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March 8, 2024

BY EMAIL AND RESS

Ms. Nancy Marconi
Registrar
Ontario Energy Board
Suite 2700, 2300 Yonge Street
Toronto, ON M4P 1E4

Dear Ms. Marconi:

Re: Hydro One Networks Inc. (Hydro One) Application for Leave to Construct – Waasigan Project Ontario Energy Board File Number: EB-2023-0198

Please find enclosed the reply submissions of Hydro One Networks Inc.

An electronic copy of this letter has been submitted using the Board's Regulatory Electronic Submission System.

Yours truly,

McCarthy Tétrault LLP

Per:

Gordon M. Nettleton
Partner | Associé

ec: Reena Goyal, McCarthy Tétrault LLP
Joanne Richardson and Andrew Flannery, Hydro One
All registered parties

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*;

AND IN THE MATTER OF an Application made by Hydro One Networks Inc. pursuant to s. 92 of the *Ontario Energy Board Act, 1998* (the "Act") for an Order or Orders granting leave to construct transmission facilities ("**Waasigan Project**" or "**Project**") in the northwest Ontario regions of Thunder Bay, Rainy River and Kenora.

AND IN THE MATTER OF an Application by Hydro One Networks Inc. pursuant to s. 97 of the Act for an Order granting approval of the forms of land use agreements offered or to be offered to affected landowners.

REPLY SUBMISSION
HYDRO ONE NETWORKS INC.

March 8, 2024

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1.0 INTRODUCTION

1. Hydro One provides these reply submissions to the arguments received from Ontario Energy Board Staff ("**OEB Staff**" or "**Staff**"), Métis Nation of Ontario ("**MNO**") and the Neighbours on the Line ("**NOTL**").[1]

2.0 REPLY TO OEB STAFF SUBMISSIONS

2. OEB Staff takes no issues with most of the elements of Hydro One's application, including Project need, Project alternatives (including recommended conductor size), the proposed route, consumer impacts, reliability and quality of service, land matters (including the proposed form of landowner agreements) and conditions of approval.

3. Notwithstanding, OEB Staff have raised concerns regarding the following Project budgeted cost items:
   - line cost estimate;
   - contingency amount; and
   - overhead capitalization methodology.

4. As Hydro One understands OEB Staff's recommendations, further consideration and "full" approval of these budgeted cost amounts should be deferred until after the Project has been fully constructed, after all actual costs have been incurred, and during the Project's first cost-based revenue requirement application. In other words, Hydro One should bear cost recovery risk concerning recommended future reviews of the methodologies used to calculate these *__forecast__* amounts. This is in addition to Hydro One's obligation to demonstrate at a revenue requirement proceeding that all Project costs have been prudently incurred whilst not knowing whether the budgeted amounts themselves have been determined to be reasonable or not. For the reasons that follow, Hydro One cannot support this approach.

[1] Intervener GLP filed a letter dated February 21, 2024 stating that it had no written submissions at that time, but reserves its right to do so at a later date in line with any further OEB procedural orders.

A. Line Cost Estimate

No consideration has been given to Hydro One's competitive bid EPC contract

5. OEB Staff's recommendation concerning the applied-for Project Line Cost budgeted approval amount is that (a) the amount should be subject to further review in the Project's cost-based transmission revenue requirement proceeding, and (b) based on that review process, reductions of up to $144 million could be made. OEB Staff's recommendation is made based on its comparative analysis of the East West Tie Project ("**EWT Project"**) and its concern that when comparing the cost per kilometer metric associated with that project, Hydro One's Line Cost estimate appears to be too high by up to $144 million.

6. What OEB Staff fail to consider is that Hydro One's Line Cost estimate is based upon a robust, arms-length, two-year competitive bid process ending in 2022. Valard Construction ("**Valard**") was selected as the EPC Contractor and a negotiated agreement for the Project's fixed price Engineering Procurement and Construction services ("**EPC Contrac**t") was reached.[2] OEB Staff neither asked interrogatories nor filed evidence challenging the propriety of Hydro One's competitive bid process. Nor did it challenge the terms and conditions contained in the EPC Contract. Yet, it is this information that forms the very substance of Hydro One's Line Cost estimate. Importantly, the EPC Contract is a result of a competitive bid process; it is a market-based outcome and the basis upon which Hydro One's Line Cost estimate is based.

7. Robust competitive bid processes are intended to reflect current market conditions and best available pricing information. Evidence that another EPC contractor would (or should) reasonably agree to develop and construct the Project on the same terms and conditions as have been negotiated with Valard, but at a reduced cost of up to $144 million, is not found in this proceeding. OEB Staff's reliance on project comparators constructed either before or throughout COVID-19 should not override

[2] Exhibit B, Tab 7, Schedule 1, page 4.

the actual results Hydro One has contracted and which it is relying on to substantiate its Line Cost estimate.

Implications of OEB Staff's recommendation

8. The ramifications and consequences of OEB Staff's approach must be given careful consideration. This is especially the case where, as in these circumstances, the Project has been determined to be a priority transmission project and one in which the IESO has provided a finite in-service date. Time is of the essence.

9. In that context, consider the consequences to Hydro One if OEB Staff's approach were adopted. Hydro One would be placed in the unenviable position of trying to find ways to mitigate the financial risks inherent to a future potential $144 million capital cost disallowance. What steps would the OEB reasonably expect Hydro One to take to respond to this added risk?

- Is Hydro One expected to delay construction in order to repeat its competitive bid process so that illusory EPC contractors can make bids that incorporate OEB Staff's assumed cost reduction? No evidence has been filed to support the mere belief that such an outcome is possible, let alone likely.

- Hydro One's competitive bid process and the negotiation of its EPC Contract took over two years to complete. Would repeating this competitive bid process be in the public interest? How would this delay affect the IESO's timing requirements?

