McCarthy Tétrault LLP
PO Box 48, Suite 5300
Toronto-Dominion Bank Tower
Toronto ON M5K 1E6
Canada
Tel: 416-362-1812
Fax: 416-868-0673

mccarthy tetrault

Gordon M. Nettleton
Partner, National Energy Regulatory Practice
Email: gnettleton@mccarthy.ca

October 18, 2017

VIA RESS, EMAIL AND COURIER

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, Ontario M4P 1E4

Dear Ms. Walli:

RE: EB-2016-0160 – Notice of Motion To Review and Vary Decision and Order dated September 28, 2017

I am writing to you on behalf of Hydro One Networks Inc. In accordance with Rules 40 and 42 of the Ontario Energy Board (the "Board")'s *Rules of Practice and Procedure*, enclosed please find a Notice of Motion to Review and Vary portions of Board Decision and Order in EB-2016-0160.

Electronic copies of this filing have been distributed to all parties in the EB-2016-0160 proceeding.

Yours truly,

McCarthy Tétrault LLP

Per:

Gordon M. Nettleton

GMN

cc: EB-2016-0160 All Parties

ONTARIO ENERGY BOARD

IN THE MATTER OF a cost of service application made by Hydro One Networks Inc. with the Ontario Energy Board on May 31, 2016 under section 78 of the *Ontario Energy Board Act,* 1998, S.O. 1998, c. 15, (Schedule B), seeking approval for changes to its transmission revenue requirement and to the Ontario Uniform Transmission Rates, to be effective January 1, 2017 and January 1, 2018;

AND IN THE MATTER OF the Decision and Order dated September 28, 2017 in this proceeding; and

AND IN THE MATTER OF sections 40 and 42 of the Ontario Energy Board's *Rules of Practice and Procedure.*

NOTICE OF MOTION

Hydro One Networks Inc. ("**Hydro One**") will make a motion to the Ontario Energy Board (the "**Board**") at its offices at 2300 Yonge Street, Toronto on a date and time to be fixed by the Board.

PROPOSED METHOD OF HEARING: The motion is proposed to be heard orally.

THE MOTION IS FOR:

1. An order that the Board review and vary the Board's decision and order of September 28, 2017 in EB-2016-0160 (the "**Decision**") in respect of the following determinations:

   a) that a portion of tax savings resulting from the Government of Ontario's decision to sell its ownership interest in Hydro One Limited by way of an Initial Public Offering on October 28, 2015 and subsequent sale of shares ("**IPO**") should be

applied to reduce Hydro One's revenue requirement for 2017 and 2018 (Section 15 of the Decision) (the "**Tax Savings Determination**");

b) that Allowance for Funds used During Construction ("**AFUDC**") in respect of the Niagara Reinforcement Project ("**NRP**") should not be included in rates for 2018 (Section 13 of the Decision, the "**NRP Determination**"); and

c) that the costs attributable to the Ombudsman Office should not be included in rates (paragraphs 7.2.2 and pp. 47 of the Decision) (the "**Ombudsman's Office Determination**").

The Threshold Test is Met

2. The determinations addressed in paragraph 1 of this Notice of Motion contain errors of fact and law that meet the threshold for a review of the Decision as specified in Rule 42 of the Board's *Rules of Practice and Procedure* and Board decisions applying same.[1] Namely, that these determinations contain:

a) significant questions as to the correctness of the Decision;

b) one or more of (i) findings that were contrary to the evidence before the panel; (ii) failure to address a material issue by the panel; (iii) inconsistent findings by the panel; or (iv) something of a nature similar to (i), (ii) or (iii); and

enough substance to the issues raised such that a review could result in the Board varying its decision, that is, the errors made by the panel are material and relevant to the outcome of the Decision such that if the errors were corrected, the reviewing panel would change the outcome of the Decision.

---

[1] See, in particular, EB-2006-0322/0338/0340 p. 15.

THE GROUNDS FOR THE MOTION ARE:

Tax Savings Determination

3. Four principal errors were made in the Tax Savings Determination, namely:

   a) erroneously finding that the tax paid by Hydro One to exit the payment in lieu of taxes regime (the "**PILs Departure Tax**") under the *Electricity Act* (Ontario) ("**Electricity Act**") was "variable";

   b) misinterpreting and misapplying RP-2004-0188 to the facts of this case;

   c) failing to apply the stand-alone utility principle and the fair return standard; and

   d) making errors with respect to the applicable tax concepts.

