Ontario Energy Board

Filing Requirements
For
Electricity Transmission Applications

Chapter 4

~~Applications~~ Leave to Construct and Related Matters under Part VI ~~Section 92~~ of the Ontario Energy Board Act

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Contents

Chapter 4: Filing Rrequirements for Applications for Leave to Construct and Related Matters, etc for electricity transmission projects under Section 92 of the Ontario Energy Board Act ("the Act")

4.1 Introduction

The purpose of this chapter is to set out the filing requirements for the following applications related to electricity transmission facilities under the *Ontario Energy Board Act, 1998* (Act):

a. Section 92, Leave to Construct (LTC) Applications

b. Section 95, Exemption from the Requirements for Section 92 LTC

c. Section 99, Expropriation Applications related to LTC approvals

Applicants should also refer to Chapter 1 of the Filing Requirements (Overview) for guidance on confidential filings and other general requirements applicable to applications that are the subject of this Chapter.

The Ontario Energy Board (OEB) expects applicants to file these applications in a manner that is consistent with these filing requirements, unless they can demonstrate a cogent rationale for departing from it. The OEB may require an applicant to file evidence in addition to what is identified in the filing requirements for a given application. An applicant may combine its requests for various types of approvals into a single application where it is appropriate to do so.

~~These filing requirements are intended to assist an applicant in preparing its leave to construct application.~~ These filing requirements ~~It~~sets~~s~~ out the information that is required to be filed by two broad categories of applicants - rate-regulated applicants and non-rate-regulated applicants. ~~ - to enable the Board to determine whether a project is in the public interest.~~ The different factors considered by the OEB ~~Board~~ between rate-regulated and non-rate-regulated applications lies in the fact that regulated entities seek to recover costs from the consumers of electricity through their rates, while non-rate-regulated entities do not~~provide their own funding~~.

Section 4.2 applies to both rate-regulated and non-rate-regulated applicants. Further information required for rate-regulated entities is covered in section 4.3 and further information required for non-rate-regulated entities is covered in section 4.4.

4.2 The Regulatory Framework

The Act requires transmitters and distributors to obtain leave of the OEB ~~Board~~ for the construction, expansion, or reinforcement of electricity transmission ~~and distribution~~ lines ~~or interconnections~~. An "electricity transmission line" is defined under section 89 of the Act as a line, transformer, plant or equipment used for conveying electricity at voltages higher than 50 kilovolts.

The Act and related regulation provide for certain exceptions from the requirement to obtain leave which are discussed further in these filing requirements.

The requirement to obtain LTC applies irrespective of whether the applicant wishing to construct, expand, or reinforce the electricity transmission ~~and/or distribution line or interconnection~~ is or intends to become rate-~~-~~regulated by the OEB.

Any person who obtains leave of the OEB ~~Board~~ under section 92 or who is exempt from obtaining leave under section 95 may apply to the ~~Board~~ OEB for authority to expropriate lands for the purpose of constructing, expanding, or reinforcing an electricity transmission ~~and/or distribution~~ line ~~or interconnection~~ for which leave to construct was granted. Other matters related to the construction of electricity transmission infrastructure are also discussed in these filing requirements, for example authorization to enter onto subject lands and crossings over or under a highway etc.

4.2.1 Legislation

The applicable sections of the Act for leave to construct and related proceedings are sections 92, 95, 96, 97, 98, 99, 101 and 102. Each of these sections is addressed ~~briefly~~ below.

Section 92: Requirement for Leave to Construct and Exceptions

Under section 92 (1) of the Act, and subject to the exceptions set out in the Act and related regulation, leave to construct is required for the construction, expansion, or reinforcement of an electricity transmission line.

~~**s. 92.** (1) No person shall construct, expand or reinforce an electricity transmission line or an electricity distribution line or make an interconnection without first obtaining from the Board an order granting leave to construct, expand or reinforce such line or interconnection. 1998, c. 15, Sched. B, s. 92 (1).~~

As noted above, there are exceptions to the requirement under section 92(1) for leave to construct. Section 92(2) provides that leave to construct is **not** required for relocation or reconstruction of an *existing* electricity transmission line where no expansion or reinforcement is involved *unless* the acquisition of additional land or authority to use additional land is necessary.

Furthermore, related regulation[1] under the Act provides that the requirement for leave to construct generally does not apply to certain types of work including:

- construction, reinforcement or expansion of an electricity transmission line that is *two km or less* in length
- an interconnection linking a transmission system with an adjacent transmission system in Ontario
- an interconnection linking a distribution system with an adjacent transmission system.

The effect of sections 92(1) of the Act and section 6.1(1) of the Regulation as well as the definition of "electricity transmission line" in section 89, read together, is to require a leave to construct authorization from the OEB only in cases where an applicant seeks to construct, expand, or reinforce an electricity transmission line that is greater than two kilometres in length.[2]

~~Section 92 also applies to distributors' projects involving transformation connection projects (e.g. a transformer station transforming from above 50 kV to below 50 kV), if the transmission line tap is more than 2 km in length; and, facilities with voltages which are above 50kV and with line connections greater than 2km in length regardless of whether they have been "deemed" by the Board to be distribution facilities.~~

In addition to the right to construct the facilities, an LTC approval granted by the OEB enables the holder of that leave, under section 98 of the Act, to enter land to conduct surveys and examinations that are necessary for fixing the site of the work.[3]

[1] Regulation 161/99 made under the OEB Act, section 6.2. Note that this regulation contains additional exemptions.
[2] See also EB-2013-0421, Decision on Threshold Questions (SECTR Project) where the OEB considered whether leave to construct approval was required for the construction of transformation stations. The OEB found that section 92 applies to transformation connection projects where a transmission line is greater than 2km but not to a standalone transformation project.
[3] Section 98 (1) of the Act. -This also applies, pursuant to section 98(1).2 of the Act, where the project has been exempt from the requirement to obtain leave to construct under section 95 of the Act.

The provisions of section 98 of the Act are discussed further in these filing requirements.

Section 95: Exemption from the Requirement to Obtain Leave to Construct

Section 95 allows the OEB to exempt a project proponent from ~~an applicant to seek an exemption from~~ the requirements of

section 92 in special circumstances. The onus is on the applicant seeking an exemption to establish special circumstances. ~~Some examples of what the Board has considered as constituting special circumstances in past cases include whether there is a need to obtain necessary land rights prior to construction, whether there are any environmental impacts, if there are other concerns raised by landowners, etc.~~ The Act does not define "special circumstances" and the OEB has determined whether special circumstances exist on a case-by-case basis.[4] As such, decisions on applications under s.95 are not determined by a Delegated Authority (i.e. an OEB employee to whom certain decision-making authority has been delegated by the Chief Commissioner) but will be decided by one or more OEB commissioner(s).[5]

A project summary report should be submitted with a section 95 application for review, consistent with the requirements described in this document. The level of detail in the submission must reflect the issues or concerns encountered during the evaluation phase of the project and ~~.~~provide an understanding of the special circumstances being relied on. This could include, as applicable, an explanation of the project route/location, need for the project, project costs, project design, project alternatives and landowner impacts.

Section 96: Scope of OEB Consideration of "Public Interest" under section 92

Section 96(1) of the Act provides that, if the OEB is of the opinion that the construction,

[4] See for example, EB-2017-0161 (Hydro One Leaside TS Upgrade) where section 92 approval would have been required because the acquisition of additional land was necessary and the affected landowners asked for a minor relocation of the transmission line. However, the OEB determined that the amendment by Hydro One of its original project and routing plan to accommodate the affected landowners were special circumstances that warranted the granting of an exemption pursuant to section 95 of the Act.

[5] Section 6(1) of the Act provides that, subject to OEB by-laws and to the approval of the OEB chief executive officer, the chief commissioner may in writing delegate any power or duty of the OEB that may be exercised or shall be performed under subsection 4.3 (8) of the Act to an employee of the OEB who is not a commissioner.
Section 4.3(8) of the Act states:
(8) Except where this Act provides otherwise and subject to the regulations, the powers and duties of the Board with respect to the hearing and determination of matters over which it has jurisdiction may be exercised and shall be performed by panels of commissioners assigned for the purpose by the chief commissioner under subsection (7). 2019, c. 6, Sched. 2, s. 5.

expansion or reinforcement of the proposed work is in the public interest, it shall make an order granting leave to carry out the work.