- Hydro One has no assurance that a new competitive bid process would result in lower bids. If a repeated competitive bid process resulted in higher estimated costs than what Hydro One has already negotiated, how would ratepayers' best interests be served? Existing negotiated arrangements would likely be terminated, higher EPC costs would result, regulatory processes affirming the reasonableness of these results would be necessary, and all of this would result in construction and in-service timing delays.

- If the competitive bid process was repeated and no change in EPC costs was achieved, construction timing and regulatory delays would still ensue. Hydro One, again, questions how that outcome remains in electricity consumers' best interests.

10. Hydro One could simply assume the additional financial risks associated with OEB Staff's recommendation. Yet the uncertainty of this risk remains significant. How would the OEB assess the propriety of foreseeable budgeted cost items, on an after-the-fact basis, and in the light that actual committed costs would have been incurred? Would hindsight analysis be used to deny the Line Cost budget amount?

11. Prudence reviews are typically based on whether costs were known or ought to have been known at the time the Project was applied-for, namely, now. Hydro One's Project budgeted cost amounts represent its foreseeable Project costs with contingency. A denial of a portion of these amounts now, inherently means the budgeted costs are unreasonable. Yet, OEB Staff have made it clear they have not reached this conclusion. Rather, they are reserving their position until costs have actually been incurred.

12. And so if budget costs are not "unreasonable" now, and yet they are not "reasonable enough" for unconditional inclusion in the OEB's Project budget approval, they are essentially in 'regulatory purgatory'. This outcome provides no regulatory certainty on how budgeted estimates will be subsequently assessed, let alone how actual prudently incurred costs are assessed against a then-disallowed budget construct.

13. Hydro One's expectation is that during its first revenue requirement proceeding for the Project, it will seek approval to include all actual prudently incurred Project costs for recovery in rates. Hydro One expects parties to that proceeding will be afforded the opportunity to test whether actual costs were in fact prudently incurred. While actual

incurred costs levels that meet the approved budget levels may support findings of prudence, meeting budget does not in and of itself prevent the OEB or parties from testing the prudence of all applied-for incurred Project cost amounts. Hydro One fully expects the prudence of incurred costs to be demonstrated. What it cannot accept is the deferral and *post-facto* assessment into whether budgeted amounts themselves were reasonable from the outset of the Project.

14. At the leave to construct stage, the issue should be whether the applied-for budgeted costs are reasonable. Approved budgets provide transmitters with some certainty that costs incurred that meet these established levels will be recoverable in rates, assuming they are demonstrated to be prudently incurred costs. In the present circumstances, this outcome provides Hydro One with a level of certainty so that it may proceed and make the investments necessary to develop and construct the Project. OEB Staff's recommendation does not comport with that standard. It casts unnecessary doubt as to whether $144 million of Hydro One's legitimate, foreseeable estimated costs required to develop and construct the Project, may be incurred to the same degree as all other Project budgeted costs.

15. For an investor, OEB Staff's recommendation also creates significant regulatory uncertainty. And indeed more so than if the OEB determined now that a portion of the estimated Line Costs were not approved because they were not demonstrated to be reasonable. Consider the following scenario: foreseeable Project costs are applied-for but not fully "approved" until after the investments have been made. On what basis would a reasonable investor agree to fund these amounts if the budgeted category itself has not been fully approved and is still subject to disallowance? Is it reasonable to expect investors to de-risk this outcome by not making the investments or seeking greater risk/return premiums? Who pays for these outcomes?

16. It is one thing for investors to understand cost recovery risks when incurred costs exceed an OEB-approved budget amount. But it is a completely different circumstance where the foreseeable budgeted amounts are identified, expected to be incurred, yet then subsequently denied because budget amounts themselves are revisited and reduced.

17. The Waasigan Project has been identified in the Ontario government's *Powering Ontario's Growth* report as one of the electricity system upgrades being undertaken to unlock opportunities in Northern Ontario. As described in the evidence[3], the Project is required to address an identified need to support economic development in the west of Thunder Bay area by increasing supply and reliability capability through the release of existing transmission constraints. Hydro One submits that imposing incremental investment risk that is associated with OEB Staff's recommendation is not in the public interest, and would fail to accord with the positive investment signals that are an inherent aspect for the Ontario Government and industry to proceed forward with energy transition and decarbonization objectives.

18. A final decision approving Hydro One's estimated Project costs as reasonable, at the levels included in the Application, should therefore be rendered now and as part of this section 92 application.

EWT Project comparator concerns

19. OEB Staff appear to support their recommendation based on its review of the EWT Project, and in particular, a per km cost metric comparator. Yet, OEB Staff's reliance on this metric appears to place little weight on the significant timing differences and market conditions that exist with these projects. Again, Hydro One's costs are based upon a competitive bid process that was finalized in 2022. The EWT Project was placed in service on March 31, 2022. EWT Project cost overruns were experienced throughout the Project. Upper Canada Transmission 2 Inc., ("**UCT 2**") conducted negotiations with Valard regarding these overruns and these were not finalized until August 2022.

20. It is reasonable to expect that EPC contractors subsequently participating in Hydro One's competitive bid process would do so by taking into account past project experience and pricing bids based on current labour market conditions,

[3] Exhibit B, Tab 3, Schedule 1.

regulatory/permitting experience, and current supply chain and material cost conditions. Yet, it is unclear how any of these factors have been taken into account in OEB Staff's comparator analysis.

21. Recall that Hydro One's analysis shows that the Waasigan Project cost is $2.6 million[4] per km and the EWT Project is $2.5 million[5] per km (up to $2.8 million[6] per km when calculated on the basis of the actual incurred project cost of $1,029.3 million[7]).

22. In any event, while this comparator analysis may be of some interest, it should not be viewed as better evidence to actual competitive market outcomes. Hydro One maintains that its Line Cost estimate aligns with its competitively negotiated EPC Contract. This information is the best evidence on the record in this proceeding to support OEB approval of Hydro One's applied-for Line Cost estimate.