4. Each of the errors set out above is described in detail below; the cumulative consequence of which was the adoption of a flawed benefits follows costs methodology.

I. The Decision Erred by Finding that the PILs Departure Tax was "Variable"

5. The Decision characterizes the PILs Departure Tax as a cost that was "variable at the discretion of the Province".[2] The Board then speculated upon the tax elimination options that the Province could have used to avoid the cost of the PILs Departure Tax and, in the application of the benefits follow costs principle, adopted a PILs Departure Tax value materially less than the $2,271M of PILs Departure Tax that was actually paid by Hydro One.[3] In short, the Decision errs in treating the PILs Departure Tax as, in effect, not a real or true cost.

---

[2] Decision, p. 98.

[3] Ibid at p. 99-100.

6. The Board's finding that the PILs Departure Tax is a variable cost (not a real or true cost) is incorrect. There is no factual basis for this finding because:

a) The PILs Departure Tax was a real cost, paid by Hydro One via wire transfer and recorded in the consolidated financial statements of Hydro One;[4]

b) Hydro One ceased to be a corporation exempt from tax under the *Income Tax Act* (Canada) ("**ITA**")[5] on the IPO which caused it to be liable for PILs Departure Tax under the Electricity Act on the excess of the fair market value ("**FMV**") of its assets over their tax basis;

c) The Minister of Energy for the Province established the $2,271M PILs Departure Tax liability of Hydro One under s. 16.1 of O. Reg. 207/99; and

d) No options were available to Hydro One to avoid paying the PILs Departure Tax liability.

7. According to the Decision, the Province could have eliminated the PILs Departure Tax by making a regulation under s. 114(1)(m) of the Electricity Act exempting Hydro One from the obligation to pay the PILS Departure Tax, or by granting a remission order in respect of the PILs Departure Tax to Hydro One under s. 95.1 of the Electricity Act.[6]

---

[4] See Exhibit J11.16.

[5] References to the ITA should be read as including the *Taxation Act, 2007* (Ontario). Ontario corporate taxes are imposed under the *Taxation Act, 2007* (Ontario), which incorporates by reference the provisions of the ITA.

[6] Page 98 of the Decision states that the "PILs Regulation empowers the Province, as the taxing authority, to exempt an obligated utility, in whole or in part" citing section 16.1 of O. Reg. 207/99. In fact, O. Reg. 207/99, s. 16.1 does not grant the Minister such a power. It provides:

> With the consent of the Minister, the corporation pays to the Financial Corporation an amount that, in the Minister's opinion, <u>reasonably approximates</u> the additional amounts, if any, that would be payable by the corporation under sections 89 and 90 of the Act[.] (emphasis added)

O. Reg. 207/99, s. 16.1 grants the Minister a limited authority to set the amount of the PILs Departure Tax payable to the OEFC to an amount that "<u>reasonably approximates</u>" the amount calculated under ss. 89 and 90 of the Electricity Act—it does not grant the Minister authority to exempt an obligated utility in whole, and limits any exempted amount such that the obligated utility remains liable to pay a reasonable approximation of the amount otherwise due. It is assumed that the Decision meant to refer to the Governor in Council's power to grant a regulatory exemption under ss. 114(1)(m) and or a remission order under s. 95.1 of the Electricity Act as referred to above.

8. However, the Province did not, in fact, either make such a regulation or issue such a remission order. Further, there was no evidence before the Board regarding the circumstances in which the Province would consider it an appropriate policy decision to take either such action. There was also no evidence before the Board regarding the reasons for the Province's policy decision to not exercise its discretion to promulgate a regulation or issue an order in council to waive or reduce the PILs Departure Tax.

9. The Decision further errs in finding that the PILs Departure Tax paid by Hydro One and funded by the Province was "effectively a payment from itself to itself" to preserve the "Exempt Utility FMV".[7] The payment of the PILs Departure Tax was not a payment by the Province to itself. The evidence on the record, ignored in the Decision, was that the PILS Departure Tax was paid by Hydro One to the Ontario Electricity Financial Corporation ("**OEFC**").[8] The payment was financed by an equity infusion from Hydro One's shareholder, the Province.[9]

10. Under the Electricity Act, the PILs Departure Tax, once paid to the OEFC, did not form part of the Province's consolidated revenue fund and the OEFC was obliged to use the amount for the purpose of carrying out its statutory objectives,[10] which include servicing and retiring debt obligations.[11] The Board had no evidence about the policy decisions made by the Province that resulted in a determination that Hydro One should pay the PILs Departure Tax to OEFC so that OEFC could fulfill its statutory obligations.[12]

---

[7] Decision, p. 98.