Subsection 96(2) specifies that for the purposes of section 92, in determining whether the construction, expansion or reinforcement of the electricity transmission line ~~or interconnection~~ is in the public interest, the OEB ~~Board~~ shall only consider the following:

> ~~"1.~~The interests of consumers with respect to prices and the reliability and ~~-~~quality of electricity service.~~"~~
>
> ~~2. Where applicable and in a manner consistent with the policies of the Government of Ontario, the promotion of the use of renewable energy sources."~~

As discussed further below, the OEB's authority to consider environmental and indigenous consultation matters is limited by section 96(2) and these matters can only be considered to the extent they are relevant to the issues of price, reliability and quality of electricity service.

Section 96.1: Priority Projects

Section 96.1 of the Act states that the Lieutenant Governor in Council may make an order declaring that the construction, expansion or reinforcement of an electricity transmission line specified in the order is needed as a priority project. Section 96.1(2) requires that, when considering an application under section 96.1, the OEB shall accept that the construction, expansion or reinforcement is needed when forming its opinion under section 96.[6]

While issues relating to the need for the project and consideration of alternatives are not applicable in the case of a priority project, the OEB may consider various aspects of the proposed project as they relate to the public interest considerations under section 96(2), i.e., price, reliability and quality of electricity service. Aspects that have been considered by the OEB in applications for leave to construct priority projects have included consideration of the schedule, costs, proposed route and physical design.[7]

[6] Examples of "priority projects" include EB-2018-0190 (Wataynikaneyap Power), and EB-2022-0140 (Chatham to Lakeshore). The complete list of Priority Projects is set out on the OEB's web page.
[7] For example, the OEB considered the cost and reliability implications of an applicant's proposed route and tower and conductor technologies in relation to a priority project in EB-2022-0140 (Chatham to Lakeshore)

Section 97: Landowner Agreements

Section 97 of the Act states that the OEB will not grant leave to construct until it is satisfied that the applicant has offered or will offer to each owner of land affected by the approved route or location an agreement in a form approved by the OEB.
The OEB therefore requires that applicants file draft or completed forms of land use agreement (easement agreements, etc.) that have been or will be offered to affected landowners for the OEB's review. Appendix B sets out the types of clauses that it is expected will be included in an agreement.
~~Section 97 requires that information on land requirements must be included as part of the leave to construct application. Section 97 states, "leave to construct shall not be granted until the applicant satisfies the Board that it has offered or will offer to each owner of land affected by the approved route or location an agreement in a form approved by the Board."~~
For purposes of these filing requirements, an affected landowner ~~An affected landowner~~ means those landowners of property upon, over or under which it is intended to construct facilities.[8]

Section 97.1 No leave if covered by licence

Section 97.1 specifies that leave to construct shall not be granted to a person if a licence that is held by another person includes an obligation to develop, construct, expand or reinforce the line that is the subject of the application.[9]

Section 97.2: Leave in the procurement, selection context

Section 97.2 specifies that leave to construct shall not be granted to an applicant if the Independent Electricity System Operator (IESO) has commenced, been directed to commence, or announced a future procurement process, or a future process to select a transmitter, for the development, construction, expansion or reinforcement of a transmission line or interconnection and the process has not been completed, or if the IESO has completed the process and entered into a contract with someone else.
Section 97.2(2) provides that if the applicant in an application under section 92 is a person with whom the IESO has entered into a procurement contract respecting the development, construction, expansion, reinforcement of the line or the making of the interconnection, the OEB may make an order under section 96 without holding a hearing.

[8] EB-2016-0310 (Henvey Inlet Wind), Procedural Order No.1
[9] See for example EB-2016-0258 (Remote Community Connections and Line to Pickle Lake), Decision and Order issued September 1, 2016 in response to Order in Council 1158/2016 dated July 20, 2016 which directed that the OEB amend the transmission licence of 2472883 Ontario Limited on behalf of Wataynikaneyap Power LP (Wataynikaneyap Power LP) to require it to develop and seek approvals for certain transmission projects to connect sixteen remote First Nation communities to the provincial electricity grid.

Section 98: Right to Enter Land

Under section 98(1) of the Act, any person who *has obtained leave to construct* from the OEB, or who has been exempted under section 95, may enter on land at the intended location of a proposed transmission facility in order to conduct surveys and examinations that are necessary for fixing the site of the work. In addition, where the proposed work is the expansion or reinforcement of a transmission system, any person who is required by the OEB pursuant to a condition of the person's licence to expand or reinforce the transmission system may enter on the subject land.

The persons enumerated in section 98(1) of the Act are not required to make an application to the OEB for permission to enter onto the subject land.

Section 98(3) of the Act provides that the OEB may issue an order authorizing a person to enter on land intended for *proposed* construction, expansion or reinforcement of an electricity transmission line for the following purposes:

- to gather field data and conduct tests to facilitate the preparation of an environmental assessment under the *Environmental Assessment Act* in relation to the proposed work, or to facilitate the preparation of an application for any other permit or approval required for the proposed work or
- to determine the land required for the proposed construction, expansion,
- reinforcement or making of the work.

Section 98(4) of the Act sets out the conditions for an application under s.98(3).[10] Section 98(5) sets out the factors that the OEB must consider in an application under section 98(3), namely

[10] Section 98(4) of the Act states:

(4) Subsection (3) applies if,

(a) either of the following applies with respect to the proposed work:
(i) proposed terms of reference for the preparation of an environmental assessment for the proposed work have been approved under subsection 6 (4) of the *Environmental Assessment Act*, or

(ii) the applicant has issued an initial notification respecting the proposed work in accordance with the requirements of the document titled "Class Environmental Assessment for Minor Transmission Facilities", as it is amended from time to time, that is published by and available from Hydro One Inc.; and

(ii) the applicant has commenced, in accordance with the requirements of Part II.4 of the *Environmental Assessment Act*, the process for completing an environmental assessment under that Part; and

(b) any other requirements that are prescribed by the regulations have been met.

(a) whether, before applying, the applicant made reasonable efforts to obtain consent for entry onto the land from the owner of the land; and

(b) whether entry onto the land is needed for a purpose listed in subsection 98(3).

In approving applications for early access to land intended for the proposed transmission facility, i.e., before leave to construct has been granted, the OEB may impose conditions which determine the scope and timing of activities that are allowed and set the notification requirement for landowners prior to entry onto land and communication with landowners during and after completion of entry onto land activities.[11]

Section 99: Expropriation

Under section 99 of the Act, the OEB can authorize the expropriation of land if it is in the public interest. Any person who has leave to construct from the OEB, or who has been exempted under section 95 or by regulation, may apply for expropriation where they have been unable to reach an agreement with an affected landowner.

In determining whether the expropriation is in the public interest, the OEB has taken into account the objectives of the Act, the broad public interest, and the interests of each of the parties to the proceeding.[12]

Section 100 of the Act provides that, if the applicant and affected landowners cannot agree on compensation for expropriation, the compensation is determined by the Ontario Land Tribunal under the *Expropriations Act.*

The OEB does not determine the specific compensation, the principles that are applied to determine compensation, the process through which those principles were developed, the application of those principles in determining compensation or the reasonableness of compensation offers. However, in considering an application under section 96(2), the OEB will consider the interests of consumers with respect to price and the costs of the project, including total land acquisition costs.[13]

[11] See for example EB-2007-0051 (Hydro One – Bruce to Milton), where the OEB granted an interim order (under former subsection 98(1.1)) allowing access to land proposed to be the site of a new transmission line from Bruce Power to Hydro One's Milton switching station. The order was subject to certain conditions of approval including permitted activities, notification to landowners and other matters.

