fact, the DSC defines a "physical distributor" as follows:

> *…with respect to a load transfer, means the distributor that provides physical delivery of electricity to a load transfer customer,* ***but is not responsible for connecting and billing the load transfer customer directly****.*[11] ***[emphasis added]***

15. Similarly, the OEB's Notice when it introduced the LTLT Elimination Policy indicated the following:

> *… It is therefore the physical distributor that provides the delivery of electricity to the load transfer customer. However, the customer is billed by the geographic distributor (i.e., pays geographic distributor's distribution rates which may be higher or lower than physical distributor's rates)*

16. Accordingly, had it been directly billing the Customer, which it does not, Entegrus could not satisfy the definition of a "physical distributor" under the DSC.

17. Denying the existence of a LTLT on the basis that Entegrus does not directly bill the Customer would impose a new, and contradictory, requirement for LTLT arrangements. It would simultaneously require the OEB to ignore the various other factors of this case that plainly fall within the typical understanding of what a LTLT arrangement entails.

18. Further, given that Hydro One is the geographic distributor that billed the Customer directly, the LTLT settlement between Hydro One and Entegrus was effectively represented by the lease and maintenance payments made pursuant to the 1997 Letter. While perhaps this structure is unusual, that is simply owed to the particular contractual rights contained in the 1997 Letter, but it does not change the substantive effect of the 1997 Letter.

Cross-Subsidization Issues

19. Another contested issue pertains to cross-subsidization. While cross-subsidization concerns have been cited as a particular concern with LTLTs, the OEB has recognized that "there are a number of undesirable outcomes" with these arrangements which led to the LTLT

[11] Distribution System Code (DSC), section 1.2, definition of "physical distributor".

Elimination Policy.[12] Leaving aside these other "undesirable outcomes" for present purposes (such as the confusion that has already presented itself in this case)[13], the evidence confirms the financial consequences to the various parties by virtue of the 1997 Letter. The effect is that Entegrus ratepayers are and will be cross-subsidizing Hydro One through the historic 1997 Letter arrangements and through any transfer of the M7 and M8 Feeders at net book value.

20. Hydro One has confirmed that for the period of 2016 – 2022[14], it earned the following revenue from the Customer:

2016	$ 220,260
2017	$ 225,693
2018	$ 232,510
2019	$ 238,879
2020	$ 226,235
2021	$ 240,996
2022	$ 266,151
Total	$1,650,724

[15]

21. The average revenue from this seven year period totals $235,817.71. As a result, Hydro One averaged more revenue from the Customer each year during this period than the proposed purchase price of the Feeders.

22. In contrast, given the Feeders' remaining life of 14 years[16], and using the same discount rate of 12% as utilized by Staff[17], the present value of future revenues, in 2023 dollars, totals $1,563,039.48 ($235,817.71*1.12[14]). This amount approximates the fair market value of the Feeders given their current use.

23. It is important to recall also that Hydro One was only paying around $66,000 per year[18] to rent the infrastructure that it used to earn these revenues of more than $235,000 per year. Hydro One only provided the revenue generated in relation to the Customer for the past seven years. On the assumption that Hydro One received the same average revenues from

[12] *Ibid*.
[13] Application 2022-10-17, pages 22-23.
[14] Hydro One declined to provide these revenue figures for any prior period.
[15] See Hydro One's Response to Entegrus Interrogatory #19.
[16] 40 years (per the IFRS amortization schedule) less 26 years (2007-2023).
[17] Staff Submission, pages 8-9.
[18] $5,527.83 per month.

the Customer over the past 26 years, it received gross revenues of more than $6 million.[19] That is to be compared to the rental payments that Entegrus has received, which total around $1.38 million.[20] If the "time value of money" is taken into account, and the customer and rental revenues are discounted to 1997 dollars (using the 12% discount rate applied by Staff in their Submission), then it could be said that Hydro One received the equivalent of $1,861,936.48 in 1997 dollars[21] and Entegrus received the equivalent of $532,844.33 in 1997 dollars.[22]

24. Given the above, including the significant revenue generated from the Feeders, the suggestion that Hydro One and/or the Customer are being, or would be, penalized is unfounded. They have had the benefit of this LTLT arrangement for over 20 years. Conversely, should the Feeders be transferred to Hydro One pursuant to the 1997 Letter, Entegrus customers will be deprived of the (underutilized) Feeders that could have been used to service a growing community, with growing needs, while receiving in return a fraction of the Feeders' replacement costs.

25. The simple fact is that the Customer is served by Entegrus assets that are being underutilized. That excess capacity could be, and should be, used to serve other Entegrus customers, which can only be done if the LTLT arrangement instituted by the 1997 Letter is eliminated. Entegrus customers are being deprived of a benefit and will have to incur the consequences of substantial additional costs for new capacity to serve St. Thomas. Hydro One benefits from the significant revenues from the Customer (which are far in excess of the rental and maintenance amounts paid for the Feeders). All of these factors are described in more detail later in this Reply Argument. The combination of these factors, coupled with (accurate) calculations to account for the passage of time, results in Entegrus customers effectively cross-subsidizing Hydro One.

26. On the subject of cross-subsidization, there are a couple of specific submissions to which Entegrus wishes to respond.

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[19] 26*$235,000 = $6.11 million.
[20] 123*5,827.93 + 120*5,527.93 = $1.38 million. Note this does not include any rental payments since 2017.
[21] $235,817.71 x (1-(1/(1.12^{26})))/0.12.
[22] See footnote 23.

27. Staff submits that Entegrus has already received the cost of the M7 and M8 Feeders through rent payments over time. Putting aside the fact that cost-recovery does not imply that ownership transfers (see paragraph 98 below), the numbers presented by Staff do not support this observation, once a necessary correction is made. In the Staff Submission, the total present value of payments made by Hydro One reflects a discount rate of 12% applied to payments received from 1997 to 2007, but does not include a similar calculation for payments received from 2008 to 2017. For the latter period, Staff applied a 12% discount rate to show the payments in 2008 dollars, but then only applied a 2% inflation factor (rather than a 12% discount rate) for the years from 1997 to 2008. Once that correction is made, the total payments are $532,844.33[23], which is a shortfall of $206,855.42 versus the total construction costs (all in 1997 dollars)[24]. When one converts this 1997 dollars shortfall to current day, the implication is that Entegrus has under-recovered by around $4 million (using Staff's 12% discount rate applied for 26 years).[25]

28. Related to this is the Customer's assertion that Entegrus "has received almost double the cost of the feeders through monthly payments".[26] This argument is fatally flawed as it fails to account for the time-value of money. Once that is taken into account, it is clear that Hydro One has not paid anywhere near the full cost of the Feeders, in 1997 dollars.