Exclusion of COVID-19 and inflation costs

23. OEB Staff takes the position that "no regard should be given to the other EWT related cost estimates submitted by Hydro One given that they are inflated and include incomparable Covid-19 related expenses'' and that "EWT project's costs related to Covid-19 should be discounted from the analysis"[8]. OEB Staff further submits – again for the very first time in this proceeding – that inflation for the Project should not be considered for comparator purposes.

24. In so doing, OEB Staff believes the appropriate comparator estimate for the EWT Project is $2.2 million per km[9] on the basis that COVID-19 related costs should be discounted for comparator purposes.

[4] Exhibit I, Tab 1, Schedule 9, page 2, updated Table 7.
[5] Exhibit I, Tab 1, Schedule 9, page 2, updated Table 7.
[6] Exhibit I, Tab 1, Schedule 12, page 4, part c), Table 2.
[7] EB-2023-0298, Exhibit A, Tab 1, page 6, Table Ex A.1.
[8] OEB Staff Submission, section 2.3, pages 10 to 11.
[9] OEB Staff Submission, section 2.3, page 10.

25. When eliminating the COVID-19 related costs from the EWT Project, OEB calculates the Waasigan Project is “approximately 18% higher on a cost per km basis than the EWT project”[10] (Hydro One notes this calculation is based on UCT 2’s applied-for costs of $935.9 million[11] but the actual incurred overall project cost is $1,029.3 million[12].) Further deducting inflation from this analysis, OEB concludes the Project is “approximately 45% higher on a cost per km line basis than the EWT project”[13].

26. OEB Staff’s approach of using only nominal dollars for project comparison purposes, is commercially unreasonable (at best) and procedurally unfair (at worst). Section 4.3.2.8 of the *Filing Guidelines*[14] requires that comparable project information include inflation escalation to the current year. The inclusion of inflation escalation in Hydro One’s project comparator analysis in this proceeding is the same as has been used by it in numerous other section 92 applications and is consistent with the OEB’s inflation escalation adjustment.

27. To adopt OEB Staff’s approach of ignoring inflation also fails to account for the commercial realities in which large energy infrastructure projects are developed, including the macro-economic environment and actual scope and challenges/differences bespoke to each transmission project that is developed, publicly consulted on and executed over varying time periods. There is ample evidence that the cost of relevant capital goods and services for the development and construction of large transmission projects – like most goods and services – increases over time.[15]

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[10] OEB Staff Submission, section 2.3, page 11.
[11] As per Exhibit B, Tab 7, Schedule 1, page 11, Table 7, Hydro One utilized a EWT project cost estimate of $935.9M based on the Upper Canada Transmission’s East-West Tie Line Quarterly Construction Progress Report, dated October 21, 2022, page 15 (as clarified in Exhibit I, Tab 1, Schedule 12, page 2, part a)).
[12] EB-2023-0298, Exhibit A, Tab 1, page 6, Table Ex A.1.
[13] OEB Staff Submission, section 2.3, page 11.
[14] OEB Filing Requirements for Electricity Transmission Applications – Chapter 4 – Leave to Construct and Related Matters under Part VI of the OEB Act, dated March 16, 2023, Page 24.
[15] OEB Report of the Board – as issued on November 21, 2013 and as corrected on December 4, 2013, the OEB explained why it continued to

28. To exclude COVID-19 related costs for comparator purposes is similarly unreasonable. Much of the items tagged for the EWT Project as 'COVID-19 related' costs are now the 'new normal' in the high-inflationary post-pandemic macro-economic climate. Increased cost levels (as compared to those pre-pandemic) are no longer atypical or exceptional, due to a number of factors which have significantly changed cost structures for materials, goods and services (e.g. longer supply chains and product/material scarcity)[16].

29. In other words, what were previously viewed as special COVID-19 related costs are, in many respects, simply now embedded in the marketplace for all industries in the form of higher standard development and construction prices as compared to pre-pandemic pricing. This is, again, demonstrated by the actual competitive bid results that Hydro One relies on for the selection of its Project EPC contractor and the negotiated EPC Contract with Valard.

30. Moreover, the concern with OEB Staff's approach rests not with the removal of COVID-19 related costs for comparative purposes, but rather, what Hydro One is supposed to do with a cost metric that is inherently different from what has been negotiated through its competitive bid process. Should Hydro One present the $2.2 million per kilometer metric to its EPC Contractor and expect Valard to revise its pricing, notwithstanding the competitive bid process that was followed? Should Hydro One now repeat its competitive bid process to determine if any EPC contractor is willing to construct the Project using OEB Staff's analysis? Should Hydro One not proceed with the Project unless and until an EPC contractor agrees to OEB Staff's $2.2 million per kilometer

undertake specific research and consultation on the subject of inflation, and stated on page 3, "An objective of the further research undertaken in order to implement this policy direction was to better align indexing of rates with the inflation faced by distributors in Ontario", by which the OEB is clearly acknowledging inflations existence and impacts. (Hydro One notes that while the quote is made pertaining to Ontario's Distributors, its more than conceivable that the concept of the 'existence of inflation' could be extrapolated to the cost pressures also faced by transmitters).

[16] Exhibit B, Tab 7, Schedule 1; Exhibit I, Tab 1, Schedule 8, pages 1 to 2, parts a, b); Exhibit I, Tab 1, Schedule 11, page 2, part a).

metric? Should Hydro One and its investors simply assume this cost risk, notwithstanding that a competitive bid process was used and the applied-for Line Cost estimate reflects that outcome?

Additional trend analysis information

31. OEB Staff suggests this proceeding would have benefitted from Hydro One providing further evidence on why the Project's line costs are higher than that of the EWT Project (e.g. trend analysis of equipment costs and manufacturing costs).