[8] See Exhibit J11.16, Attachment 2, in which there is a description of the five wire transfers made to the OEFC by Hydro One's Manager, Treasury Operations on November 4, 2015.

[9] Exhibit J11.16, Attachment 2, Page 36. N.B. Hydro One is a wholly-owned subsidiary of Hydro One Inc. which in turn, is wholly owned by Hydro One Limited, the publicly-traded corporation. Unless otherwise indicated, references to shareholders of Hydro One are to the ultimate shareholders of Hydro One, the Province and the public.

[10] Electricity Act, s. 62.

[11] *Ibid* at s. 55.

[12] In fact, Exhibit K2.4 contains testimony by the Deputy Minister of Energy before the Standing Committee on Energy indicating that the PILs Departure Tax of "$2.6 billion goes towards paying down the stranded debt, so that transaction is targeted towards stranded debt".

II. The Misinterpretation of RP-2004-0188

11. The Board misinterpreted and misapplied RP-2004-0188 to the facts of this case.

12. RP-2004-0188 is a Board report providing guidance on the generic regulatory rate treatment of a number of issues, including the allocation of tax benefits arising from a costless bump in assets to FMV. The bump was costless because it resulted from a directive from the Minister of Finance and the utility paid no cost in relation to an underlying transaction.

13. RP-2004-0188 allocated the benefit of future tax savings of costless bumps to ratepayers. It did not address FMV bumps that were not costless. The FMV bump allocation conclusions in RP-2004-0188 expressly apply where a "shareholder has not incurred any cost".[13] RP-2004-0188 states that the "benefits follow costs" principle is only discounted because a shareholder has paid no cost "related to" the FMV bump.[14]

14. That is clearly not the case in this proceeding. Hydro One became liable for and paid PILs Departure Tax on the recapture and gains arising from the deemed disposition of all of its assets at FMV on the IPO as a consequence of it ceasing to be a corporation exempt from tax under the ITA.

15. RP-2004-0188 did not address the allocation of tax benefits arising from a bump in assets to FMV as a consequence of a shareholder selling an ownership interest in the parent company of a rate regulated utility thereby causing the utility to incur tax and other transaction costs. The Decision errs in finding that RP-2004-0188 applied given the evidence in this case that the PILs Departure Tax was a real cost, among other real costs caused by a shareholder decision to sell its ownership interest, all of which costs were funded by shareholders and not borne by ratepayers.

---

[13] RP-2004-0188, p. 56.

[14] *Ibid.*

III. The Stand-alone Utility Principle and the Fair Return Standard

16. Pursuant to the "stand-alone utility" principle, the costs that are recoverable in rates are costs that are incurred for the provision of rate regulated services. This principle was correctly stated in the Decision[15]; however it was misapplied to the facts on the record of this proceeding. The costs incurred by Hydro One resulting from the shareholder's decision to sell its ownership interests were not caused by or related to the provision of regulated transmission services. That is why none of the IPO transaction costs, such as underwriters' fees, legal fees, accounting fees and the PILS Departure Tax, were included in Hydro One's applied-for rates revenue requirement.

17. Pursuant to the "stand-alone utility" principle, the Board is required to treat a government-owned utility in the same way as it would a privately-owned utility.[16] Past Board decisions confirm that the fair return standard does not compensate utilities for any additional risks attributable to Government ownership.[17]

18. By the Decision's finding that Hydro One's shareholder (i.e. the Province) had discretion to waive the PILs Departure Tax, Hydro One became exposed to a risk unrelated to rate regulated service, but which resulted in a reduction in Hydro One's applied-for recovery of taxes on income from rate regulated service. This is inconsistent with the fair return standard. By exposing Hydro One to a risk which is specifically excluded in its risk-based rate of return, the Decision has effectively prevented Hydro One from realizing the opportunity to earn a fair return and confiscated and transferred the value of this entitlement to customers.

19. Based on the reasoning in the Decision, it is clear that if the funding of the PILs Departure Tax had been provided by any shareholder other than the Province, the cost of the

---

[15] Decision, p. 10.

[16] See, for example, EB-2007-0905 Decision and Order dated November 3, 2008, p. 136 and 142, see also *Reference respecting Ontario Hydro*, H.R. 16, Report of the Board, Volume I dated September 15, 1987, Ch. 11.

[17] See EB-2007-0905 Decision and Order dated November 3, 2008, s. 8.3.2.