The LTLT Elimination Policy is Mandatory

29. Further, and in any event, the LTLT Elimination Policy is mandatory rather than permissive. Parties cannot intentionally, or through inadvertence, unilaterally opt-out of the scheme. Hydro One[27] and Staff[28] argue, however, that the parties' failure to include the Customer in the 2017 LTLT Application[29] as one of the load transfers to be eliminated is somehow dispositive of, or even relevant, to the substantive effect of the 1997 Letter. This cannot be correct.

30. Any LTLT analysis will inevitably be case specific. It was a mistake to not include the Customer as one of the arrangements to be eliminated in the 2017 LTLT Application, but

[23] $385,299.61 /$1.12^{10.25}$ + $412,253 = $532,844.
[24] $739,699 – $532,844.
[25] $206,855.42 x 1.12^{26} = $3.94 million.
[26] Formet Submission, para. 119.
[27] See, for instance, Hydro One Submission, para. 24.
[28] See, for instance, Staff Submission, page 7.
[29] See Entegrus Argument in Chief, paras. 21-22.

that error does not alter the substantive reality created by the 1997 Letter. Further, section 6.5.3 of the DSC obliges the geographic distributor (being Hydro One in this instance), rather than the physical distributor, to apply to the Board for a service area amendment. The failure to include the Customer in the 2017 LTLT Application was accordingly the responsibility of Hydro One in any event. Regardless, this SAA Application affords the Board the opportunity to address an issue that was apparently, and incorrectly, overlooked.

31. Hydro One cites three cases to argue that the "OEB has the authority to leave LTLTs as they stand" despite the LTLT Elimination Policy.[30] A closer examination of these cases, however, demonstrates their limited relevance to the present analysis.

32. Two of three cases, being the Burlington Hydro Inc. case (EB-2017-0220) and the Hydro One/Thunder Bay Hydro Inc. case (EB-2017-0250/EB-2019-0147) have not been resolved by way of an OEB decision. In fact, there is nothing on record to indicate why these matters have not proceeded or the OEB's analysis of the issue. What is clear, however, is that one or both parties to the LTLT in those cases are seeking an exception to the LTLT Elimination Policy. There is no indication of any objection to such an exemption. Perhaps there are good reasons for those exemption requests, but that is not what is happening here. Rather, Entegrus is explicitly seeking compliance with the LTLT Elimination Policy and does not agree that an exemption would be appropriate.

33. The third case cited by Hydro One is the E.L.K Sellick Decision under EB-2016-0155. In its responding argument in this matter, Hydro One quotes a passage from its submissions filed in connection with the E.L.K Sellick Decision.[31] The OEB's decision itself, however, is entirely silent on the proposition that if the OEB granted that application (which it ultimately did), a LTLT would be created. The DSC is not even referenced in the OEB's decision.

34. Moreover, E.L.K. in its Reply Argument challenged Hydro One's contention as follows (citations omitted):

> Third, Hydro One argues that approving the service area amendment will create a new long-term load transfer, contrary to the provisions of the Distribution System Code. Hydro One argues this on the basis of an unproven assertion that "Hydro One will remain the physical distributor" if E.L.K. provides service. ***This is not true. The evidence is that E.L.K. will supply power to Sellick from E.L.K's existing***

[30] Hydro One Submission, para. 41.
[31] See Hydro One Submission, para. 39.

> ***distribution feeder that is currently used to serve E.L.K. customers eastward along Clark Street***.
>
> If the Board grants the Application, E.L.K. will be both the physical and geographic distributor. E.L.K. is considered both the physical and geographic distributor for all the other customers serviced by this same feeder eastward along Clark Street. It is true that this feeder is supplied via Hydro One's M7 line. ***Contrary to the assertions of Hydro One, the fact that Hydro One supplies power upstream to an embedded distributor does not, in and of itself, make Hydro One the "physical distributor" nor does it make all the embedded distributor's customers LTLTs***. ***[emphasis added]***

35. The issues identified by E.L.K. in its Reply Argument simply do not exist here where, among other issues, it is Entegrus who owns the Feeders and is already the physical distributor, and where it would remain as such if this SAA Application is granted.

36. Hydro One's reliance on the E.L.K Sellick Decision is misplaced.

37. Hydro One further seeks to rely on the OEB's Executive Policy Committee's conclusion in EB-2015-0006 to suggest that the LTLT Elimination Policy only applies to LTLTs that were identified as of December 21, 2015.[32] This is incorrect. As confirmed by the Notice of Amendments to a Code dated December 21, 2015, the "purpose of the DSC amendments is to set out the criteria under which ***all*** load transfer arrangements will be eliminated" (emphasis added). Further, section 6.5.6 of the DSC stipulates that distributors "shall not enter into any new load transfer arrangements". The direction from the OEB, and the mandatory language contained in the LTLT Elimination Policy, make it plain that all LTLTs are to be eliminated, and the inadvertent failure to recognize an arrangement as being contrary to the policy at one point in time does not permit the parties to perpetuate an otherwise improper LTLT arrangement forevermore. There are examples of other LTLT elimination applications being brought (and approved) after the deadline set out in the LTLT Elimination Policy. [33]

C. THE LETTER AGREEMENT IS FRUSTRATED

38. The 1997 Letter creates and perpetuates a LTLT. As described, this LTLT should be eliminated, as directed by section 6.5.3 of the DSC. The effect is that the 1997 Letter will be

[32] Hydro One Submission, para. 24(c).
[33] See, for example, the case cited by Entegrus at paragraph 22 of the Argument in Chief. See also EB-2018-0112 (Hydro One and Kitchener-Wilmot); EB-2018-0159 (Hydro One and InnPower); EB-2018-0260 (Milton Hydro and Alectra); EB-2017-0378 (Veridian Connections and Hydro One); EB-2019-0013 (Hydro One and Lakeland Power); EB-2019-0287 (Hydro One and Alectra); EB-2019-0298 (NPEI and Hydro One); and EB-2020-0115 (Hydro One and Sudbury Hydro).

frustrated, and cannot be enforced or relied upon. This is discussed in detail at paragraphs 60 to 83 of the Argument in Chief.