32. Hydro One submits that OEB Staff have had every opportunity to ask questions on this topic and to file evidence regarding these issues. Hydro One is not the proponent of the EWT Project. Hydro One has had no involvement with UCT 2's EPC practices and management. All of this information would be necessary in order for Hydro One to carry out the level of analysis OEB staff is seeking.

33. Additional trend analysis information also does not address the realities of how electricity utilities must conduct their affairs in order to design and construct major infrastructure projects. Competitive bid processes are a practicable and well understood approach to ensuring Project budgets are based on prevailing market conditions. Information regarding trend analysis of equipment costs and manufacturing costs is not what results in the selection of EPC contractors. Overall price, quality, and timing commitments are the key evaluation criteria.

34. Requiring material trend analysis in a future revenue requirement application after a Project has been constructed, after costs have been committed, and after necessary investments have been made, do not make for better or more efficient outcomes. Providing transmitters with a reasonable level of cost certainty; that they may and should be able to rely on robust construction contracting practices; that the selection process used is reasonable; and that the project is prudently managed throughout the design, development and construction process, are the qualities that matter most.

35. None of these factors appear to be reflected in OEB Staff's submission. By explicitly not opposing Hydro One's applied-for Project cost estimates on the one hand, but instead recommending further information be filed on Project cost budget estimates after Project costs have been committed and incurred as part of a future revenue requirement application on the other hand, again, casts unnecessary doubt and confusion regarding the OEB's regulatory processes and to the utilities that rely on such processes. In Hydro One's respectful submission, there is no cogent reason for the OEB to adopt this approach, particularly in these circumstances.

36. Simply put, the recommendations proposed by OEB Staff are unnecessary and impracticable, and should be disregarded as such.

B. Project Contingency Cost Estimates

37. Hydro One disagrees with OEB Staff that the contingency budget estimate for this Project is excessive and that "the contingency cost estimates for the line portion of the Project should be reviewed in the Project's cost-based transmission revenue requirement proceeding".[17]

38. OEB Staff's proposal to defer final consideration of the Project's contingency cost estimates appears to be formed solely on mathematical comparatives to the Chatham to Lakeshore and EWT projects, in isolation and absent bespoke qualitative and quantitative factors.[18]

39. Hydro One's interrogatory response in Exhibit I, Tab 1, Schedule 7 provides the probabilistic approach used to calculate the Project cost contingency estimate. This approach "followed an industry established best practices methodology in developing the contingency utilizing a risk management model"[19]. Hydro One further provides in this interrogatory response a detailed rationale for why the estimated contingency level

[17] OEB Staff Submission, section 2.3, page 13.
[18] See, for example, Exhibit B, Tab 7, Schedule 1, pages 9 to 10 regarding increased cost pressures.
[19] Exhibit I, Tab 1, Schedule 7, page 2, part a).

is appropriate based on the levels of Project risks, risk factors, and which elements of the Project risks are expected to be accommodated by the total Project cost forecast. The Project cost "contingency is not a funded liability of all risk items (such as explicit delays arising from Indigenous community engagement and consultations) but rather it is a probabilistic amount based on Hydro One's assessment of the likelihood of occurrence"[20].

40. As for the contingency budget for the Chatham to Lakeshore project raised in comparison by OEB Staff, this was created using the same process and tools as that for the Waasigan Project. The higher percentage for the Project, as compared to the Chatham to Lakeshore project, reflects the specific inherent increased risks of the Project such as terrain and geographical location, weather, outage constraints, transportation cost impacts etc.).

41. Regarding the contingency budget used in the EWT Project, Hydro One has no information regarding its development. However, Hydro One notes the significant concerns and questions that arose throughout the EWT Project construction phase, namely, that all of EWT's contingency budget was absorbed soon after construction commenced.[21] Given this, Hydro One has no assurance that EWT's contingency budget provides any reasonable basis to establish the contingency budget for the Waasigan Project.

42. Again, for the reasons stated above, it would also be inappropriate and procedurally inefficient for the OEB to defer approval of the Project's contingency cost estimates. Project applicants, as well as associated developers, third party contractors and investors, need regulatory assurance that their capital expenditures may reasonably be recovered ***before*** construction is commenced. Creating unnecessary regulatory

[20] Exhibit I, Tab 4, Schedule 2, page 2, part d).
[21] See EB-2023-0298, Exhibit I, Tab 1, Schedule 52, Attachment 1 at pdf page 32; Letter from OEB to NextBridge Infrastructure LP dated October 10, 2019 (which was issued in advance of EWT Project construction commencement) regarding OEB's concerns that 99.8% of EWT's approved contingency budget had already been allocated to cover projected cost increases, as reported in the Project's first Quarterly Report to the OEB.

uncertainty by adopting OEB Staff's proposed approach, will only serve to chill future energy infrastructure project investment and stifle economic growth in Ontario.

C. OVERHEAD CAPITALIZATION METHODOLOGY

43. OEB Staff's overarching position on the issue of the Overhead Capitalization Methodology Approach ("**Blended OCM"**) is that:

> "OEB staff can neither support nor dispute the proposed new overhead capitalization methodology approach. OEB staff submits that the review of the proposed new overhead capitalization approach should be conducted by the OEB as part of the Project's first cost-based rates application … rather than in the current proceeding. In the Project's first cost-based rates application, OEB staff recommends that the following six points be addressed:
>
> 1. The new approach is proposed to be a precedent.
> 2. The new approach is proposed to have a material impact.
> 3. There are implications on the new approach based on the regulatory accounting standard used.
> 4. There are implications on the selected date to apply the new approach.
> 5. It is unclear whether the difference between the legacy overhead capitalization methodology and the new approach is being tracked in a deferral or variance account.
> 6. The new approach is a rates issue and should be tested by a number of additional ratepayer groups, in conjunction with OEB staff."[22]

Hydro One will reply to each of these items in turn, below.

44. However, first, Hydro One submits that any consideration of OEB Staff's eleventh-hour proposal that approval of the Blended OCM be severed from this Application, should be balanced against the significant regulatory uncertainty that would ensue as described in paragraphs 9 to 17 above.