PILs Departure Tax would have been recognized as a real cost and not discounted as a "variable" cost. Employing distinctions based on the identity of the shareholder for purposes of utility rate-making is inconsistent with the stand-alone utility principle and the fair return standard.

IV. Errors in Applicable Tax Concepts

20. The Decision improperly characterized the events of the IPO as giving rise to "deemed" and "actual" sale events under the ITA which, in turn, created "actual and deemed increases" in the adjusted cost basis of Hydro One's assets:

> As a consequence of the Province's initial November 2015 IPO sale of about a 15% interest in Networks' assets and the "deemed" sale and reacquisition of the remaining 85% interest that the Province then held, the eligible asset values used for the purposes of calculating Networks' future income taxes increased from their pre-sale tax values to their FMV at the time of sale. These actual and deemed increases in the tax values of these assets then became available to provide Networks with substantial savings in cash taxes payable in years beyond November 2015. […]
>
> The issue to be decided in this case is how the principles expressed in the May 2005 Report are to be applied in a situation where the Province has only sold part of its ownership interest in Hydro One Limited and its subsidiaries including Networks. The sale transaction in this case is partly actual and partly "deemed". Moreover, this combined actual and deemed sale transaction has triggered "recapture".[18]

21. The ITA does not distinguish between an "actual" and a "deemed" sale. The mechanism giving rise to the increase in the cost of assets under s. 149(10)(b) of the ITA is a single deemed disposition and reacquisition of all of a corporation's assets at FMV at the time that the corporation ceases to be tax exempt under the ITA. This single deemed disposition of assets at FMV caused Hydro One to be liable for the PILs Departure Tax on recapture and gains.

[18] Decision at pp. 82 and 86 (emphasis added).

22. The Decision confuses and conflates tax savings and costs to obtain tax basis. The Decision states, *inter alia*, in respect of RP-2004-0188:[19]

> In a "deemed" sale of utility assets at FMV, where the FMV Bump in the assets is not actually attributable to a purchase at FMV, the "benefits follow costs" principle does not apply to the FMV Bump related future tax savings and they are be allocated to ratepayers. (emphasis added) […]

It further states that:

> [I]n determining, for regulatory purposes, the appropriate Benefits follow Costs allocation factor in this case, it is appropriate to treat the departure tax amount of $2,271 million as an actual contribution towards the FMV Bump value of $9,794M million embedded in the total FMV of Hydro One Limited shares. […]
>
> In this scenario, [where 29% of the shares of Hydro One have been acquired by the public] the total amounts that have actually been paid towards the $9,794M million FMV Bump of Networks' asset values used for calculating the Deferred Tax Asset is 29% of $9,794M million[.][20] (emphasis added)

RP-2004-0188 does not contain any requirement that there be an asset or share payment at FMV for a FMV bump, in order to fully allocate the future tax savings from the FMV bump to shareholders. Notwithstanding what the Decisions states, no one would pay 29% of $9,794M to obtain 29% of the $9,794M FMV Bump, or, for that matter, $9,794M to obtain 100% of the $9,794M FMV Bump. The value of future tax savings from the FMV Bump, on a non-present valued basis, is $2,595M.[21] The most that would be paid for the future tax savings is $2,595M. Nonetheless, the Decision assumes that Hydro One share purchase payments have embedded in them payments of $3.77 for every $1.00 of tax savings ($9,794M/$2,595M).

---

19 See p. 88 of the Decision.

20 Decision, pp. 99-100. The FMV Bump represents an addition to a notional account (undepreciated capital cost) and does not have a "value" to Hydro One separate and apart from the tax savings it generates.

21 The value of $9,794M in additional tax basis (giving rise to increased capital cost allowance deductions) will depend on Hydro One's income tax rate but, at Hydro One's present 26.5% rate of tax, $9,794M of additional tax basis will yield approximately $2,595M in future tax savings: see Exhibit J11.3.

23. Using the capital invested by the Province, Hydro One, in fact, paid $2,271M of PILs Departure Tax and transaction costs of approximately $39M[22] for the $9,794M FMV Bump, which generated $2,595M in additional tax savings at current federal and Ontario corporate income tax rates (26.5%). It is axiomatic that of the purchase price paid for the shares of Hydro One[23], the amount indirectly paid for the future tax savings attributable to the FMV Bump would approximate the tax savings attributable thereto and not some multiple thereof.

24. Absent a decision by the Province to sell an ownership interest in Hydro One, there would have been no PILs Departure Tax, no FMV Bump and no future tax savings. Accordingly, a proper application of the benefits follows costs principle and the "stand-alone utility" principle should allocate 100% of the future tax savings from the FMV Bump of $2,595M to the shareholders.