39. The key point here is that once the LTLT is eliminated, then the 1997 Letter can no longer legally be performed. That is what Entegrus is asking the OEB to confirm in this case.

40. Other parties make much of the fact that Entegrus has continued to observe the 1997 Letter, even after the OEB directed utilities to eliminate LTLTs.[34]

41. Entegrus acknowledges that this SAA Application should have been commenced earlier. However, there was nothing misleading or inappropriate. Indeed, it is Hydro One, as the geographic distributor, who should have brought the SAA Application – that is clear from section 6.5.3 of the DSC. Of course, Hydro One's position in this case underlines that Hydro One would never have sought to eliminate this LTLT, meaning that this Application would ultimately fall to Entegrus. In any event, without Hydro One having sought and obtained an exemption from the LTLT Elimination Policy for this LTLT, it cannot be said that Hydro One has met the conditions precedent for the transfer of the Feeders under the 1997 Letter.

42. In any case, there are other examples of SAA Applications brought after the first round of joint SAA Applications following the LTLT Elimination Policy.[35] The fact that the Application is late is not determinative.

43. Contrary to the insinuation from Hydro One, there is no reason to conclude that the STEI/Entegrus MAADs application would have been treated differently had the LTLT been identified at that time[36] – if indeed this arrangement is an LTLT, it would be eliminated whether the distributor was STEI (unamalgamated) or Entegrus (amalgamated).

44. The fact that Entegrus continues to observe the terms of the 1997 Letter, and the resulting LTLT, while this Application is underway is entirely consistent with the DSC. Section 6.5.5, requires that the load transfer arrangement continue until such time as the load transfer arrangement is eliminated under section 6.5.3. It would not serve any party's interest (and certainly not the Customer) if unilateral changes were made in the existing arrangements before the OEB addresses the dispute between the parties. Notably, while Hydro One

[34] Hydro One Submission, para. 13 and Formet Submission, paras. 87-95.
[35] See footnote 31 above.
[36] In response to Hydro One Submission, paras. 31-36.

purported to exercise its purchase option under the 1997 Letter almost five years ago, since that time it has not taken any steps with the OEB or in Court to enforce its purported rights.[37]

45. This is not a case of self-induced frustration, as alleged by other parties.[38] Unlike the scenario described in the *Petrogas Processing Ltd. v Westcoast Transmission Co.* case[39], this is not a circumstance where Entegrus has failed to take a step that would have avoided having the 1997 Letter frustrated. The frustration here arises because of the OEB's rules (the DSC) and the inability of the 1997 Letter arrangement to fit within those rules. While it is true that the OEB has discouraged LTLTs since the DSC was created, it was only through the 2015 amendments to the DSC that a direction was made for LTLTs to be eliminated by a set date – the OEB's Notice at that time is clear that the amendments are "to establish criteria to facilitate the elimination of the remaining load transfer arrangements between electricity distributors".[40]

46. As explained throughout this Application, the impact of the 1997 Letter being frustrated is that it is no longer enforceable. The parties can no longer satisfy the requirement in the 1997 Letter that Hydro One must obtain all requisite or governmental approvals[41], and the option to purchase the M7 and M8 Feeders is no longer available.

D. EVEN IF THE AGREEMENT IS NOT AN LTLT, TRANSFER OF ASSETS IS NOT IN PUBLIC INTEREST

47. In its Application[42], and in Argument in Chief[43], Entegrus explains that it is important to consider that even if the 1997 Letter is not frustrated by the OEB's LTLT Elimination Policy, then it is still necessary for Entegrus to obtain leave from the OEB for the transfer of the M7 and M8 Feeders. Entegrus explains that it would not be able to satisfy the OEB that such a transfer is in the public interest. That will effectively mean that any transfer cannot be completed. Stated differently, the 1997 Letter will be frustrated because the OEB will not issue approval under section 86(1)(b) of the OEB Act.

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[37] Hydro One Submission, para. 10, citing Attachment 7 to Hydro One Evidence.
[38] Staff Submission, page 10, and Formet Submission, paras. 92-96.
[39] See the passage from *Petrogas Processing Ltd. v Westcoast Transmission Co.* cited by both Staff and Formet at the paragraphs noted in the previous paragraph.
[40] EB-2015-0006, Notice of Proposal to Amend a Code, Proposed Amendments to Distribution System Code, February 20, 2015, page 1.
[41] Entegrus Application, Attachment 3.
[42] Application, page 18.
[43] Argument in Chief, paras. 84-92.

48. Several responses are offered to Entegrus' position on this topic.

49. Hydro One argues that no section 86(1)(b) approval is required for two reasons. First, Hydro One argues that the OEB has already reviewed the 1997 Letter around 2002 and did not express concerns.[44] Second, Hydro One argues that the M7 and M8 Feeders are not used by Entegrus to serve the public, meaning that section 86(1)(b) does not apply.[45]

50. Entegrus disagrees. The phrasing of section 86(1)(b) of the OEB Act is clear:

> *No transmitter or distributor, without first obtaining from the Board an order granting leave, shall,*
>
> *(b) sell, lease or otherwise dispose of that part of its transmission or distribution system that is necessary in serving the public*

51. Even if the OEB somehow approved the lease arrangement in 2002 (which Entegrus denies, especially given that section 86 of the OEB Act did not exist at that time), that is distinct from the proposed transfer of ownership. The key transaction is the proposed sale of the M7 and M8 Feeders from Entegrus to Hydro One, such that they will become Hydro One assets. That has not happened yet, but if it does, it would clearly be subject to section 86(1)(b) of the OEB Act, which states that *an order granting leave* of the OEB is required to "sell" that part of the distribution system necessary in serving the public.

52. Hydro One's suggestion that section 86(1)(b) does not apply because the M7 and M8 Feeders are not currently used by Entegrus to serve the public is similarly flawed. The question is whether the assets are necessary in serving the public. Entegrus has explained throughout this Application why these assets (which it owns) are necessary to serve the growing capacity requirements in St. Thomas. The suggestion in Hydro One's evidence (cited in the Hydro One Submission) that assets outside a distributor's service territory cannot be used to serve the "public" in the distributor's service territory cannot be correct.[46] The very assets in question here (the M7 and M8 Feeders) are located in the Entegrus service territory (outside the boundaries of the Customer's property, which is the area served by Hydro One). Therefore, Hydro One's logic would say that it cannot use the Feeders to serve the Customer. Similarly, Hydro One's logic would say that it should have conceded the contested SAA with Hydro

[44] Hydro One Submission, para. 30.
[45] Hydro One Submission, para. 45.
[46] Hydro One Intervenor Evidence, section 3.1.1.1, page 21.