[22] OEB Staff Submission, section 2.4, pages 15 to 16.

45. Notwithstanding, the primary rationale for the Blended OCM approach and why it is important to have a final decision made on this issue now, is the quick-succession in which the Project and other EPC projects must be developed to support provincial decarbonization and broader energy transition goals.

The new approach is proposed to be a precedent

46. The proposed Blended OCM is not precedential. The Blended OCM is simply a refinement to Hydro One's existing and OEB approved approach to overhead capitalization methodology as reviewed by and recommended in the Atrium Economics Report:

> "To be consistent with Hydro One's existing overhead capitalization guiding methodology and principles … a refinement is warranted when calculating Hydro One's overhead rate for projects subject to the ECI-EPC delivery model".[23]

47. Indeed, OEB Staff have recognized that the Atrium Economics Report recommends the Blended OCM as an extension of the industry best practice analysis already conducted as part of the development of the Black and Veatch Report[24] filed and approved in Hydro One's JRAP proceeding (EB-2021-0110), which considers alternate methods and the appropriateness of a blended or multi-factor allocation.

48. Atrium Economics is the same entity that led the review and recommendations for Hydro One's overhead capitalization methodology for the JRAP proceeding, building on the Guiding Principles of Cost Allocation[25] and comparing Hydro One's current corporate overhead recovery[26] versus the need for a specific rate related to early

[23] Exhibit B, Tab 7, Schedule 1, page 6.
[24] EB-2021-0110, Exhibit E, Tab 4, Schedule 8, Attachment 1 – Report on Corporate Cost Allocation Review, section 4.6, pages 16 to 17.
[25] Exhibit B, Tab 7, Schedule 1, Attachment 1 - Atrium Economics Report, section 2, pages 4 to 5.
[26] Exhibit B, Tab 7, Schedule 1, Attachment 1 - Atrium Economics Report, section 3, pages 5 to 7.

contractor involvement ("**ECI**") EPC projects[27]. A strong nexus therefore exists between the OEB-approved overhead capitalization methodology used in the JRAP and the proposed Blended OCM, such that the cost of projects executed using the ECI-EPC process only attract costs that are required to support them.

49. The "portfolio of significant transmission system expansion projects"[28] referred to in OEB Staff's submission, is comprised only of those "multi-year and significantly more extensive''[29] projects which will engage the ECI-EPC delivery model. These are projects of a type which are additional to and were not included in or contemplated during the JRAP proceeding.[30]

The new approach is proposed to have a material impact

50. OEB Staff submits that since the Blended OCM has a material impact on the Project, it is appropriate for it to be tested in the Project's first cost-based rates application where Hydro One should provide a net present value ("**NPV**") analysis showing the impact on the Project in the event the OEB does not approve the Blended OCM.

51. As stated in the evidence[31], the proposed Blended OCM ensures that an ECI-EPC Project only attracts the costs required to support them. Not allowing Hydro One to apply the Blended OCM would result in a level of costs incurred by these ECI-EPC executed projects that are not required to support them throughout construction. In essence, the Project would be attracting overheads from both the ECI-EPC contractor and from Hydro One. This would artificially inflate Project costs.

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[27] Exhibit B, Tab 7, Schedule 1, Attachment 1 - Atrium Economics Report, section 4, pages 7 to 8.
[28] OEB Staff Submission, section 2.4, page 16.
[29] Exhibit B, Tab 7, Schedule 1, Attachment 1 - Atrium Economics Report, section 4, page 8.
[30] These Projects are of a nature that would qualify to be included in the OEB Approved Affiliate Transmission Projects (ATP) account (EB-2021-0169); and Externally Driven Work Regulatory (EDWR) account (EB-2021-0110, Decision on Settlement Proposal and Order on Rates, page 89).
[31] Exhibit B, Tab 7, Schedule 1, page 6.

There are implications on the new approach based on the regulatory accounting standard used

52. OEB Staff requests that Hydro One "on a best-efforts basis, explain, identify and quantify indirect costs (including indirect overheads) that are eligible for capitalization under USGAAP but not under MIFRS"[32] and outline the impact if the Blended OCM is disallowed.

53. Hydro One agrees that if a transition from USGAAP to MIFRS is contemplated, then the impacts and analysis of the impacts should be discussed at a future rate application. For the purpose of this Application, however, Hydro One has OEB-approval to use USGAAP, and the Blended OCM is in compliance with USGAAP. Any discussion of any future change to accounting standards are irrelevant and out of scope for this proceeding.

There are implications on the selected date to apply the new approach

54. OEB Staff submits the effective date of the Blended OCM rate needs further discovery primarily because the pre-2023 $47.4 million in capital expenditures did not apply the Blended OCM, and instead attracted the general standards overhead rate.[33]

55. Hydro One submits the OEB's concerns are overblown. Not applying the Blended OCM rate to this portion of Project costs does not result in a material impact to the total Project cost[34]. Moreover, the $47.4 million is included in the total forecast Project cost of $1.2 billion[35], inclusive of the standard general overhead rate.

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[32] OEB Staff Submission, section 2.4, page 18.
[33] OEB Staff Submission, section 2.4, page 18.
[34] The amount not having applied this methodology is approximately $3 million as the Project had only utilized 4% of budget expenditures at the time of the change ($47.4M/$1,200M=4% had non-ECI-EPC overhead). Retroactively adjusting the overhead would only adjust the budget by 0.2%.
[35] Exhibit B, Tab 7, Schedule 1, Table 1, page 1.

It is unclear whether the difference between the legacy overhead capitalization methodology and the new approach is being tracked in a deferral or variance account

56. OEB Staff submits that Hydro One should be required to track in a new variance account or ATP Account any differences between the Project costs using the existing overhead capitalization methodology and the Blended OCM rate, until the next rebasing.