[12] The meaning of "public interest" in the context of expropriation under the OEB Act was considered by the Ontario Divisional Court in *Union Gas Ltd.* v. *Township of Dawn, 1977 CanLII 1042,* 15 O.R. (2s) 722 (Div. Court) and applied in subsequent OEB decisions including, for example, EB-2006-0352 (Re Hydro One Service to Toyota Canada), EB-2008-0050 (Re Canadian Renewable Energy Corp.) and EB-2013-0268 (Dufferin Wind) Procedural Order No.3,

[13] EB-2007-0050 (Hydro One – Bruce to Milton LTC), Oral Decision, May 8, 2008

Furthermore, in an expropriation application, the OEB will consider, among other things, the *appropriateness of the interests sought in the lands sought to be expropriated* which have an impact on the total land use impacts and therefore on compensation.[14]

~~Section 99 relates to expropriation. The Board can order the expropriation of land if it is in the public interest. Compensation issues are dealt with by the *Expropriations Act* and the Ontario Municipal Board. The Board's consideration of the public interest may be more expansive in a section 99 application than in a section 92 application. For an example, see the discussion of the public interest in Dufferin Wind Power Inc. EB-2013-0268, Procedural Order No. 3 and Decision on Issues, February 7, 2014.~~

Section~~s~~ 101: ~~and 102~~ Crossings with Leave

~~Upon request, under Section 101 the OEB~~Board may grant authority to construct upon, over or under a highway, utility line or ditch.

Under section 101 of the Act the following persons may apply to the OEB for authority to construct upon, over or under a highway, utility line or ditch:

- Any person who has leave to construct the work under Part VI of the Act
- Any person who intends to construct the work and who is exempted under section 95 from the requirement to obtain leave; and
- Where the proposed work is the expansion or reinforcement of a transmission system, any person who is required by the OEB, pursuant to a condition of the person's licence, to expand or reinforce the transmission or distribution system.

If the OEB is of the opinion that the construction of the work upon, under or over a highway, utility line or ditch is in the public interest, it may make an order authorizing the construction upon such conditions as it considers appropriate.

In making its determination on the public interest in a section 101 application, the OEB has considered the circumstances of the case and its statutory objectives.[15]

[14] EB-2010-0023 (Hydro One – Bruce to Milton Expropriation), Decision & Order, March 15, 2011

[15] See, for example, EB-2018-0190 (Wataynikaneyap (WPLP)) where WPLP committed to entering into crossing agreements or similar arrangements with the owners or persons in control of the highways, utility lines, ditches and rail crossings along or across which the proposed transmission facilities would run. The OEB granted leave to construct subject to WPLP obtaining the necessary crossing agreements, permits and approvals. See also, EB-2016-0310 (Henvey Inlet Wind) where the OEB found that the applicant was taking steps to obtain the necessary permits and agreements with the relevant agencies and utilities; the OEB

Section 102: Compensation for Damages

~~Section 102 sets out how compensation for damages will be dealt with if it cannot be agreed upon.~~
Section 102 provides that a person who has acquired land for a work under this part of the Act shall pay to the landowner compensation and, if the compensation is not agreed upon, it shall be determined in the manner set out in section 100 of the Act and the process set out in the *Expropriations Act* must be followed to determine the amount of compensation to be paid.

As noted above, the OEB is not involved in determining landowner compensation although certain aspects of land acquisition costs may be relevant to the OEB's consideration of the public interest under section 96(2).

4.2.2 Related Regulatory ~~Hearings~~Approvals

In addition to a leave to construct approval, most projects will require various other (non-~~Board~~OEB) regulatory approvals: for example, an environmental assessment approval. In some cases, these approvals will be obtained after the ~~Board~~ OEB issues an order granting leave to construct.

It is possible that other approvals may result in ~~material~~ changes to the project after the project has been reviewed by the OEB ~~Board~~ (for example, a routing change or the imposition of additional project costs ~~to rate payers~~ that were not known to the OEB~~Board~~). Under such circumstances, an applicant is required by the standard conditions of a leave to construct order to advise the OEB~~Board~~. Depending on the materiality of the change, the applicant may be required to file a motion to review and vary the order and satisfy the ~~Board~~ OEB that the project is still in the public interest.

Outside of the leave to construct application, there are other OEB ~~Board~~ conducted reviews that also involve the review of transmission investments, such as in a rates proceeding~~those associated with the review of transmission investments~~. The OEB's

approved the application subject to the applicant obtaining all the necessary permits and entering into all necessary agreements. See also EB-2020-0160 (Enbridge Gas – Windsor Pipeline Replacement) where the OEB found that, in assessing the public interest in that case, the OEB was guided by its statutory objectives with respect to natural gas and, in particular, the objective of protecting the interests of consumers with respect to prices and the reliability and quality of gas service.

~~Board's~~ authority to approve ~~review~~ a transmitter's capital budgets and set rates is established in subsection 78 (1) of the Act.[16] ~~which states "No transmitter shall charge for the transmission of electricity except in accordance with an order of the Board, which is not bound by the terms of any contract."~~ In the case of a rate-regulated transmitter, this could result in the same transmission line construction project coming before the OEB ~~Board~~ in two separate proceedings.

Normally the need for, and cost of, a project is reviewed in detail as part of a leave to construct application. If a leave to construct application precedes a transmitter's rate application that includes the same project, and the applicant is not proposing a significant variation from the cost of the project approved in the associated leave to construct application, the need for the project and cost will likely not be re-examined.

If a leave to construct application ~~proceeding~~ is preceded by a transmitter's rate applications ~~proceeding case~~, the need for the project may not have been dealt with in sufficient detail in the rate~~s~~ application to satisfy the requirements of a leave to construct application~~proceeding~~. Any variation in the cost of the project from the rate applications to the leave to construct application must also be addressed in the latter.

If the project had received approval in a rate~~s~~ application ~~hearing~~ as part of an envelope of expenditures rather than as a discrete approval of the particular project, the OEB ~~Board~~would, in a subsequent leave to construct application ~~hearing~~, likely revisit the valuation of the project in some detail. The intent, however, is not to re-assess that which has already been specifically addressed in a related proceeding.

4.2.3 The OEB's Consideration of a Project

~~In determining a leave to construct application, the Board seeks information about evaluates whether it is in the public interest taking into considerationaspects of:~~
~~a) Price;~~
~~b) Reliability;~~
~~c) Quality of electricity service; and~~
~~d) Promotion of the use of renewable energy sources.~~
~~With respect to need for the project, the Board will only consider matters described in section 96(2) of the Act, and will not consider broader issues.~~

[16] Subsection 78(1) of the Act states:
No transmitter shall charge for the transmission of electricity except in accordance with an order of the Board, which is not bound by the terms of any contract.

In determining whether to approve a leave to construct application, the OEB evaluates whether the proposed project is in the public interest. Section 96 (2) of the ~~OEB Act~~Act states that, in considering whether an electricity transmission project is in the public interest, the OEB can only consider the interests of consumers with respect to:

- prices
- reliability
- quality of electricity service

The OEB may consider matters in a leave to construct proceeding if they can be shown to relate to section 96(2); for example, the impact of a new transmission line on the reliability and quality of service to *distribution* customers has been considered in previous leave to construct proceedings.[17]

Further details regarding the need for the project for rate-regulated and non-rate-regulated applicants ~~is~~are set out in sections 4.3.2.3 and 4.4.2.3 of these filing requirements~~below~~.

Environmental Matters

The OEB's authority to consider environmental matters is limited by section 96 (2) of the Act. Environmental matters can be only considered to the extent they are relevant to the issues of price, reliability and quality of electricity service – for example, where they can impact the costs of and schedule of a project.[18]

Indigenous Consultation (Duty to Consult)~~.~~

Section 35 of the *Constitution Act, 1982* recognizes and affirms the existing Aboriginal and treaty rights of the Aboriginal peoples of Canada. The Crown's duty to consult and accommodate arises when the Crown contemplates an action or makes a decision that may have an appreciable adverse effect on asserted or proven Aboriginal or treaty rights[19].

[17] See for example EB-2011-0027 (Summerhaven Wind LP) where the OEB considered the close proximity of transmission and distribution facilities which could result in negative impacts on the distribution system that require mitigation activities. The OEB found that the situation required assessment of the price, reliability and quality of electricity service from two perspectives: 1) potential impacts on transmission facilities and 2) potential impacts on distribution facilities and by extension, on distribution customers.