Ottawa which involved serving a new customer using lines running through Hydro Ottawa's service territory in Casselman[47] – Hydro One did not take that position in the prior case.

53. Staff submits that the question of whether section 86 approval would be issued is not before the OEB, and it would not be appropriate for the OEB to provide comments on the merits of a future application.[48] Staff says that Entegrus cannot rely on a future application to say that the 1997 Letter is frustrated. Entegrus submits that it is unfair to criticize Entegrus for not making such an application at this time, where the utility takes the position that no transfer will need to occur if the 1997 Letter is found to have been frustrated. On the other hand it is not efficient to require consecutive proceedings that engage the same issues with the risk of inconsistent findings.

54. Entegrus indicates, and Hydro One appears to agree[49], that it is most efficient for the OEB to address all relevant items in this proceeding rather than in a piecemeal fashion. The Customer indicates in its Submission that the OEB can address section 86 pursuant to its own motion under section 19(4) of the OEB Act, and further submits that "[t]he Board has the right to consider, and is considering, the unusual circumstances brought forward in this SAA application to determine what relief is appropriate, if any."[50]

55. Entegrus submits that it is appropriate for the OEB to provide guidance in this proceeding, while all interested parties are engaged, as to whether leave would be granted for the sale of the M7 and M8 Feeders. This will avoid the need for a subsequent contested proceeding.

56. For the reasons set out at paragraphs 86 to 92 of its Argument in Chief, Entegrus submits that the OEB should indicate that it would not grant section 86(1)(b) approval for the transfer of the M7 and M8 Feeders to Hydro One. As noted, the Application Form for section 86(1)(b) requires the applicant to describe the following: (a) Are the assets surplus to the applicant's needs?; (b) Would the proposed transfer impact distribution or transmission rates of the applicant?; and (c) Will the transaction adversely affect the safety, reliability, quality of service, operational flexibility or economic efficiency of the applicant or the proposed recipient.

[47] EB-2022-0234 Decision and Order, February 9, 2023.
[48] Staff Submission, page 10.
[49] Hydro One Submission, para. 45.
[50] Formet Submission, paras. 90 and 102.

57. In relation to the sale of the Feeders at net book value, Entegrus cannot provide positive responses for any of those items.

58. The excess capacity on the assets can be used by Entegrus, resulting in significant savings for its ratepayers as compared to transferring the underutilized assets to Hydro One at a fraction of their replacement value (which is estimated at $3 million to $4 million)[51]. Further, it has become clear through Hydro One's updated response to Entegrus Interrogatory #1 that Hydro One itself has made or supported applications for all remaining capacity at Edgeware TS. With no breaker positions available at Edgeware TS, Entegrus would need to construct its own station at an estimated cost of $40 million[52]. Entegrus would not be permitted to sell these assets to an affiliate at net book value that much lower than market price[53] – the same principles are appropriate when looking at the reasonableness of the potential transaction for the purposes of section 86 of the OEB Act.

59. To repeat what is stated in Argument in Chief[54], Entegrus submits that the OEB can fairly conclude that it would not approve any future section 86(1)(b) application. This would have the effect of frustrating the 1997 Letter. A contract that is frustrated is "terminated without fault to either side".

E. SAA APPLICATION SHOULD BE GRANTED

60. For the reasons set out above, Entegrus submits that the OEB should find that the 1997 Letter has been frustrated, and that the purchase option for the M7 and M8 Feeders no longer applies. In that circumstance, for the reasons detailed at paragraphs 93 to 124 of the Argument in Chief, Entegrus submits that the OEB should grant the SAA Application.[55]

61. At a high level, Entegrus submits that serving the Customer and having operational control over the M7 and M8 Feeders is economically efficient by making the most efficient use of existing resources, is in the broader interest of customers (current and future) and supports

[51] Entegrus Application, Section 5.5.1.
[52] Argument in Chief, para. 50.
[53] Affiliate Relationships Code for Electricity Distributors and Transmitters, section 2.3.6.1.
[54] Argument in Chief, para. 92.
[55] Entegrus accepts the statement from Staff (see page 10 of OEB Staff Submission) that if the OEB declines to find that the 1997 Letter has been frustrated, then the requested SAA Application will not be granted.

the rational expansion of distribution systems. Entegrus submits that the Customer will continue to receive reliable service and any cost impacts will be appropriately mitigated.

62. In Argument in Chief, Entegrus provided detailed commentary about how the SAA Application meets the OEB's expectations and should be granted. Entegrus will not repeat those submissions, or the relevant passages from prior OEB decisions and policy guidance. However, in the paragraphs that follow, Entegrus will address the concerns noted by Hydro One and the Customer (Staff did not make submissions on this point).

63. Entegrus premises much of its SAA argument on the more efficient use that can be made of excess capacity on the M7 and M8 Feeders to serve growing capacity requirements in St. Thomas. Hydro One and the Customer take issue with each of those assertions.

64. A fair observer would conclude that there is there is excess capacity available on the M7 and M8 Feeders. Indeed, even Hydro One acknowledges that there is excess capacity, as seen in its continued willingness to grant Entegrus access to 5MW of capacity. There is, however, more than 5MW of excess capacity to be used without negatively impacting the Customer.