NRP Determination

25. The NRP is a $100M transmission line in southwestern Ontario. Hydro One was granted leave to construct the NRP in 2005.[24] Hydro One incurred debt to finance the construction. In approving the recovery of the financing costs in transmission rates, the Board stated that it "accepts the expenditures associated with the project as prudent, and requires no further analysis from Hydro One to justify expenditures incurred to date."[25]

26. In the same decision, the Board noted that, "as a result of a land claim by aboriginal peoples and the occupation of a portion of the lands necessary for the completion of the last two kilometers of the project, the project has been frustrated, pending a multi-lateral resolution

---

[22] See pages 1 and 4 of Exhibit I-09-002, Attachment 2 (Hydro One Limited Supplemented Prep Prospectus dated October 29, 2015), in which the expenses of the offering are estimated to be $12,500,000 plus an underwriters' fee of $26,600,800 (without accounting for fees related to the over-allotment option). These costs reflect expenses incurred in the IPO of Hydro One Limited and are not particularized in respect of Hydro One.

[23] As a subsidiary of Hydro One Limited.

[24] EB-2004-0476.

[25] EB-2006-0501 at p. 47 (emphasis added).

of the underlying land claim issues."[26] The Board went on to find that "special regulatory treatment is appropriate for the NRP because a recognizable risk has materialized out of the land claim dispute in Caledonia, the resolution of which is beyond the control of Hydro One."[27]

27. The regulatory treatment afforded by the Board was to allow the recovery of yearly interest charge on the debt used to finance the construction (the "**AFUDC**"), but not include the NRP in rate base until it was brought into service. The Board stated that this approach was a "compromise."[28]

28. The Board thus permitted the recovery of AFUDC in rates effective January 1, 2007 "with no explicit time limit as it remains uncertain when the Caledonia dispute will be resolved. If Hydro One requires additional relief prior to the project being completed and in-service, it is free to bring an application seeking such further relief."[29]

29. Hydro One thus understood the decision to permit continued recovery on the basis approved for 2007 rates and has not sought any different relief in this application.

30. However, in Section 13 of the Decision, the Board found that Hydro One should be permitted to recover the AFUDC for 2017, but not for 2018. This finding was unreasonable, because there was no evidence before the Board that would allow it to conclude that the situation which the Board determined "was outside of Hydro One's control", and which "required a multi-lateral resolution" had changed for 2018.

31. Specifically, there was no evidence that Hydro One's negotiation efforts were insufficient, and that Hydro One is in a position to find "alternate solutions" or that any such

---

[26] EB-2006-0501 at p. 62 (emphasis added).
[27] EB-2006-0501 at p. 63.
[28] EB-2006-0501 at p. 64.
[29] EB-2006-0501 at p. 64.

alternate solutions exist. Neither the Board nor any parties cited any evidence respecting Hydro One's negotiation efforts or possible "alternate solutions".

32. The only evidence on the record of the proceeding in regards to the status of the NRP is found at page 162 of transcript volume 11, where Board Staff asked one of Hydro One's finance panel witnesses who did not have responsibility for matters involving work execution or strategy, about the NRP. Specifically, Board Staff first asked Hydro One's witness as to the status of the dispute relating to the NRP. Not surprisingly, the witness answered the question by stating "I have no updates, I am not aware".[30] In answer to Board Staff's further question as to the witness's expectations regarding when the line will enter service, Hydro One's regulatory accounting witness replied "I am not aware of anything".[31]

33. <u>These answers provided the totality of the evidence on the record of this proceeding in regards to the status of the NRP</u>.[32] There were no follow up questions asked and no undertakings requested on the NRP. In other words, there is no evidence on the record on the proceeding in regards to the NRP from witnesses who testified on First Nations matters or planning and therefore would reasonably be in a position to provide evidence on the status of the NRP.

34. The Board therefore erred in finding that Hydro One has not made sufficient effort to resolve the issues associated with the NRP. There was no evidentiary basis for that finding.

35. New facts and new circumstances that could not have been considered at the time of the EB-2016-0160 hearing are now in the public domain. On October 13, 2017, Six Nations Band Council and Six Nations of the Grand River Development Corporation announced that a

---

[30] Transcript volume 11, p. 162.

[31] Transcript volume 11, p. 162.