57. For clarity, Hydro One is seeking approval of the Blended OCM such that tracking of any such differences for transmission ECI-EPC contracted projects is not required. A deferral and variance account would generally be provided to protect ratepayers against an uncertain future outcome, that might result in more (or less) specific expenditures or incomes being recovered (or dispositioned) to ratepayers.

58. Hydro One therefore submits that the use of a deferral account is not required.

The new approach is a rates issue and should be tested by a number of additional ratepayers groups, in conjunction with OEB Staff

59. OEB Staff suggests the Blended OCM issue is better addressed in a rate application, where they believe a "broader range of ratepayer groups"[36] can test Hydro One's evidence.

60. This suggestion, however, ignores that the OEB's notice requirements for this Application were rigorously followed, giving any and all third parties ample opportunity to participate in this proceeding. Hydro One also notes that more than one-third of OEB Staff interrogatories were dedicated to the proposed Blended OCM issue. All interrogatories were responded to by Hydro One and no further clarification was sought by OEB Staff.

[36] OEB Staff Submission, section 2.4, page 19.

61. Furthermore, OEB Staff already agree with Hydro One's approach to engage an independent expert to undertake a review of the Blended OCM, with the filing of the expert's report in a future rates application.[37] OEB Staff also notes and supports Hydro One's intention to execute an annual evaluation of the Blended OCM calculation as recommended in subsection 5.5 of the Atrium Economics Report.[38]

62. More intervener participation is therefore not a reasonable basis to delay determination of the appropriateness of the Blended OCM.

Conclusion on proposed deferral of Blended OCM approval

63. OEB Staff's purported bases for delaying adjudication of the Blended OCM as set out in its submission, go beyond accepted industry norms. Deferring a decision on the Blended OCM creates additional and unnecessary regulatory uncertainty and changes the risk-profile for these types of projects that investors will not be prepared to accept without adverse financing consequences.

64. There are also existing barriers faced by First Nations related to concluding equity ownership in the energy sector that have acted as roadblocks to the conclusion of previous equity offerings in energy sector stemming from accessing capital. Hydro One and its partners are working collaboratively to resolve these potential systematic barriers, but the OEB's proposed approach would add a new layer of uncertainty that will have consequences for both Hydro One and its First Nations partners. Hydro One submits this is not a reasonable basis to effectively delay Project execution to the detriment of potential First Nation partners and ultimately ratepayers. This is also surely not an outcome or message the OEB is looking to send to current or potential future energy infrastructure developers and First Nations partners in Ontario.

[37] OEB Staff Submission, section 2.4, page 19.
[38] OEB Staff Submission, section 2.4, page 19.

65. Delaying approval (or denial) of the Blended OCM creates regulatory uncertainty for all of Hydro One's ECI-EPC-based project portfolios, adding incremental burden in terms of Project schedule and costs as described in paragraph 9 above. Hydro One needs to know whether it can continue to cost certain in-flight projects using the Blended OCM.

66. Hydro One thus urges the OEB to render a complete decision on all the issues in scope for this section 92 application (including the Blended OCM), thereby providing the much-needed regulatory certainty that should accompany a project approval, for a project that comes in on-time and on-budget, that those prudently incurred costs will reasonably be recovered in future rates.It is appropriate for the OEB to make a decision on the Blended OCM given the extensive evidence that exists on the record of this proceeding.

67. In and only in the alternative, if the OEB determines that further examination of the Blended OCM is required, Hydro One submits the issue should be dealt with narrowly and succinctly in the form of a second phase to the current proceeding. Such subsequent phase should be constituted and disposed of as expeditiously as possible so as to ensure the Project phase prescribed in-service dates can still be met.

3.0 RESPONSE TO MNO SUBMISSIONS

68. MNO submits the OEB should not approve this Application unless and until the Final Environmental Assessment ("**EA**") is approved.[39] In support of its position, MNO reiterates its submissions made to the Ministry of the Environment, Conservation, and Parks ("**MECP**") as part of the EA process.

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[39] MNO Submission dated February 21, 2024, page 4, paragraph 12.

Mitigation efforts will not materially increase Project costs

69. MNO argues that certain outstanding environmental impact mitigation efforts could give rise to "potentially further, and significant, costs that may have to be expended by Hydro One in order to obtain EA approval, which in turn will likely affect the prices of, and delivery of electricity by, the Project"[40].

70. However, there is no evidence filed in this proceeding to support MNO's claim that environmental mitigation efforts could materially impact Hydro One's estimated Project costs. That is, there is no evidence to suggest that mitigation efforts to address the environmental concerns raised by MNO, even if so ordered by MECP as part of the Final EA process, will exceed the Project's estimated line and station contingency amount of $123.6 million in recognition of potential risks including approvals, permits and authorizations.[41]

71. Further, ratepayer protection is provided in that the recovery of Project capital expenditures will be included in the rate base of a future revenue requirement application subject to prudence review as part of a full adjudicative process.

Duty to consult is being addressed through the EA process

72. In addition, MNO submits the OEB must ensure that the "… constitutional principle of the honour of the Crown is upheld throughout its decision making process and ensure that the duty to consult is met prior to any approval that has the potential to adversely impact Indigenous rights".[42]

73. However, the OEB has outlined several times in this proceeding the scope of the review that it will undertake. The parties to this Application, including MNO, have been repeatedly cautioned to limit their participation to areas that fall within the OEB's

[40] MNO Submission dated February 21, 2024, page 12, paragraph 30.
[41] Exhibit I, Tab 1, Schedule 7, pages 3 to 4.
[42] MNO Submission dated February 21, 2024, page 13, paragraph 32.

legislative mandate.[43] Consideration of environmental issues or issues related to the government's duty to consult with Indigenous communities do not form part of the OEB's review, unless they are relevant to price, reliability and quality of electricity service.[44] For matters related to the Crown's duty to consult, the OEB relies on the consultation (efforts and actions), as procedurally delegated by the Ministry of Energy to Hydro One, conducted during the Terms of Reference, the EA, and ongoing commitments for continued consultation opportunities throughout subsequent projects phases (e.g. design and construction).