65. The evidence is clear, though some of it is confidential and is therefore redacted. There is almost [redacted] MW of capacity available on the M7 and M8 Feeders. The Feeders each have [redacted] MVA planning capacity and [redacted] MVA maximum operating capacity. This makes a total of [redacted] MVA planning capacity (and [redacted] that in terms of max operating capacity for emergencies and exigent situations). Using the [redacted] power factor agreed between Hydro One and the Customer in the May 2023 Letter, the highest peak load from the Customer for the years 2016 onwards is [redacted] MVA ([redacted] MW at [redacted] power factor) in [redacted].[56] Therefore, the evidence shows there is a minimum of [redacted] MVA of unused capacity that could be available for other customers without impacting on the highest-ever peak load from the Customer. The actual number may be higher, as described in the Entegrus Supplementary Evidence (which does not apply the same power factor).[57]

66. In response to concerns raised by the Customer[58], Entegrus confirms that the amount of unused capacity is calculated using the planning capacity for the Feeders (not the maximum

[56] The May 2023 Letter is attached to the Customer's May 19, 2023 Supplementary Evidence. For information about the Customer's peak load, see Hydro One response to Entegrus IR 2(b).
[57] Entegrus Supplementary Evidence, pages 3-4.
[58] Formet Submission, para. 39.

operating capacity). Of course, this leaves operational contingency in the event of unanticipated operational issues – because there is substantial further available capacity above the planning capacity that could be used from time to time. It is standard practice that during outage scenarios, utilities (including Entegrus) utilize the difference between planning capacity and maximum operating capacity until restoration occurs. It is not standard practice, as Hydro One alleges[59], for a distributor to retain fully redundant capacity to serve a customer based on the planning capacity (as opposed to the maximum operational capacity) of facilities. That approach would be very expensive and inefficient.

67. As set out in the May 2023 Letter between Hydro One and the Customer, there may be further additional capacity available on the M7 and M8 Feeders. Under the terms of the May 2023 Letter that was entered into between Hydro One and the Customer to confirm reserved capacity for the Customer, it is clear that the purported capacity reservation for the Customer is time-limited. Entegrus has more submissions about the May 2023 Letter below. For the purposes of this part of the Reply, Entegrus simply wishes to point out that as of May 2025 there may be additional available capacity on the M7 and M8 Feeders, should it turn out that the Customer's peak load is less than what the parties have purported to reserve while this proceeding is underway.[60]

68. In their submission, Staff indicate their view that Hydro One and Entegrus would both make efficient use of excess capacity on the M7 and M8 Feeders.[61] The evidence does not support that conclusion. Hydro One has not indicated any plans to use the excess capacity, other than to offer some amount to Entegrus. Moreover, after 25 years of longstanding underutilization of the Feeders, with the highest peak of [redacted] MW (equivalent to [redacted] MVA at a [redacted] power factor), Hydro One has now entered into the May 2023 Letter under which it will wait at least [redacted] before considering offering more than 5 MW to other customers. This underlines that Hydro One's approach does not seek to make efficient use of existing distribution assets. It also underlines uncertainty in the Customer's future demand – presumably, the parties to the May 2023 Letter did not underestimate the Customer's future demand.

[59] Hydro One Submission, para. 49.
[60] The May 2023 Letter is attached to the Customer's May 19, 2023 Supplementary Evidence.
[61] Staff Submission, page 11.

69. In their Submissions, Hydro One and the Customer allege that Entegrus either does not have, or has not proven that it has, a pending capacity shortfall in St. Thomas.[62] That is not supported by the evidence, nor by Staff who indicate that they do not dispute the Entegrus position that it needs capacity to serve future load in the area.[63]

70. In its Application, Entegrus set out the evidentiary basis for how its capacity requirements in St. Thomas are increasing.[64] This is confirmed in the utility's Distribution System Plan (DSP).[65] Entegrus acknowledges that it may ultimately need more additional capacity than the excess capacity that is available from the M7 and M8 Feeders. However, that will not happen for some time, and in the meantime approving this SAA Application will support and enable the efficient use of distribution infrastructure in St. Thomas while continuing to serve the Customer. This is consistent with the plans set out in the Entegrus DSP.[66]

71. Since the time that the Application was filed, it has only become more clear that Entegrus is facing increasing load growth in St. Thomas, and that new capacity is and/or will be required

72. The announcement of the Volkswagen plant in St. Thomas will spur economic growth. Some of this will be in the Entegrus service territory. The City of St Thomas has annexed approximately 1,500 acres (600 hectares) of land for an industrial park.[67] The first purchaser of the land is Volkswagen. Other portions of the land are for various feeder plants to support Volkswagen. Entegrus has approximately 200 acres of service territory in the industrial park. Of course, the development and operation of the Volkswagen facility, with its thousands of new jobs, is very likely to lead to increases in electricity demand in St. Thomas. Among other things, this would include homes, hotels, restaurants and small businesses.

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[62] Hydro One Submission, paras. 51-65 and 71-77, and Formet Submission, paras. 39-44 and 69-76.
[63] Staff Submission, page 11.
[64] Entegrus Application, pages 14-16.
[65] The DSP was provided at Entegrus response to Hydro One Interrogatory #10(d), Attachment D. See, for example, sections 4.2.1 and 4.2.2 and 4.4.5.1, for discussion about planning and capacity constraints in St. Thomas.
[66] See DSP at: Section 0 on page 14, Section 3.2.1 on page 122, Section 4.2.1 on page 182, Section 4.4.5.1 on page 216).
[67] Hydro One Response to Entegrus Powerlines IR #1, July 21, 2023 – page 5.

73. Additionally, there are specific pre-existing customers who have expressed interest in obtaining more capacity from the Entegrus distribution system. These new demands would total more than [redacted].[68]

74. Furthermore, the expected evolution towards electrification can only be expected to increase demand and capacity requirements for distributors, including in St. Thomas. Whether increased demand arises from electric vehicles or building heating, the indications from the OEB[69] and the IESO[70] are that capacity requirements are increasing.

75. Taking all of this together, it is an entirely fair expectation, if not an inevitability, that Entegrus' capacity requirements in St. Thomas will continue to increase and that the excess capacity on the M7 and M8 Feeders will be used if available to Entegrus.

76. In Argument in Chief, Entegrus explained how other options to access new capacity for St. Thomas will be very expensive, largely because it would require the construction of a new station since Hydro One has now allocated all capacity at Edgeware TS.[71] Hydro One indicated in response that there is actually significant available capacity at Edgeware TS, or using existing transmission connections already allocated to Entegrus.