[32] The following questions asked by Board Staff to Hydro One's expert in regulatory accounting are to confirm that the AFUDC is a "straight debt cost" and does not include any return on equity or depreciation related to the NRP. See transcript volume 11, pp. 163-164.

tentative agreement was reached with the Ontario Ministry of Energy and Hydro One.[33] This important achievement is intended to allow completion of the NRP. Reaching a tentative settlement of this sort conclusively demonstrates the conclusions reached in the Decision are incorrect.

<u>Ombudsman's Office Determination</u>

36. The Decision states at page 47 that "The budgeted annual compensation cost of the new Chair [of the Hydro One Board of Directors] is about $1.7 million and $1.8 million in 2017 and 2018, respectively, with about 53% of those amounts being allocable to transmission."[34] The Board's statement is incorrect and is based on a misreading of the evidence. The evidence[35] specifies that $1.4 million of the cost of <u>the Office of the Chair</u> relates to the cost of the Ombudsman's Office, a legally required position in respect of which the Board made no finding of imprudence.

37. On October 11, 2017, the Board amended the last full paragraph found on page 48 of the Decision to include a new sentence that reads "of those amounts, $1.4 million is attributable to the Ombudsman's Office." The October 11, 2017 revision does not fully correct the issue at hand in two respects. First, page 47 of the Decision still incorrectly states "[T]he budgeted annual <u>compensation cost of the new Chair</u> is about $1.7 million and $1.8 million in 2017 and 2018…". This cost relates to the Office of the Chair and not the compensation cost of the new Chair. Retaining the subsequent comparison of these amounts to "[T]he 2014 cost of the Chair that was replaced was about $300,000" maintains a mistaken belief that the compensation cost of the Chair has materially changed. The reputational impact of these misstatements are material to Hydro One and its Chair. Hydro One therefore requests that

[33] See Attachment "A" to this Motion.

[34] Decision, p. 47

[35] See undertaking J12.5.

the record be properly corrected to state the compensation costs of both Ombudsman's Office and the Chair for 2017 and 2018.

38. Second, as the $1.4 million of the Office of the Chair cost is in fact related to the Ombudsman's Office and legally required, Hydro One submits that this cost should be recovered in rates. For transmission, this amount is 53% of $1.4 million, that is, approximately $750,000. Hydro One therefeore requests that the Decision be varied to include this amount in Hydro One's revenue requirement for each of 2017 and 2018.

Rules and Other Grounds

39. Rules 8, 40 and 42 of the Board's *Rules of Practice and Procedure*.

40. Such further grounds and material as counsel may advise and the Board may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The Board's Decision with Reasons dated September 28, 2017;

2. Materials from the record of this proceeding;

3. Hydro One's submissions on this Motion, which will be delivered in accordance with the Board's procedural order(s) in regards to this Motion; and

4. Such further and other documentary evidence as counsel may advise and the Board may permit.

Date: October 18, 2017

McCarthy Tétrault LLP
Suite 5300, TD Bank Tower
Toronto ON M5K 1E6
Fax: 416-868-0673

Gordon M. Nettleton
gnettleton@mccarthy.ca
Tel: 403-260-3622

George Vegh
gvegh@mccarthy.ca
Tel: 416-601-7709

TO: Ontario Energy Board
P.O. Box 2319
26th. Floor
2300 Yonge Street
Toronto ON M4P 1E4

Tel: (416) 481-1967
Fax: (416) 440-7656

AND TO: Intervenors of Record

Attachment "A"

Please see attached

Aboriginal BUSINESS

Six Nations negotiates tentative deal, Niagara Reinforcement Line may go ahead

October 13, 2017 190 views

Towers have sat idle since 2006 Six Nations land Reclamation

By Lynda Powless

Editor

SIX NATIONS OF THE GRAND RIVER- The Six Nations Band Council and the Six Nations of the Grand River Development Corporation(SNGRDC) have negotiated a tentative agreement with the Ontario Ministry of Energy and Hydro One that would see the controversial Niagara Reinforcement Line (NRL), stopped during the 2006 Reclamation of lands at he former Douglas Creek Estates, proceed.

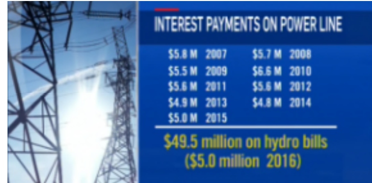
After four years of negotiations the SNGRDC announced Friday (Oct 13, 2017) it will begin a 60 day community consultation at Six Nations next week on what it sees as a long-term value for the community.