[18] See, for example, EB-2017-0182 (East-West Tie) and EB-2022-0140 (Hydro One Chatham to Lakeshore), Determinations on the Filing of Evidence and Form of the Hearing, August 5, 2022 and PO No.2

[19] *Rio Tinto Alcan Inc v Carrier Sekani Tribal Council*, 2010 SCC 43 and *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73

However, section 96(2) of the Act expressly limits the scope of the OEB's mandate under section 92 to consideration of price, reliability and quality of electricity service. Accordingly, the OEB's authority to consider the Constitutional duty to consult in an application for leave to construct an *electricity transmission line* is limited to the issues set out in section 96(2).[20]

4.3 Information Required of Rate-regulated Applicants

This section applies only to rate-regulated applicants. Rate-regulated applicants include licensed transmitters that provide transmission services to third parties at ~~Board~~ OEB-approved rates. ~~There is an onus on rate-regulated entities whose revenues are derived from ratepayers to satisfy the Board that all expenditures on transmission facilities are required.~~ Transmitters can only charge customers for the transmission of electricity if they have received an order from the OEB under section 78 of the Act. The OEB will not issue an approval under section 78 unless it is satisfied that the requested rates are "just and reasonable." Applicants that are not rate-regulated are referred to in section 4.4

Rate-regulated transmitters and distributors applying for transmission connection projects are subject to additional requirements as set out in the Transmission System Code.

The ~~Board~~ OEB expects an electricity transmission leave to construct ~~n~~ application by a rate-regulated applicant to have the following components:

4.3.1 Exhibit A: The Index

The first schedule in the application should be an index of the application. The table below illustrates the typical layout expected for a leave to construct application and lists where further detail regarding the content of each section can be found in these filing requirements. The Table of Concordance at Appendix A is to be completed when transmitters do not provide the application information in the order specified in the table below.

[20] See for example EB-2009-0120, Decision on Questions of Jurisdiction and Procedural Order No. 4 (Yellow Falls FP), EB-2012-0082 (Hydro One Lambton-Longwood), EB-2017-0182 (East-West Tie) and EB-2022-0140 (Hydro One Chatham to Lakeshore)

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4.3.2 Exhibit B: The Application

4.3.2.1 Administrative Matters

This section must include the formal signed application, which must incorporate the following:

1. ~~1.~~ the name of the applicant and any ~~partnerships involved in the application;~~ other parties acting as partners or joint applicants in the application

~~2. details of the authorized representative of the applicant, including the name, phone and fax numbers, and email and delivery addresses;~~

2. ~~3.~~ an outline of the business of the applicant and the parties involved in filing~~to~~ the application~~;~~

~~4.~~ an explanation of the purpose of the project for which leave to construct is

3. being sought~~;~~

4. a list of all other approvals requested from the OEB and reasoning for the need of such approvals and reference to applicable legislation

5. a concise description of the routing and location of the project, including the affected municipalities and regions

6. an indication of any shared corridors where there could be cross circuit

6. interference, and of any issues related thereto with the owning authority~~;~~

7. ~~7.~~ a description of project components, their locations, and purposes

8. ~~;8.~~ an explanation of how the project is in the public interest, as defined by section 96 (2) of the Act~~; and~~

~~1.~~9. ~~9.~~ the current project schedule.[21] ~~Note that the Order of the Board will likely have an expiry date by when the project must have commenced.~~

[21] Note that ~~the~~ any Order of the ~~Board~~ OEB ~~will likely have~~typically has an expiry date by when the project must have commenced.

10. details of the authorized representative of the applicant, including the name, phone number, and email and delivery addresses

11. a description of non-OEB approvals that could have a material impact on timing or costs of the proposed project

The OEB has developed a standard Issues List for electricity transmission leave to construct applications.[22] The OEB recognizes that some cases can raise unique issues, and the OEB's process recognizes that in some circumstances, submissions on the issues list may be needed. The OEB anticipates that the standard Issues List will be sufficient for most electricity transmission infrastructure applications. There may be circumstances where certain of these issues do not apply, for example in an application for leave to construct a priority project subject to section 96.1 of the Act.[23]

The OEB typically imposes a set of standard conditions as part of its leave to construct approvals.[24] Applicants should expect to meet those standard conditions. If an applicant believes that a condition should be modified, the applicant must request any proposed changes and provide supporting rationale in its application for the OEB's consideration.

The OEB has established performance standards for leave to construct applications. Performance standards outline the typical procedural steps associated with processing a particular type of application and the typical number of calendar days for each step. The OEB has established one performance standard for more complex applications and one performance standard for more straightforward applications (Short-form Applications). Along with the performance standards, the OEB developed criteria for assessing which performance standard will apply to leave to construct applications.[25]

[22] The OEB's standard Issues List for electricity transmission leave to construct applications is available on the OEB website. The issues list may be updated from time to time. Applicants are encouraged to check the OEB website for the current version.
[23] For example, EB-2022-0140 (Chatham x Lakeshore) PO2
[24] The OEB's standard conditions of approval for electricity transmission leave to construct applications are available on the OEB website as Schedule 1 to the OEB's standard Issues List for electricity transmission leave to construct applications. The standard conditions may be updated from time to time. Applicants are encouraged to check the OEB website for the current version.

[25] The OEB's performance standards for processing electricity transmission leave to construct applications are available on the OEB website. The performance standards may be updated from time to time. Applicants are encouraged to check the OEB website for the current version. The actual performance standard that will apply will depend on the exact nature of the application and its content. The actual procedural steps and timelines for individual proceedings may vary and may be affected by statutory holidays.

The delegated powers and duties with respect to facilities applications are detailed on the OEB's website.[26]

4.3.2.2 Project Overview ~~Documents~~

This section of the application provides the background and a summary of the application which will assist the OEB in drafting a Notice of Hearing. It must include:

1. a detailed description of location of the project and its components
2. maps (1:50,000 or more detailed) showing the route, facility sites and any proposed ancillary facilities.
3. a draft of a project map suitable for publication with the Notice of Hearing.

   This map must be in black and white, uncluttered, have large readable font. The map is to indicate the general area of the project and identify features so that potentially affected landowners can determine if they have an interest in the application. It must contain at least one landmark (city/town, major street, lake, railway line, etc.), a legend (that uses symbols, dashed lines and hashes rather than colours), a north arrow, a scale, and major features mentioned in the application (lines, stations). The final version of this drawing for publication will be decided following discussion with the OEB case manager and the applicant
4. line drawings of the proposed project, showing supply connection(s) to the proposed facility and delivery facilities from the proposed facility to any adjacent transmission and/or distribution system(s); and
5. the nominal rating of the main components of the project, including transformers.

4.3.2.3 Evidence in Support of Need for the Project

General

The OEB typically considers the need for a project and alternatives to the project as part of its review of a project's impact on prices, reliability, and quality of service under section 96 (2) of the Act.

[26] OEB Delegated Powers and Duties - Facilities

The applicant should demonstrate the need(s) that the project addresses, including the timing of each need. When relevant to demonstrating the need, the applicant should provide:

- five years of historical demand information
- 15 years of demand forecast information
- information about facility limitations and/or capacity
- information about system limitations and/or transfer capability
- facility end-of-life information
- other information that may be required to demonstrate the need(s).

Relationship to regional plans and/or other bulk plans

The applicant is required to provide evidence to the OEB that identifies the recommended and planned transmission and non-wire projects in any regional plans and/or bulk plans[27] that have linkages and/or interdependencies to the applied-for transmission project.[28] Such projects, or those under consideration as part of an ongoing planning process, might span multiple regions.

This evidence is to be in the form of a document prepared by the IESO. Where available, the IESO document should include estimated individual and aggregate costs related to the recommended and planned projects that have linkages and/or interdependencies, with appropriate caveats around the accuracy of the cost estimates.

An application for a project that derives from a regional plan must summarize and reference the relevant need information from the Integrated Regional Resource Plan (IRRP), where applicable, and the Regional Infrastructure Plan (RIP). Additional information provided by the IESO in support of the need for the proposed project, if applicable, must also be included in this section of the application. The full IRRP and RIP Reports are to be included in Exhibit F.[29]

[27] Bulk system planning typically focuses on the adequacy and reliability of the 500 kV and 230 kV networks, and addresses provincial electricity needs and broader policy direction (such as assessing the impact of nuclear facility refurbishment or renewable energy policies).
[28] For further information, see EB-2020-0176, OEB Response to Regional Planning Process Advisory Group (RPPAG) Recommendations to Improve the Regional Planning Process, April 28, 2022 and RPPAG Report to the OEB, December 20, 2021.
[29] The IESO carries out a Scoping Assessment which determines the appropriate regional planning approach – IRRP or RIP. If the IESO concludes that only a RIP is necessary, an IRRP will not be available.