77. With respect, Entegrus submits that Hydro One's position is disingenuous.

78. It is clear from Hydro One's updated response to Entegrus Interrogatory #1 that Hydro One itself has made or supported applications for all remaining capacity at Edgeware TS. While these may still be open applications, Hydro One's own evidence explaining the status of the three remaining breaker positions is that "Hydro One Distribution's long-term expectation is that the need for the breaker positions referenced will remain on a permanent basis" (in relation to the M11 and M12 breakers) and that "Hydro One Distribution currently has one other proposed connection that could restrict access to the M9 unbuilt breaker position".[72]

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[68] See Entegrus response to Formet IR #3(b) and Entegrus Supplementary Evidence, page 9.
[69] See, for example, the December 2022 Cover Letter 2024 COS Filing Requirements_20221215 (oeb.ca), which states that an electricity distributor must demonstrate that it has a planning process for future capacity needs of the distribution system, which must include, among others, increased adoption of EVs.
[70] See, for example, December 2022 IESO Pathways to Decarbonization Report - https://www.ieso.ca/-/media/Files/IESO/Document-Library/gas-phase-out/Pathways-to-Decarbonization.ashx
[71] Argument in Chief, paras. 43-51.
[72] Hydro One Response to Entegrus Powerlines IR #1, July 21, 2023 –pages 3 and 6.

79. Similarly, the suggestion that Entegrus can obtain more capacity by running its feeders to maximum capacity rather than to planning capacity contradicts what Hydro One and the Customer indicate should be done with the M7 and M8 Feeders serving the Customer. In all cases, Entegrus agrees that the planning assumption should be to use planning capacity of the facilities, which gives comfort that disturbances and temporary increases in capacity requirements can be managed by accessing the maximum capacity.

80. Finally, Entegrus wishes to respond to the concerns raised about the reliability and cost of service to the Customer if the SAA is granted.

81. On the topic of reliability, Entegrus submits that its proposal will ensure that the Customer will continue to receive reliable service.[73] The Customer will have service available from multiple feeds, which will provide coverage in the event of a disruption from one source.[74] While there will not be completely redundant (unused) supply on a single feeder dedicated to the Customer, that is the efficient approach.

82. On the topic of costs impacts, two matters are raised by other parties.

83. First, Hydro One argues that its costs to connect the Customer will be lower than those of Entegrus.[75] That is not the case.

84. The assumed capital cost that Hydro One says that Entegrus would pay is overstated. It includes both the incremental costs of the system topology changes to integrate the M7 and M8 Feeders into the Entegrus system, as well as the net book value of the M7 and M8 Feeders.[76] There is no apparent reason to consider that the asset costs (for assets already owned by Entegrus) should be included.[77] More importantly, the relevant comparator is the value that Entegrus ratepayers receive from the excess capacity on the M7 and M8 Feeders that is unlocked versus the cost to obtain such capacity in another way. That is not considered by Hydro One.

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[73] This is in response to the Formet Submission, paras. 45-49 and 114-118.
[74] See Entegrus Supplementary Evidence, at pages 3-4 and Attachment 2. See also Entegrus response to Hydro One IR #4, including parts (g) and (h).
[75] Hydro One Submission, paras. 90-91.
[76] See Hydro One Submission, page 51, Table 1.
[77] Although arguably Entegrus will lose the benefit of annual rental revenues from Hydro One of around $65,000 per year.

85. Second, Hydro One argues that Entegrus will have to make substantial rate mitigation payments to the Customer, and this will impair the efficiency of any SAA.[78]

86. Entegrus acknowledges that there will be some rate mitigation payments required for the years 2024 and 2025, until such time as Entegrus rebases and the St. Thomas rate zone rates are harmonized with the existing Entegrus-Main rates.[79] Entegrus will work collaboratively with the Customer and the OEB to determine the appropriate levels.

87. Entegrus does not agree, however, that there will be any rate mitigation payments (let alone substantial payments) required after its planned May 1, 2026 rebasing.

88. Hydro One's position is based on its assumption that if the Customer becomes eligible for the Entegrus Large Use customer class, the Customer will also have to pay "standby charges".[80] This is not the case. The Entegrus Standby Power Service Classification specifically applies to load displacement generation.[81] The tariff sheet says it refers to an account that has Load Displacement Generation and requires the distributor to provide back up service. This rate is not intended for a Large Use Customers who do not have load displacement generation, and therefore would not apply to the Customer.[82]

89. The evidence shows that if the Customer was an Entegrus Large Use customer, it would experience annual savings of [redacted][83].

[78] Hydro One Submission, paras. 91-101.
[79] Argument in Chief, para. 117.
[80] Hydro One Submission, paras. 97-98.
[81] Decision and Rate Order (entegrus.com) – see page 30 of 42.
[82] [redacted]
[83] This annual amount is calculated by comparing the total per month results in Entegrus' response to Formet Interrogatory #4, Attachment 1 for the Entegrus Main Rate Zone Large Use Rate Class (col F line 21) versus Hydro One's total per month results provided in Hydro One's response to Formet Interrogatory #2, filed as Exhibit I, Tab 3, Schedule 2, Attachment 1, and multiplying by 12 months.

F. OTHER ITEMS

90. As stated at the outset of this Reply Argument, Entegrus does not intend to respond to each and every item in the submissions from other parties. There are, however, a small number of items that Entegrus would like to address, but which do not fit under the headings above.

91. In Argument in Chief, Entegrus raised concerns about the May 2023 Letter between Hydro One and the Customer that seemed to make permanent the arrangement whereby the Customer receives complete redundant supply on the M7 and M8 Feeders. Entegrus indicated that the May 2023 Letter appears to be an attempt to defeat the SAA Application.

92. The responses from Hydro One and the Customer about the May 2023 Letter were very limited.

    (a) The Customer indicates that the May 2023 Letter simply reaffirms the current arrangements.[84]

    (b) Hydro One also states that the May 2023 Letter is an affirmation of existing arrangements.[85] Hydro One then states, however, that Entegrus will not be able to provide the same level of service as committed in the May 2023 Letter and also obtain significant additional capacity on the M7 and M8 Feeders.[86]

93. Entegrus submits that it remains unclear what changed with the May 2023 Letter, and why it was needed. It is not clear that the May 2023 Letter plays any part in this SAA Application. What is clear is that this is a new contractual obligation between Hydro One and the Customer entered into in the middle of a contested proceeding to determine who should serve the Customer.

94. One thing that is clear from the May 2023 Letter is that it contemplates that the reserved capacity for the Customer will be revisited at a future date. Essentially, the Customer is receiving "assigned capacity" for a period of time, and then that capacity may be later reduced if the actual demand from the Customer is less.[87] Of course, if nothing has changed since the 1997 Letter, it is not clear why this accommodation is now needed.

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[84] Formet Submission, paras. 34-36.
[85] Hydro One Submission, para. 72.
[86] Hydro One Submission, para. 75.
[87] The May 2023 Letter is attached to the Customer's May 19, 2023 Supplementary Evidence – it indicates that the Customer has to use its assigned capacity by May 2025 or else have it reduced to the highest rolling average 3 month average peak load.