74. As the OEB is aware, it is not uncommon that a section 92 application for a transmission project run concurrently with an EA process. Seeking regulatory approvals in parallel, rather than sequentially, supports efficiencies aimed at executing the Project in a timely manner while also meeting regulatory requirements. This is necessary in order to ensure efficient and effective regulatory approval processes for major electricity transmission projects – now more than ever - and in order to meet Ontario's decarbonization goals as part of the broader energy transition.

OEB standard conditions of approval provide additional ratepayer protection

75. The OEB's section 92 Standard Conditions of Approval, which Hydro One expects would apply to any approval of this Application[45], serve as sufficient safeguard to ensure that Project construction will not commence until applicable regulatory approvals are obtained (e.g. Final EA approval). Hydro One understands that a section 92 approval is <u>not</u> a green light to carry out Project construction until it has obtained applicable regulatory approvals.

76. Further, the Standard Conditions of Approval affords ratepayer protections by requiring Hydro One to submit an update to the OEB if material Project changes are required to the section 92 application on which the OEB relies on in rendering its decision. In such instances, the OEB would have a number of avenues available

[43] Procedural Order No. 1 dated November 10, 2023, pages 5 to 6.
[44] Procedural Order No. 1 dated November 10, 2023, page 5.
[45] Exhibit I, Tab 1, Schedule 17, page 1, part a).

including seeking additional clarification from Hydro One regarding the anticipated impacts. The OEB may then use its discretion to stay and/or augment a section 92 approval.

77. Accordingly, the concerns raised in MNO's Submission do not constitute a reasonable basis for the OEB to defer rendering a decision in this Application.

4.0 RESPONSE TO NOTL SUBMISSIONS

78. NOTL's February 21, 2024 letter to the OEB was received consistent with the established deadline in Procedural Order No. 4 for interveners to file final submissions in this Application, and will therefore be referred herein as the "**NOTL Submission**". Although NOTL does not oppose the Project, the NOTL Submission reiterates objections to the proposed Project route. Hydro One has already provided clarifications and responses to NOTL's concerns, consistent with the OEB's direction in its Procedural Orders.[46]

79. NOTL filed its interrogatories to Hydro One on December 4, 2023. Hydro One interrogatory responses were filed on December 19, 2023. NOTL filed a letter on January 30, 2024 regarding Hydro One's interrogatory responses, raising further concerns and questions regarding the Project.

80. On February 1, 2024, Hydro One filed a letter with the OEB responding to NOTL's January 30, 2024 letter, citing evidentiary references and offering additional information regarding its interrogatory responses. The OEB issued Procedural Order No. 4 on February 2, 2024, in part confirming that Hydro One has satisfactorily responded to NOTL's January 30, 2024 letter.[47]

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[46] Specifically the comments made on scope and jurisdiction in Procedural Orders #1, #3 and #4.
[47] Procedural Order No. 4 dated February 2, 2024, page 2.

81. All interveners were also given the opportunity in Procedural Order No. 3 to file further evidence. No intervener, including NOTL, filed any additional evidence on the record.[48]

82. The comments and questions set out in the NOTL Submission have already been brought forward through the EA process, which included consideration of technical and cost criteria in addition to other components of the broad definition of 'Environment' within the *Environmental Assessment Act.* Through the EA process, Hydro One has spent significant time and effort in reviewing, considering, responding and incorporating NOTL's input on the Project, where practicable.

83. Hydro One has also responded to the items in the NOTL Submission through the interrogatories process in this section 92 proceeding, as described more fully below.

Unincorporated townships and communities had opportunity to participate in EA process

84. The Terms of Reference process resides under the legislative authority of the MECP, as part of the EA process. Any concerns NOTL may have concerning that process is more appropriately directed to, and should be raised with, the MECP and not considered by the OEB (as outlined in its guidance to the parties in this proceeding[49]) in this section 92 Application. Notwithstanding, Hydro One responded to this question as part of the interrogatories process.[50]

85. The evidence submitted in this Application demonstrates that communities and groups within any unincorporated townships, as well as NOTL, had repeated notification on Project matters and numerous opportunities to be involved in the EA. For instance, the Notice of Commencement of the Terms of Reference as well as the Notice of

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[48] Although certain interveners, namely Larry Richard, Kurt Krause and MNO, indicated they wished to submit evidence, no such evidence was ultimately filed from any of them in this proceeding. See OEB Procedural Order No. 1 dated November 10, 2023, page 6.
[49] Procedural Order No. 1 dated November 10, 2023, pages 5 to 6; and Procedural Order No. 3 dated January 16, 2024, pages 2 to 3.
[50] Exhibit I, Tab 3, Schedule 1, page 4, part i).

Commencement of the EA was distributed to Indigenous communities, government officials/agencies, interested persons and organizations, signaling EA process commencement.[51] Throughout the Terms of Reference, EA, and beyond (including current construction planning activities), Hydro One has continued to raise awareness and communicate Project information through multiple forums and media, inviting continued engagement with Indigenous communities, stakeholders and members of the public.

NOTL's proposed route alternatives are unsatisfactory

86. NOTL's November 16, 2023 letter to the OEB describes a new proposed route that had not previously been shared with Hydro One. As explained in Hydro One's interrogatory responses, this new route proposed by NOTL does not meet the IESO's system planning requirements that require the Project to connect through the Mackenzie Transformer Station in Atikokan, Ontario.[52]

87. In any event, route alternative evaluation is a subject addressed in the EA process, under the jurisdiction of the MECP and falls outside the scope of this section 92 Application. Notwithstanding, Hydro One's evidence demonstrates that the preferred route, as selected in the EA following a thorough evaluation of reasonable route alternatives (approved in the Terms of Reference), as well as others proposed by NOTL, is the best approach.