Relationship to reliability standards or other obligations

Where the need for a project relates to meeting reliability standards or other obligations specified by regulatory organizations including the Northeast Power Coordinating Council (NPCC)[30], North American Electric Reliability Corporation (NERC)[31], or by the IESO, the application must reference the applicable standards or other obligations and describe how the project will help address them.

Relationship to other electricity system benefits

Where the applicant attributes other electricity system benefits to a proposed project, such as avoiding generation capacity and/or energy costs, lowering energy market prices, reducing congestion, or reducing transmission losses, the evidence must include quantification and explanation of each of the benefits listed, including corroborative evidence from the IESO, if applicable.

~~The Board, in determining if the project of a rate-regulated applicant is needed, will consider the aspects mentioned in 4.2.3 and two additional aspects: Project Classification (whether it is a development, connection or sustainment project), and Project Categorization (whether it is discretionary or non-discretionary). The categories and classes have different threshold and criteria for approval.~~

~~Furthermore, applications for leave to construct projects which derive from a Regional Integrated Plan will need to demonstrate to the Board that regional issues, including conservation and demand management ("CDM") measures and alternatives, have been appropriately considered and addressed in developing the applicant's infrastructure investment proposal.~~

- ~~enhance system efficiency such as minimizing congestion on the transmission system and reducing system losses.~~

~~Connection Projects are those which provide connection of a load or generation customer or group of customers to the transmission system.~~

~~Sustainment Projects are those which maintain the performance of the transmission network at its current standard or replacing end-of-life facilities on a "like for like" basis.~~

~~Where projects include more than one of the elements of development, connection, or sustainment the applicant must identify the proportional make-up of the project, and then classify the project based on the predominant driver.~~

[30] https://www.npcc.org/
[31] https://www.nerc.com/

~~In any of the three kinds of projects an investment in the Network may be required. Network facilities are comprised of network stations and the transmission lines connecting them, as defined in the Board's Transmission System Code ("TSC").~~

4.3.2.~~3.2~~4 Project Categorization

The purpose of project categorization is to distinguish between a project that is "must- do", beyond the control of the applicant (~~"~~non-discretionary~~"~~) and one that is at the discretion of the applicant (~~"~~discretionary~~"~~). The applicant is required to identify the project categorization in the application.

Non-discretionary Projects

In the case of a non-discretionary project, the applicant must establish that the preferred option is a better project than the alternatives. The applicant need not include a "do nothing" alternative since this alternative would not meet the need criteria. ~~-~~One way for a rate-regulated applicant to demonstrate that a preferred option is the best option is to show that it has the highest net present value as compared to the other viable alternatives. However, this net present value need not be shown to be greater than zero.

Non-discretionary projects may be triggered or determined by such things as:

1. ~~1.~~ mandatory requirements to satisfy ~~obligations specified by regulatory organizations including~~reliability standards set by standards authorities (NERC and NPCC) or the IESO~~-~~

~~1.~~ 2. ~~-~~a need to connect new load (of a distributor or large user) or a new generation connection

2.

3. ~~3.~~ ~~-~~a need to address equipment loading or voltage/short circuit stresses when their rated capacities are exceeded

4. a transmission project that the transmitter is required by its licence to develop and seek approvals for

~~3.~~5. ~~4.~~ ~~-~~projects identified in a provincial government approved plan~~;~~

6. ~~5.~~ ~~-~~projects that are required to achieve provincial government objectives that are prescribed in governmental directives or regulations~~; and~~

7. priority transmission projects declared by Lieutenant Governor in Council order that the construction, expansion or reinforcement of an electricity transmission line is needed as a priority project

~~4.~~8. a need to comply with direction from the OEB in the event it is determined that the transmission system's reliability is at risk.

Discretionary Projects

Discretionary projects are proposed by the applicant to enhance the transmission system performance, benefiting its users. Projects in this category may include projects to:

1. ~~1.~~ reduce transmission system losses~~;~~
2. ~~2.~~ reduce congestion~~;~~
3. ~~3.~~ build a new or enhance an existing interconnection to increase generation reserve margin within the IESO-controlled grid, beyond the minimum level required~~;~~
4. ~~4.~~ enhance reliability beyond a minimum standard~~; and~~
5. ~~5.~~ add flexibility to the operation and maintenance of the transmission system.

~~4.3.2.4 Cost Benefit Analysis and Options~~

~~The Board requires cost-benefit analysis evidence of the various options that were considered by the applicant as alternatives to the proposed project. The Board expects that rate-regulated applicants will present:~~

- ~~the preferred option (i.e. the proposed project);~~
- ~~alternative options, and, where the project is discretionary, the option of "doing nothing"; and~~
- ~~whether there is an opportunity for CDM to defer the investment.~~

~~The Board will either approve or not approve the proposed project (i.e. the preferred option). It will not choose a project from among significant alternative options. The applicant must present to the Board alternatives which meet the same objectives that the preferred option meets.~~

~~4.3.2.5 Avoiding Non-transmission Alternatives~~

~~Where the applicant lists the benefits of a leave to construct project as avoiding non-transmission alternatives such as a peaking generation facility or a "must run"~~

~~generation requirement, it is helpful for the applicant to include corroborative evidence from the IESO and/or the Ontario Power Authority regarding the applicant's quantitative evaluation of such a benefit. This evidence is required to support the need for the project.~~

4.3.2.5 Analysis of Alternatives

The applicant should demonstrate that the project is an appropriate choice for addressing the need(s) that it is meant to serve. The OEB therefore requires evidence on the alternatives to the proposed project and any key variations of the proposed project that were considered by the applicant.

Applications for leave to construct projects that derive from a regional plan must demonstrate that alternatives to address regional needs, including conservation and demand management (CDM) measures and non-wire alternatives (e.g., generation, storage, etc.), have been appropriately considered and addressed in developing the proposed project. The relevant information from the IRRP and the RIP are to be summarized and referenced in this section.

In general, the OEB expects that rate-regulated applicants will present the following information:

- the proposed transmission (wires) project
- where the project is discretionary, the alternative of "doing nothing"
- non-wires alternatives, including any opportunity for cost-effective generation, energy storage and/or CDM to defer or avoid the wires investment
- other alternatives (including other wires alternatives) that meet the same needs as the preferred wires option
- reasoning for why the proposed transmission project was selected over other wires and non-wires alternatives.

The applicant must compare the various alternatives and options in terms of cost, feasibility, timing, reliability, flexibility (in terms of staging, operability and/or other factors), risk and any other relevant criteria. Key variations of the project that were considered should also be described (such as different voltage, conductor size, operation, and tower type).

The applicant should describe the confidence level of its cost estimates for all alternatives considered, including the proposed project. The applicant should explain the appropriateness of the project in light of any differences in cost estimate confidence.

The applicant should consider both quantitative and qualitative benefits of the various options and provide evidence of these benefits. If the various options are expected to have significant qualitative benefits, the applicant should consider these benefits in ranking the options. Incorporating qualitative criteria may result in a different ranking of options compared to the ranking based only on quantitative benefits and costs. For example, an option may be compared based on its degree of disruption to property owners with grades of minimal, significant and highly disruptive.

The OEB will either approve or not approve the proposed project. It will not choose a project from among possible options or routes. If an application is not approved by the OEB but the applicant wishes to proceed with a project, the applicant must file a new leave to construct application for the OEB's review.

4.3.2.6 Project Costs

The applicant must file information on the costs of the proposed project. The information must include the following, for line and station components separately, as applicable:

1. labour
2. materials
3. acquisition of land use rights, and land acquisition including permanent and working easements, survey and appraisals, legal fees, crop and damage compensation
4. direct and indirect overheads
5. capitalized interest
6. contingency
7. other
8. class of the project cost estimate, consistent with applicable Association for the Advancement of Cost Engineering (AACE) recommended practice

The applicant should describe the process by which costs and contingencies were estimated.

The following table should be included to summarize the costs of the proposed project for line and station components separately, as applicable. The table may be modified as necessary.

Table 2 – Estimated Cost of Work

	Line	Station	Total
Labour			
Materials			
Land rights			
Overheads (direct and indirect)			
Capitalized Interest			
Contingency			
Other (specify)			
Total Cost of Work			

The following table should also be included, with corresponding explanation, for projects that avoid sustainment work. The table may be modified as necessary.