95. The May 2023 Letter was entered into at a time of great uncertainty as to who would service the Customer. Rather than provide certainty, the May 2023 Letter only creates confusion. The 'guarantee' of reserved redundant capacity was not Hydro One's to provide given it presupposes the OEB's conclusion in this case. At very least, the May 2023 Letter should not be seen as a commitment that binds Entegrus should it be granted the right to serve the Customer.

96. In any event, the existence and terms of the May 2023 Letter signify that Hydro One and the Customer recognize that there may be (or already is) excess capacity available on the M7 and M8 Feeders, but they want to wait (until well after this proceeding) to confirm that fact. In this way, the May 2023 Letter casts doubt on the actual capacity requirements of the Customer, but indicate that this will be dealt with at a later date (while at the same time arguing strongly that there is limited additional capacity available now).

97. A theme in the submissions from Hydro One and the Customer is that Entegrus is attempting to retain assets that should belong to Hydro One and/or the Customer, because they have already paid for the assets.[88] The Customer goes so far as to assert that Entegrus is "pillaging assets" that Customer has paid for.[89]

98. The notion of the assets having been funded by either or both of HONI and the Customer is misguided. It is clear that a utility's customers pay for service, and do not acquire an ownership interest in the utility's assets from such payments.[90] That is similarly true for lease payments. In this case, Entegrus owns the M7 and M8 Feeders. As noted, they are in Entegrus rate base, and Entegrus is responsible for their reliability. Through this SAA Application, Entegrus is seeking to gain control over the operation of its assets, such that more use can be made from the excess capacity.

99. At the end of their submissions, the Customer warns that granting the SAA Application will have a "chilling effect" on the prospects of large industrial customers locating in Ontario.[91] Hydro One makes a similar argument.[92]

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[88] See, for example, Hydro One Submission, paras. 89 and 101 and Staff Submission, page 9.
[89] Formet Submission, para. 106
[90] *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board),* [2006] 1 SCR 140, para. 68.
[91] Formet Submission, para. 146.
[92] Hydro One Submission, para. 108.

100. Entegrus submits that these concerns are misplaced. The reason that Entegrus should succeed in the SAA Application is because the arrangement between Hydro One and the Customer is an LTLT that, according to the OEB's own rules, should be eliminated. In any event, the Customer will be protected if it is served by Entegrus. There will be rate mitigation as necessary, and the Customer will receive reliable service.

101. Finally, at several times in their submission, Staff propose that Entegrus and Hydro One should participate fully in regional planning processes, to address future growth in St. Thomas.[93]

102. Entegrus has two responses.

103. First, Entegrus has been a full participant in regional planning activities to date for St. Thomas. This is seen in the response to Staff Interrogatory #4, where Entegrus explains how it participates in the IESO's regional planning process, and how it meets directly with Hydro One for discrete planning issues and updates.[94] That being said, Entegrus does find that it is hindered by "information asymmetry" in relation to capacity availability from Hydro One. This is disappointing, where Entegrus is the "customer" of Hydro One Transmission. Perhaps this is caused in part by the fact that Hydro One Distribution is also a "customer". This information asymmetry was clearly demonstrated in this case where Entegrus learned, during this regulatory proceeding, that there is apparently no remaining available capacity at Edgeware TS. Based on past practice, Entegrus believed it would be informed when breaker positions were under study for assignment or restriction. This was not the case here - Entegrus was never informed. That information only found its way onto the record of this proceeding as a result of Entegrus having to bring a motion (letter request) for full answers to interrogatories, which Hydro One resisted until being directed by the OEB to provide full responses.[95] As noted, those responses showed that Hydro One has reserved the remaining capacity at Edgeware TS for itself.[96]

104. Second, it is important to underline that regional planning would not have remedied the pending capacity issues faced by Entegrus in St. Thomas. The IESO leads regional planning

[93] See, for example, Staff Submission, pages 4, 11 and 12.
[94] Entegrus Response to Staff IR 4(b) and (c).
[95] Decision and Procedural Order No.. 5, July 18, 2023.
[96] Hydro One Response to Entegrus Powerlines IR #1, July 21, 2023 – see pages 3 and 6.

- it is not intended to address "distribution needs" (i.e. breaker availability).[97] As noted in the Entegrus response to Staff Interrogatory 4(b), the current regional planning process is a transmission-focused exercise, designed to identify impending needs in the local transmission system, rather than a distribution feeder level needs assessment that were the initial focus of this Application. Notably, the very significant impacts of the new Volkswagen battery plant were not known at the time of the last regional planning sessions in 2021.

105. As an aside, Entegrus submits that the OEB should give strong consideration to introducing a new or more comprehensive regional planning process to address the current gap around existing distribution level assets (including breaker position availability). This will be needed in the context of electrification and the expected growth across the province (the IESO estimates that the growing demands of an increasingly electrified Ontario will require generation to double or triple by 2050, requiring 150-280 new 250 MW transmission stations needed by 2050).[98]

G. RELIEF REQUESTED

106. As set out in Argument in Chief, Entegrus respectfully requests the following relief in relation to this proceeding:

(a) Confirmation that the 1997 Letter has been frustrated and that Hydro One does not have a purchase option for the M7 and M8 Feeders.

(b) Confirmation that Entegrus will be the permanent distributor to serve the Customer. This would be implemented as of January 1, 2024, in order to allow for an orderly transition.

(c) Confirmation that the May 2023 Letter between Hydro One and the Customer does not bind Entegrus.

(d) Payment of rent and maintenance fees from Hydro One for the M7 and M8 Feeders from January 1, 2018 to the date of the OEB's Decision (based on $5,527.83 per month).

[97] Entegrus Response to Staff IR 4(b). This is illustrated in Figure 3-1 of the IESO's Integrated Regional Resource Plan for the Greater London Sub-region (see page 8) – https://www.ieso.ca/-/media/Files/IESO/Document-Library/regional-planning/London-Area/Final-Greater-London-IRRP-20170120.ashx.

[98] See December 2022 IESO Pathways to Decarbonization Report - https://www.ieso.ca/-/media/Files/IESO/Document-Library/gas-phase-out/Pathways-to-Decarbonization.ashx, pages 25-31.