88. NOTL's objections to the preferred route are noted and Hydro One has committed through the EA process to continue engagement with the public - including those represented by the NOTL that are directly impacted by the transmission line - to identify opportunities to further mitigate potential impacts.

89. Throughout both the EA process and this section 92 proceeding, Hydro One has clearly and consistently considered and explained why NOTL's proposed route alternatives are not feasible – either because they do not satisfy the prescribed Project

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[51] Exhibit B, Tab 11, Schedule 1, Section 1.0, page 2.
[52] Exhibit I, Tab 1, Schedule 5, pages 1 to 2, part a).

need[53] as determined by the OIC (government), IESO, or Hydro One's transmission license conditions of approval, or because they do not represent the most efficient or effective alternative considering both the OEB's scope of review for this Application (i.e. price, reliability and quality of service) and the criteria established in the EA process.

Project is mandated by Order-in-Council

90. The Minister of Energy with the approval of the Lieutenant Governor in Council, issued an Order-in-Council (**OIC**) on December 11, 2013 pursuant to the authority in section 28.6 of the OEB Act. The OIC directed the OEB to amend Hydro One's transmission license requiring Hydro One to proceed with all necessary development and regulatory approvals required for the Project. The directives set out in the OIC also required the OEB and Hydro One to work co-operatively with the (then) Ontario Power Authority (now IESO) to establish the scope and timing of the (then) Northwest Bulk Transmission Line Project (now the Waasigan Project) in accordance with OPA recommendations.[54]

Land acquisition is consistent with Hydro One's LACP

91. As stated in Hydro One's interrogatory response[55], eighteen properties in Phase 1 are eligible for a full property buyout under Hydro One's Land Acquisition Compensation Principals ("**LACP**"). To date, owners of twelve[56] of these impacted properties have agreed to voluntary settlements with Hydro One. In Phase 2, six properties are eligible for a full property buyout. Offers in respect of Phase 2 properties are anticipated to be issued in early to mid-2024. For impacted properties within Phase 1, if all the properties

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[53] Evidence regarding the Project's need is provided in Exhibit B, Tab 3, Schedule 1.
[54] Exhibit B, Tab 3, Schedule 1, Attachment 1; and, Exhibit I, Tab 1, Schedule 1, page 1, part a).
[55] Exhibit I, Tab 1, Schedule 15, page 2, part d).
[56] Updated from nine (as documented in Exhibit I, Tab 1, Schedule 15, page 2, part d)) to twelve since the filing of Hydro One's argument-in-chief.

that are eligible for a full property buyout are accepted, the forecast total cost is estimated to be $10 million[57].

92. Hydro One's practice of offering full property buyouts in certain circumstances is mitigated by acquiring the full parcel, constructing the Project, and then, as appropriate, re-selling the full parcel with the Project's necessary land rights reserved in easement or fee simple holdings allowing ongoing operation, maintenance and potential expansions.

93. The use of the compensation received within each agreement is at the discretion of the respective landowner. Per Hydro One's LACP for the Waasigan Project, impacted landowners have the option to have Hydro One acquire corridor lands in fee simple. If this option is selected, property taxes for the subject corridor lands become the responsibility of Hydro One.[58]

Hydro One is not undertaking a 'telecommunication project'

94. As explained in the Application, the "new OPGW fiber will be installed atop the new circuits to allow for telecommunication as part of the new line protection control scheme"[59]. Hydro One is not undertaking a 'telecommunication project'. As part of Hydro One's standard practices, landowners who have entered into the Early Access Agreement are notified before any and all entry onto their lands and are consulted on the specifics of the access/work.

95. As clarified through the interrogatory process, "[f]or any income that is generated through agreements that are non-transmission related, such as companies offering fiber optics, or other telecommunication services, these revenues would be considered 'external revenue', and would be treated in a revenue requirement application consistent with OEB policy"[60].

[57] Exhibit I, Tab 1, Schedule 15, page 2, part d).
[58] Exhibit I, Tab 3, Schedule 1, page 4, part h).
[59] Exhibit B, Tab 2, Schedule 1, page 3.
[60] Exhibit I, Tab 3, Schedule 1, page 4, part h).

Land access rights and payment of property taxes are in proposed forms of agreements

96. The ability of Hydro One to access lands <u>outside</u> of the contemplated easement strip for entry/exit purposes, only where reasonably necessary and at reasonable times, is referred to in three agreements: The Early Access Agreement[61], the Option Agreement[62] and the Grant of Easement[63] for permanent rights.

97. These contracts reflect the reasonable assumption that, due to the unique size, topography and characteristics of each individual property, access to the future corridor (the "**Strip"**) may not be pre-established and/or possible to contain within the easement boundaries. These contracts "contemplate landowners being able to continue to use their lands as long as that use is compatible with the agreements"[64]. In such cases, landowners continue to be responsible to pay their own property taxes.

98. In all scenarios where use of lands outside of the contemplated Strip occurs, Hydro One is responsible to compensate for any damages and to restore those lands to their original condition so far as possible and practicable.

5.0 CONCLUSION

99. For these reasons, Hydro One submits that neither the issues filed by NOTL, MNO nor OEB Staff provide a reasonable basis for denying the relief sought in this Application, nor for deferring consideration or re-reviewing any of the elements of this Application at a future cost-based revenue requirement proceeding. Full and final disposition of this Application should therefore be granted without further delay.

All of which is respectfully submitted on this 8th day of March, 2024.

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HYDRO ONE NETWORKS INC.
By its counsel:

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[61] Exhibit E, Tab 1, Schedule 1, Attachment 1.
[62] Exhibit E, Tab 1, Schedule 1, Attachments 4, 6, and 9.
[63] Exhibit E, Tab 1, Schedule 1, Attachments 4 and 9.
[64] Exhibit I, Tab 3, Schedule 1, page 4, part h).

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