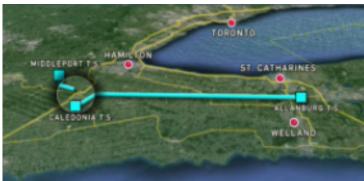
The $116 million transmission line was almost completed 11 years ago. The 76 kilometre line was and slated to bring power into Ontario from Niagara Falls New York to the area. The project came to an abrupt stop when Six Nations people stopped a subdivision being built on Six Nations unceded lands just outside Caledonia. The NRL's final connection point is at the Highway Six bypass at Caledonia. Hydro One has been unable to complete the last five kilometres of the power line since the Caledonia land claim dispute blocked the line. The power line was designed to bring 800 megawatts of electricity into southern Ontario, the same amount of power the province would get from just one of its nuclear reactors.

A portion of the towers had been used to block roads during the Reclamation (Turtle Island News photo)

The land ownership dispute led to the 2006 Reclamation of Six Nations lands, road barricades that went on for the entire summer as Ontario, Ottawa and both the Haudenosaunee Confederacy Chiefs Council representatives and Six Nations Elected Band Council representatives engaged in negotiations. Those negotiations lasted until 2010 when Six Nations Band Council first, then Ontario pulled out. Ontario said at the time it didn't need the electricity immediately because the recession had slowed manufacturing.

The disruption meant Hydro One sought and received permission from the province in 2007 to bill Ontario taxpayers for its interest payment on the $116 million capital cost of the stalled power line. As of 2015 that had amounted to nearly $50 million in interest on the power line that still is not transmitting any electricity.





The NRL route

Six Nations Elected Council (SNEC) and SNGRDC began "engaging in high level exploratory talks with the Province to arrive at a solution that would be beneficial for all parties, however nothing substantial was achieved at that time," in 2013. The talks continued in August 2016 when SNGRDC proposed a three-phase bundled solution to ENERGY and Hydro One. The three phases, the SNGRD says "will Energize, Acquire and Optimize Six Nations' energy portfolio."

They include:

- *Energize:*Hydro One is committed to offering a contract opportunity to SNGRDC's joint venture with the Aecon Group –A6N Utilities (A6N), to complete the remaining NRL transmission work.
- *Acquire:*Equity Ownership in the Line – SNGRDC will purchase 25% ownership in the line for approx. $13 million which will be financed using an Aboriginal Loan Guarantee from the province of Ontario.
- *Optimize:* In addition, ENERGY will grant a Renewable Energy capacity set-aside to Six Nations of the Grand River, to be used by SNGRDC on behalf of Six Nations, for up to 300 megawatts of new projects within the region, if further renewable generation is needed in the future.

Six Nations Elected Chief Ava Hill , in a press release said "This project will create local employment opportunities while generating long-term economic benefits for our community," said Chief Ava Hill, Six Nations Elected Council.

"Hydro One is committed to working with Six Nations to move this project forward under the principles of open communication and cooperation," said Derek Chum, Vice President, Indigenous Relations at Hydro One said in a statement. "This project will not only strengthen the working relationship between Hydro One and Six Nations, but will also provide long-term economic benefits for the community."

"Our government supports Indigenous participation in the energy sector and remains committed to ensure these opportunities continue, including partnerships on major transmission line projects such as the Niagara Reinforcement Project" said Glenn Thibeault, Minister of Energy said in a statement.

"The 300 mega-watt set aside will allow our community to take a lead role in the construction and management of new renewable energy projects in this region," said Matt Jamieson, President/CEO of SNGRDC said in a statement released Friday. "SNGRDC is always looking to find new and inventive ways to invest in renewable energy to bring economic benefits to the people of Six Nations. SNGRDC believes investing in renewable energy means investing in the future and our generations yet to come."

Community members are encouraged to attend an engagement session to learn more.. For more information visit www.snfuture.com

The Six Nations of the Grand River Development Corporation (SNGRDC) was created by the Six Nations Band council and now manages Six Nations' revenue generating projects and any economic interests, including overseeing 14 renewable energy projects the community is engaged in.

The Six Nations community's green energy portfolio is capable of producing nearly 900 MW of renewable energy through its direct or indirect involvement in seven wind, six solar and one hydroelectric project(s). The development corporation, located on the Six Nations Reserve, employs over 140 people through various Nation Enterprises or in the administration of Economic Interests projects.

The Haudenosaunee Confederacy Chief Council has not commented on the project or negotiations.

For more information please visit www.sndevcorp.ca

.