Table 3 – Estimated Cost of Avoided Sustainment Work

	Line	Station	Total
Labour			
Materials			
Land rights			
Overheads (direct and indirect)			
Capitalized Interest			
Contingency			
Other (specify)			
Total Cost of Work			

Cost responsibility for the project is based on the trigger (cause) of the new or modified facility (e.g., customer load increase, end-of-life asset, etc.) and the beneficiary of the project. The applicant must explain how cost responsibility for the project was determined.

Where the proportional benefit approach set out in the Transmission System Code (TSC) applies[32], the cost apportionment between the triggering customer(s) and the Network Pool[33] is to be provided using the table below.

[32] Section 6.3.18 of the Transmission System Code
[33] The transmission lines that are used for the common benefit of all customers are categorized as Network Lines and the corresponding terminating facilities are Network Stations. These facilities make up the Network Pool.

Table 4 – Project Cost Responsibility by Facility Type

	Total Project Connection Cost (by Facility Type)	Cost Responsibility			
		Customer		Network Pool	
	($M)	($M)	%	($M)	%
Transmission Line Facilities					
Station Facilities					
Total			-		-

The project cost allocation among the three affected pools (Line Connection, Transformation Connection and Network)[34] are to be provided for each facility using a table like the one below, taking into account any customer capital contributions that may be required. The applicant must provide the rationale for the project cost allocation among the pools. Some projects might involve no allocation of any costs to a specific customer(s) and, in such circumstances, there would be no capital contribution(s).

Table 5 – Total Project Cost Responsibility and Capital Contribution ($M)

	Cost of Work	Cost Responsibility		Customer Capital Contribution
		Customer	Pool	
Connection Facilities				
Network Facilities				
Transformation Facilities				
Total				

~~4.3.2.6 Risks~~

[34] See footnote 32 for a description of the Network Pool. The transformation station facilities that step down the voltage from above 50 kV to below 50 kV are categorized as the Transformation Connection Pool. Other electrical facilities (i.e., that are neither Network nor Transformation) are categorized as the Line Connection Pool. For more information on Transmission Service Pools, please see the Ontario Uniform Transmission Rate Schedules which are typically attached as Schedule B to a given Decision and Rate Order for Ontario's Uniform Transmission Rates.

~~The applicant is expected to also compare various risk factors for the different options, including, but not limited to:~~

- ~~financial risk to the applicant;~~
- ~~inherent technical risks;~~
- ~~estimation accuracy risks; and~~
- ~~any other critical risk that may impact the business case supporting the project.~~

4.3.2.7 Risks

The applicant should identify key risks related to the project and describe their potential impact on the project scope, schedule, or cost. Options employed or proposed to mitigate key risks should also be described.

~~4.3.2.7 Qualitative Benefits~~

~~If the proposed project alternatives are expected to have significant qualitative benefits that cannot reasonably be quantified, evidence about these qualitative benefits must be provided. The applicant should consider these benefits in ranking the alternatives. Incorporating qualitative criteria may result in a different ranking of projects compared to the ranking based only on quantitative benefits and costs. For example, a project may be compared on the basis of its degree of disruption to property owners with grades of minimal, significant and highly disruptive.~~

~~4.3.2.8 Quantitative Benefits~~

~~Where an applicant attributes market efficiency benefits to a proposed project, such as lower energy market prices, congestion reduction, or transmission loss reduction, the evidence submitted must include quantification of each of the market efficiency benefits listed for that proposed project.~~

4.3.2.8 Comparable Projects

Information must also be provided on the costs of similar projects constructed by the applicant or by other entities for comparison purposes. The applicant is required to provide information about the cost of the three most recent comparable projects constructed by the

applicant (or by other entities if the applicant has less than three comparable projects), escalated by inflation to the current year.

The information on comparable projects should include a brief description of the comparator projects, their costs, the in-service year of the projects, as well as similarities and differences in voltage level, number of circuits, type of towers, type of terrain, etc. The applicant may include additional comparison items as necessary. The applicant should provide a summary comparison in a table like the one below, which may be modified as necessary.

Table 6 – Cost of Comparable Projects

	Proposed Project	**Project A**	**Project B**	**Project C**
Technical Details				
Length (circuit km)/ Location/ Transmission Connections				
Project Surroundings (i.e., urban, semi-urban, rural)				
Environmental Issues				
In-Service Date				
OEB-Approved Cost Estimate				
Actual Total Cost				
Less: Non-Comparable Costs				
Total Comparable Project Costs				
Escalation Adjustment (if any)				
Total Escalated Comparable Project Costs				
Total cost per km ($M/km)				

Where there are costs that need to be apportioned between a rate-regulated party and other parties, the applicant must provide details on the proposed apportioning of those costs in a manner that is consistent with section 4.3.2.8 below (where some costs related to connection facility investment are allocated to the Network pool) or section 4.3.2.9 below (where exceptional circumstances apply and a regulated transmitter allocates some costs related to network facility investment to a specific transmission customer).

At the completion of the project, the applicant is required to submit the actual cost of the project compared to the estimated cost including contingencies and report on the use of

contingencies. The applicant is also required to include this information in future OEB rate applications where it seeks to add the project to rate base.

~~4.3.2.9 Apportioning of Project Costs~~

~~Where there are costs which need to be apportioned between rate-regulated and non-rate-regulated parties, the applicant must provide details of an agreement on the apportioning of these costs to the rate-regulated party and applicants must provide details to the Board which includes the costs to be borne by the rate-regulated transmitter. This must include:~~

~~1. labour - including a breakdown by facility installations;~~
~~2. materials - including a breakdown of all facility costs;~~
~~3. cost of similar projects constructed by the applicant or by other entities for baseline cost comparisons covering:~~
~~a. in-service year of the comparator project;~~
~~b. similarities and differences in terms of voltage level, type of towers, type of terrain, etc.~~
~~4. acquisition of land use rights, and land acquisition including permanent and working easements, survey and appraisals, legal fees, crop and damage compensation;~~
~~5. direct and indirect overheads broken down by facility installation; and,~~
~~6. allowance for funds used during construction.~~

4.3.2.9 Connection Projects that also Address a Network Need

Certain connection projects might also address a network need that would have otherwise required an investment. The TSC allows costs associated with such connection projects to be apportioned between the customer(s) that caused the need for the connection investment and all customers, based on the proportional benefit between the connecting customer(s) and the overall system.

Where a customer triggers the need for a new or modified transmission connection facility, where the facility addresses a network need, and where the applicant proposes to

apportion some costs in relation to that facility to the network pool, the applicant shall provide the following information, in accordance with sections 6.3.18 and 6.3.18A of the TSC:

- identify the network system need that would be addressed
- indicate when that network system need was first identified
- identify the alternative investment (i.e., proxy) that was considered to address the network need as a separate project and the costs related to each such alternative
- where a proxy is used to determine the apportionment of costs to the network pool, an explanation should be provided regarding how it was determined to be the most appropriate (i.e., cost-effective) proxy
- the proposed apportionment of costs between the triggering transmission customer(s) and the network pool and any proposed allocation to embedded distributors, where the triggering transmission customer is a host distributor[35]
- a detailed calculation showing how that apportionment was determined (accompanied by an explanation)[36]
- a document that includes an assessment by the IESO confirming there is a broader network system need and that the proposed connection facility will also address that broader network system need. The IESO should also confirm the proxy (e.g., generation, other transmission) used to determine the apportionment of costs to the network pool is the most appropriate proxy

For clarity, for the purpose of sections 6.3.18 and 6.3.18A of the TSC, a transmission network need (e.g., load restoration) must be demonstrated by the applicant and the network benefit must be quantifiable. As a consequence, if a new or modified customer connection facility would also result in ancillary benefits accruing to the transmission network that do not address a demonstrated network need, there would be no apportionment to the Network pool related to those ancillary benefits. The network benefit must also accrue directly to electricity consumers through a reduction in their electricity bill and/or an increase in reliability compared to without the new or modified connection facility (e.g., environmental benefits would not be considered in the allocation of costs).

[35] The estimated allocation to embedded distributors should only be updated during the LTC proceeding if there is a material change to the allocation between the transmission customer and the Network pool. Such estimates for embedded distributors are intended to be for information purposes only and would not be approved by the OEB as part of the LTC proceeding.