(e) Amendment of the licensed service area of Entegrus as described in Schedule 1 of its Distribution Licence ED-2002-0563 to include the property and Customer located at 1 Cosma Court, St. Thomas, ON, N5R 4J5.

107. In the event that the OEB does not find that the 1997 Letter is frustrated, Entegrus also included alternate proposals at paragraph 125 of Argument in Chief, and repeats those requests here. Among other things, Entegrus proposes that the OEB should include conditions on the transfer of the M7 and M8 Feeders, in order to obtain leave under section 86(1)(b). Such conditions could require Hydro One to pay replacement value ($3 million to $4 million, if capacity is available from Hydro One) or the fair market value of the Feeders (which, as set out above, is around $1,563,039.48)

108. However, in the event that the OEB does not agree, then Entegrus makes the following further request. In part, this is informed by the fact that Hydro One's submission provided more clarity on the terms on which it would offer Entegrus the use of 5MW of excess capacity on either the M7 or M8 Feeder if these were transferred to Hydro One from Entegrus.[99] While the Customer appears to have some opposition to this proposal to allocate some excess capacity[100], Entegrus submits that the OEB can take comfort from the fact that Hydro One (the party currently serving the Customer) is confident that this approach will not compromise service to the Customer, even in the face of the May 2023 Capacity Allocation Letter.

109. Entegrus requests that in the event the OEB finds that the 1997 Letter has not been frustrated (and no SAA is granted), and the alternate relief requested in the Argument in Chief is not granted, then the following should occur:

(a) The M7 and M8 Feeders will be transferred from Entegrus to Hydro One, at net book value of $116,431.[101]

(b) The transfer will include the M7 and M8 wires and conductors, but not the associated poles.[102] The fact that Entegrus uses the poles for other feeders underlines that the

[99] Hydro One Submission, para. 62.
[100] Formet Submission, para. 140 – note, though, that at paragraph 72(b), the Customer indicates that in some scenarios, the Hydro One offer of 5MW would serve Entegrus' needs – this suggests that the Customer's opposition is not particularly strong.
[101] This is the cost for the Feeders, but not the poles, as set out at page 11 of the Application.
[102] Hydro One indicates that it has been willing to "relinquish ownership of the distribution poles" – Hydro One Submission, paras.105 and 107. It is not clear that Hydro One still maintains that position, but Entegrus submits that it is a fair outcome, considering that Entegrus itself has other feeders on the same poles (which Entegrus owns as of now) – see Entegrus response to Hydro One Interrogatory 10(a).

poles are not intended to be transferred – Hydro One acknowledged this in its discussions with STEI and Entegrus preceding this Application.

(c) Hydro One will provide Entegrus with 5MW of capacity on the M7 and M8 Feeders. The charge should be as described below.

(i) The charge paid by Entegrus should be based on an amount equivalent to what Hydro One has been paying for use of the same assets on a per MW basis.[103] This would involve rate mitigation being applied until the end of the life of the M7 and M8 Feeders to reduce the standard charges that Hydro One proposes to apply in this unique situation. This is much more appropriate than the amount that Hydro One had been quoting, which is 7.8 to 15.6 times higher than the rental payments.[104] In order to effect this fair outcome, Entegrus requests that the OEB require Hydro One to provide rate mitigation to compensate Entegrus for the difference between what it would otherwise pay to Hydro One under the Common ST Lines rate and the amount that equates to what Hydro One has been paying for equivalent capacity on the same Feeders. This rate mitigation would be in place until the end of the life of the Feeders.

(ii) Alternately, Entegrus wants to maintain the option to obtain use of the 5MW offered by Hydro One based on the amount shown in the Hydro One submission - $7,721 per month.[105] If Hydro One is intending a different monthly charge, that is contradictory to its submission.

(d) Finally, as set out in Argument in Chief, Entegrus submits that it is entitled to payment of rent and maintenance fees for the M7 and M8 Feeders from January 1, 2018 to the date when Hydro One is no longer obtaining the use of the M7 and M8 Feeders from Entegrus.

110. Additionally, Entegrus submits that it should be entitled to additional capacity on the M7 and M8 Feeders in the event that the Customer's demand is reduced in the future pursuant to the terms of the May 2023 Letter between Hydro One and the Customer. The May 2023 Letter clearly states that if the Customer's peak load is smaller than forecast, then the reserved capacity will be reduced at a later date.[106] That will result in further excess capacity on the M7 and M8 Feeders, even according to Hydro One and the Customer. Entegrus submits that it should be granted the option to take up any such excess capacity, particularly in light of Hydro One having otherwise taken up the remaining excess capacity at Edgeware TS.

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[103] One way to look at this is that Entegrus would pay Hydro One $982 per month based on the equivalency (in terms of capacity) for what Entegrus and its predecessors have charged Hydro One for 25 years: 5 MW / 28 MW planning capacity X $5,500 = $982.
[104] Entegrus response to Hydro One Interrogatory #16(a).
[105] Hydro One Submission, para. 62.
[106] The May 2023 Letter is attached to the Customer's May 19, 2023 Supplementary Evidence – it indicates that the Customer has to use its assigned capacity by May 2025 or else have it reduced to the highest rolling average 3 month average peak load.

111. Finally, Entegrus notes the Customer's request that it be entitled to its costs of participating in the proceeding. Entegrus acknowledges that the OEB has granted the Customer cost eligibility in Procedural Order No. 2. Entegrus submits that the Customer's approved costs for the Application should be shared between Entegrus and Hydro One.

112. Entegrus has sought to coordinate and cooperate with Hydro One in order to avoid, streamline and/or resolve this Application – this is seen in the Entegrus April 20, 2023 letter detailing such efforts.[107] Both utilities are referred to as "parties" to this Application.[108]

113. Entegrus acknowledges that Hydro One has not made submissions on the question of cost responsibility, and also that the nature of the OEB's decision on the application may be relevant to this question. With that in mind, if the OEB is not prepared to indicate at this time that cost responsibility should be shared, then Entegrus requests the opportunity as part of the cost claims process to make submissions as to why the Customer's costs should be shared between Entegrus and Hydro One.

All of which is respectfully submitted this 8th day of September 2023.

David Stevens, Aird & Berlis LLP
Counsel to Entegrus

[107] https://www.rds.oeb.ca/CMWebDrawer/Record/785886/File/document
[108] Notice of Hearing and Procedural Order No. 1, March 17, 2023, page 1.