FOR IMMEDIATE RELEASE

Six Nations of the Grand River Development Corporation
2498 Chiefswood Road. P.O.Box 569
Ohsweken, ON N0A1M0

Six Nations Future Begins Community Engagement for Niagara Reinforcement Line Project

SIX NATIONS OF THE GRAND RIVER, ON – October 18, 2017 – Six Nations of the Grand River Development Corporation (SNGRDC) in conjunction with the Ontario Ministry of the Energy (ENERGY), and Hydro One, have brought forth a solution to see the Niagara Reinforcement Line (NRL) completed in exchange for long-term value for the Six Nations Community. A 60-day engagement period began on October 16th with a kick off event being held tomorrow, October 19th from 6-8PM, at the new Gathering Place by the Grand Event Centre. Community members wishing to comment on the project, are able to do so in person or in writing at any one of ten engagement sessions, or they can fill out an online comment card at www.snfuture.ca by December 15th.

The NRL, whose final connection point is located along the Highway 6 bypass in Caledonia, has sat incomplete and idle for over 10 years. In 2013, Six Nations Elected Council (SNEC) and SNGRDC began engaging in high level exploratory talks with the Province to arrive at a solution that would be beneficial for all parties, however nothing substantial was achieved at that time. These talks progressed in August 2016 when SNGRDC proposed a three-phase bundled solution to ENERGY and Hydro One. The three phases will Energize, Acquire and Optimize Six Nations' energy portfolio.

1) *Energize:* Hydro One is committed to offering a contract opportunity to SNGRDC's joint venture with the Aecon Group –A6N Utilities (A6N), to complete the remaining NRL transmission work.
2) *Acquire:* Equity Ownership in the Line - SNGRDC will purchase 25% ownership in the line for approx. $13 million which will be financed using an Aboriginal Loan Guarantee from the province of Ontario.
3) *Optimize:* In addition, ENERGY will grant a Renewable Energy capacity set-aside to Six Nations of the Grand River, to be used by SNGRDC on behalf of Six Nations, for up to 300 megawatts of new projects within the region, if further renewable generation is needed in the future.

Community members are encouraged to attend an engagement session to learn more. Informational mailers and comment cards have been sent out to every household on Six Nations with a list of engagement dates. For more information visit www.snfuture.com

Quotes

"This project will create local employment opportunities while generating long-term economic benefits for our community," said Chief Ava Hill, Six Nations Elected Council.

"Hydro One is committed to working with Six Nations to move this project forward under the principles of open communication and cooperation," said Derek Chum, Vice President, Indigenous Relations at Hydro One. "This project will not only strengthen the working relationship between Hydro One and Six Nations, but will also provide long-term economic benefits for the community."

"Our government supports Indigenous participation in the energy sector and remains committed to ensure these opportunities continue, including partnerships on major transmission line projects such as the Niagara Reinforcement Project" said Glenn Thibeault, Minister of Energy

"The 300 mega-watt set aside will allow our community to take a lead role in the construction and management of new renewable energy projects in this region," said Matt Jamieson, President/CEO of SNGRDC. "SNGRDC is always looking to find new and inventive ways to invest in renewable energy to bring economic benefits to the people of Six Nations. SNGRDC believes investing in renewable energy means investing in the future and our generations yet to come."

About Six Nations Future

Six Nations Futures is a community engagement tool utilized by Six Nations Consultation and Accommodation Process Team and SNGRDC to seek community insights on development projects happening in and around the Six Nations territory. The website and community engagement process has been designed to educate the Six Nations community about the financial, economic, and environmental impact associated with development projects, and provides a community wide mechanism to gather feedback that will help guide current and future projects. Community members can visit the website to get more information about past and current projects, and to review community engagement reports.

For more information please visit www.snfutures.com

About Six Nations of the Grand River Development Corporation:

Six Nations of the Grand River Development Corporation (SNGRDC) manages the Six Nations' economic interests in 14 renewable energy projects and numerous economic development opportunities, in and around the Six Nations territory. SNGRDC's current green energy portfolio is capable of producing nearly 900 MW of renewable energy through its direct or indirect involvement in seven wind, six solar and one hydroelectric project(s). SNGRDC is located on the Six Nations Reserve and directly employs over 140 people through Nation Enterprise or the administration of Economic Interests projects.

For more information please visit www.sndevcorp.ca

-30-

Media Contact Information

Tabitha Curley, Manager of Communications and Stakeholder Relations
Six Nations of the Grand River Development Corporation
tcurley@sndevcorp.ca
519-753-1950 Ext. 6420
www.sndevcorp.ca