[36] For further information on the proxy methodology, please see the OEB's September 21, 2017 Notice in the Regional Planning and Cost Allocation Review (EB-2016-0003)

4.3.2.~~10~~10 Connection Projects Requiring Network Reinforcement

Certain connection projects may require network reinforcement in order to proceed. In circumstances in which a connection project will trigger the requirement for network reinforcement~~In addition to the cost benefit analysis~~, the applicant must file a forecast of those reinforcement costs and supply specific information on the nature and magnitude of the network impacts (e.g. changes in generation dispatch and transmission line losses). ~~In circumstances in which the project will trigger the requirement for investment in the transmission network, the applicant shall file a forecast of these costs.~~

With these types of applications, the ~~Board~~ OEB may determine that a transmitter(s) needs to apply for a leave to construct to make the required network upgrades triggered by the proposed connection project. If a leave to construct is necessary, the ~~Board~~ OEB may invite the transmitter(s) to make the needed applications at the same time, or immediately following, the application of the initial applicant.

Applicants are referred to the TSC in regard to cost responsibility for necessary network reinforcement. Section 6.3.5 of the TSC states that:

> ~~"~~A transmitter shall not require any customer to make a capital contribution for the construction of or modifications to the transmitter's network facilities that may be required to accommodate a new or modified connection. If exceptional circumstances exist so as to reasonably require a customer to make a capital contribution for network construction or modifications, the transmitter or any other interested person may apply to the Board for direction."

Where the transmitter determines that a customer's new or modified connection facility that is the subject of the application has caused the need for a network facility investment that includes some assets that serve a connection function, the transmitter shall propose a reasonable allocation of the costs associated with the new or modified network facility to the customer.[37]

[37]The OEB issued a Bulletin on September 29, 2022 that clarifies the circumstances under which regulated electricity transmitters should allocate costs associated with network facility upgrades to a generator or load customer connecting to the transmission system. It updates and supersedes Compliance Bulletin 200606, issued September 11, 2006.

4.3.2.~~11~~11 Transmission Rate Impact Assessment

The ~~Board~~ OEB requires information relating to the rate impacts anticipated from transmission investments that require leave to construct approval.~~.~~ ~~Information~~ The information must cover the short-term impacts as well as long-term impacts of the proposed project. The applicant should refer to the most recent version of the Filing Requirements for Transmission Rate Applications.[38] A detailed 25-year discounted cash flow and incremental revenue requirement analysis is to be provided based on the estimated project cost.

Based on the load forecast, capital costs~~,~~ and ongoing maintenance costs, the Network, Line Connection and Transformation Connection Pool rate impacts associated with the Uniform Transmission Rates are to be calculated to determine the impact on a typical ~~R~~residential ~~C~~customer who is on the Regulated Price Plan. The monthly bill impact should be summarized as shown in the Table below.

Table 8 – Impact on Typical Residential Customer Bill

A	Typical Residential Customer Bill	$ per month
B	Transmission component of bill	$ per month
C	Network Pool share of Transmission component	$ per month
D	Line Connection Pool share of Transmission component	$ per month
E	Transformation Connection Pool share of Transmission component	$ per month
F	Impact on Network Provincial Uniform Rates	0.00%
G	Impact on Line Connection Pool Provincial Uniform Rates	0.00%
H	Impact on Transformation Connection Pool Provincial Uniform Rates	0.00%
I	Change in Transmission costs for typical bill (C x F)	0.00%
J	Net Impact on Typical Residential Customer Bill (G / A)	$ per month

4.3.2.~~12~~12 Establishment of Deferral Accounts

~~The Board will consider requests for the establishment of deferral accounts to record costs until the conclusion of a rate application. If an applicant chooses to make a request for the establishment of a deferral account, the following eligibility criteria must be met:~~

- ~~Causation - The forecasted expense must be clearly outside of the base upon which rates were derived;~~
- ~~Materiality – The forecasted amounts must exceed the Board-defined materiality threshold and have a significant influence on the operation of the~~

[38] Filing Requirements for Electricity Transmission ~~and Distribution~~ Rate Applications, Chapter 2 (Revenue Requirement Applications), February 11, 2016

~~distributor, otherwise they must be expensed in the normal course and addressed through organizational productivity improvements; and~~

- ~~Prudence - The nature of the costs and forecasted quantum must be reasonably incurred although the final determination of prudence will be made at the time of disposition. In terms of the quantum, this means that the applicant must provide evidence demonstrating as to why the option selected represents a cost-effective option (not necessarily least initial cost) for ratepayers.~~

~~In addition, applicants must file a draft accounting order which must include a description of the mechanics of the account and provide examples of general ledger entries, and the manner in which the applicant proposes to dispose of the account at the appropriate time.~~

In the event an applicant seeks an accounting order to establish a new deferral or variance account, the following eligibility criteria must be met:

- Causation - The forecasted amount to be recorded in the proposed account must be clearly outside of the base upon which revenue requirement(s) as applicable were derived.

- Materiality - The annual forecast amounts to be recorded in the proposed account must exceed the OEB-defined materiality threshold[39] and have a significant influence on the operation of the transmitter. Otherwise, they must be expensed or capitalized in the normal course and addressed through organizational productivity improvements.

- Prudence - The nature of the amounts and forecast quantum to be recorded in the proposed account must be based on a plan that sets how the amounts will be reasonably incurred, although the final determination of prudence will be made at the time of disposition. For any costs incurred, in terms of the quantum, this means that the applicant must provide evidence demonstrating why the option selected represents the cost-effective option (not necessarily least initial cost) for ratepayers.

Additionally, applicants must include a draft accounting order with a description of the mechanics of the account, and provide examples of general ledger entries, and the proposed account duration.

[39] Materiality thresholds are addressed in section 2.1.1. of the OEB's Filing Requirements for Electricity Transmission Rate Applications, Chapter 2 (Revenue Requirement Applications), February 11, 2016

If the applicant is an existing rate-regulated transmitter, the applicant must indicate whether the project was included in a Transmission System Plan submitted under the OEB's Filing Requirements for Revenue Requirement Applications. If the project was included in a Transmission System Plan, the applicant must confirm whether the project was presented separately or as part of a portfolio of projects. If it was not included, the applicant must explain why not.

4.3.2.13 Capital Contribution Period

The TSC states "where a distributor is required under this Code to provide a capital contribution to a transmitter, the transmitter shall permit the capital contribution to be provided in equal installments over a period not to exceed five years unless a longer period is approved by the Board."[40]

Where a distributor has informed the transmitter that it intends to provide a capital contribution in installments[41], the transmitter should advise the OEB of the distributor's intent, and the distributor or applicant (on the distributor's behalf) must file:

- annual total bill impacts over the installment period, reflecting when the asset comes into service and when rates are rebased, both with and without the extended capital contribution period
- any financial or other reasons for the request
- a draft accounting order for the project that will track the outstanding capital contribution and interest, if applicable

4.3.2.14 Project Schedule

The applicant must summarize the proposed project's key milestones, for line and station work as applicable, including estimated start and completion dates for the following:

1. leave to construct approval
2. receipt of other key permits and approvals
3. property rights acquisition
4. completion of detailed engineering

[40] Section 6.3.19 of the Transmission System Code. In an OEB Notice dated August 23, 2018 related to TSC amendments, the OEB stated: "An OEB Decision approving an extension would still be required on a case-by-case basis for the [capital contribution] installment period to exceed five years. The OEB currently foresees only one justification for an extended period. That is, where the consumer bill impacts are still too high and continue to present a barrier to the implementation of a regional plan."

[41] Including where a distributor has applied for a period beyond five years

5. major material ordered
6. construction ~~start~~
   ~~construction end~~
7. commissioning
8. in-service
9. completion of site remediation

If necessary, the applicant may provide start and completion dates for other schedule milestones.

In cases where a project requires coordination with another transmitter or transmitters, the applicant must summarize key inter-dependencies (such as station work and line work) and any critical path approvals (such as environmental approvals). The applicant must describe the co-ordination efforts that are being undertaken or are planned to be undertaken among the transmitters involved and identify coordination issues or risks and their potential impacts on the project schedule.[42]

4.3.3 Exhibit C: Project Details

This section of the application must provide detailed information on the project, focusing on identifying project design features of and operational procedures for the proposed facilities.

4.3.3.1 The Route

The OEB expects the leave to construct application to be for a single, specific route, and that the route will be quite specific from engineering, economic and practical viewpoints. For example, it must be clear which side of the road a line is on, and the specific location of the support towers, etc., in relation to affected properties. The route of the line is critical because the ~~Board~~OEB will only provide leave to construct for a specific route.

Any ~~material deviations~~ variances to the approved route following ~~Board~~ OEB approval ~~will~~may require further review by the OEB. In the course of detailed design and construction some minor deviations from the original route may be required, and the applicant is obligated to advise the ~~Board~~OEB, which will decide if such changes are of sufficient significance to warrant further examination. Generally, changes will be significant

[42] See for example EB-2017-0182 (East-West Tie) which noted the interdependencies of EA approvals for the project that was subject of the LTC application as well as related Hydro One projects.

if new or existing landowners or public land are affected.

4.3.3.~~1~~2 Description~~s~~ of the Physical Design

The applicant should provide the following information on the physical design of the project:

1. a section-by-section description of the physical form of the line~~;~~
2. transmission line details, including conductor type, ratings~~;~~
3. transmission structure description including the variety of towers~~;~~
4. transmission cable burial information and cross-section~~; and~~
5. a description of line terminations, and
6. a description of any associated stations.

4.3.3.~~2~~3 Maps

The applicant must provide maps of the proposed route. The maps should provide the following information:

1. the route of the line and the Lot number and Concession number of the land over, under, on or adjacent to which the line runs~~;~~
2. the plan of each section of the transmission line in relation to the description

   and indicating clearances to the land profile or, where buried, in relation to the surface~~;~~
3. the right-of-way dimensions and an indication of where the route crosses privately owned land~~;~~. ; and
4. ~~Indication of where Section 41 (9) of the *Electricity Act*, regarding disagreement over the location of structures, equipment or facilities over, under or on Public streets and highways, may be applicable.~~

4.3.4 Exhibit D: Design Specification and Operational Data

4.3.4.1 Operational Details

The ~~application~~ applicant must provide ~~the following details~~information on the planned operation of the transmission line including details on the control stations and monitoring and metering locations.~~:~~

- ~~The control stations; and~~
- ~~Monitoring and metering locations.~~

4.3.5 Exhibit E: Land Matters

The following information with respect to land matters is required in support of an application:

4.3.5.1 Description of Land Rights

A description and summary table of the land rights required must be provided, including:

1. the type of land rights proposed to be acquired for the project and related facilities (e.g.~~,~~ purchase, permanent easement or temporary easement requirements~~, fee simple~~)
2. the nature~~ and relative proportions~~ of land ownership along the proposed route (i.e.~~,~~ freehold, Crown or public lands)~~ and,~~
3. where no new land rights are required, a description of the existing land rights that allow for the project ~~where no new land rights are required, but the land rights of adjacent properties might be affected e.g. building restrictions on those lands;~~
4. where section 41(9) of the *Electricity Act* may be brought to bear for the use of public roads and highways as part of the route.

4.3.5.2 Land Easements Required

A description and summary table of the land area required~~,~~ including:

1. the width(s) of any right-of-way required on new and/or existing easements~~;~~
2. the location and ownership of land with existing easements and of any new easements or land use rights that will be required~~;~~ ~~and~~
3. the need and amount of additional temporary working rights required at designated locations such as crossings of rivers, roads, railways, drains and

other facilities.

4.3.5.3 Early Access to Land

As discussed above in section 4.2.1 of these filing requirements, under section 98(1) of the Act, certain persons may enter on land at the intended location of a proposed transmission facility in order to conduct surveys and examinations that are necessary for fixing the site of the work. In addition, where the proposed work is the expansion or reinforcement of a transmission system, any person who is required by the OEB pursuant to a condition of the person's licence to expand or reinforce the transmission system may enter on the subject land.

As discussed above, s~~S~~ection 98(3) of the Act allows a person to apply to the OEB ~~Board~~ for an ~~interim~~ order authorizing that person to enter on land for certain purposes if the person meets the requirements of sections 98(3) and 98(4). ~~the person has applied for leave under section 90 or 92 and has complied with section 94. Section 94, as noted above~~in section 4.2.1 of these filing requirements, ~~requires an applicant to file with the application a map showing the general location of the proposed work and the municipalities, highways, railways, utility lines and navigable waters through, under, over, upon or across which the proposed work is to pass.~~

4.3.5.4 Land Acquisition Process

A description of the land acquisition process including:

1. I~~i~~dentification of the properties and the property owners ~~and/or tenants~~ affected by the proposed construction~~(landowners line list)~~ and a summary table of all land negotiations to date, including their status and any contentious issues and the applicant's proposed approach to resolution~~;~~
2. An affidavit of title search attesting to the work that was done to identify affected landowners and listing the affected landowners. The applicant must also provide:
    a. a confidential listing of affected landowners, their contact information, and a description of their property[43] ~~and applicants should~~
    b. a second, non-confidential copy of this listing with any personal information redacted.
3. ~~e~~Evidence of discussion and/or agreements regarding sections of the route

[43] For guidance on filing personal information, applicants should consult the Rule 9A of the OEB's *Rules of Practice and Procedure* and Part 10 of the OEB's *Practice Direction on Confidential Filings*.

where section 41(9) of the *Electricity Act* may be applicable, as well as discussion regarding any disagreement over the location of structures, equipment or facilities over, under or on public streets and highways, may be applicable.

4.3.5.5 Land-related Forms

~~Section 97 operates as a condition precedent to the exercise of the Board's power to grant a leave to construct order pursuant to section 92 of the Act. Under section 97, the Board exercises discretion to approve the form of the agreements that an applicant may offer to an Ontario landowner in relation to the approved route of the proposed transmission or distribution line.~~

~~Section 97 of the Act states, "leave to construct shall not be granted until the applicant satisfies the Board that it has offered or will offer to each owner of land~~

~~affected by the approved route or location an agreement in a form approved by the Board."~~

Section 97 of the Act states that the OEB may not grant leave to construct until the applicant satisfies the OEB that they have offered or will offer an agreement in the form approved by the OEB to each owner of land affected by the approved route or location of the facilities to be constructed.

Appendix B sets out the types of clauses that it is expected will be ~~which must be~~ included in an agreement.[44] Different clauses may be appropriate for different types of land use agreement, however the OEB considers a provision for independent legal advice to be a particularly important element to any proposed land use agreement. An applicant must provide the ~~this~~ form of agreement to the land-owner's attention and it is expected that this form of agreement will be the initial starting point for a negotiation between a landowner and ~~a utility~~applicant. However, it is open to the landowner and applicant ~~utility~~ to develop the substantive content of these clauses and any other clauses mutually agreed to in the agreement.[45] ~~2~~ . Further, with the mutual agreement of both the landowner and the ~~utility~~applicant, certain clauses may be eliminated in appropriate circumstances.

An applicant may file for approval of its forms of land use agreements even if it is not certain they will be needed (e.g., in some cases it is not certain that a temporary work area easement will be required).

The applicant should confirm if the forms of agreements are consistent with any similar agreements approved by the OEB in previous leave to construct decisions. If so, the case number of the Decision and Order in which they were approved must be referenced. In the instance in which two or more parties file a joint application, clarity must be provided as to which party, or parties, is/are requesting approval of the forms of agreements.
The following table should be used to provide information regarding forms of agreements. The information in the chart below is provided as an example only.

[44] A sample easement agreement may be found at EB-2018-0108, Exhibit E, Tab 1, Schedule 3, Attachment 1. A sample working area agreement may be found at EB-2018-0263, Exhibit A, Tab 10, Schedule 2, Page 12.

[45] In *Conserve Our Rural Environment v Dufferin Wind Power Inc.* (2013) ONSC 7307, ("CORE") Justice Gordon stated:

> It is important to understand that what the Board approved was a *form* of agreement which is the subject of subsequent negotiation between the parties. It represents terms from which the party propounding the project may not unilaterally resile.

Table 10 – Overview of Forms of Agreements

Forms of Agreements	Location in Application	File Number of any OEB Decision and Order Approving a similar Form of Agreement
Early Access Agreement	Attachment 7 to Exhibit E, Tab 1, Schedule 1	EB-2019-0077

4.3.6 Exhibit F: System Impact Assessment ~~("SIA")~~

All applicants are required to provide evidence to the ~~Board~~ OEB that connection of the ~~applied for~~proposed transmission ~~line~~ project will not affect the reliability of the IESO-controlled grid. This takes the form of a System Impact Assessment ("~~SIA~~)" conducted by the IESO as a part of the IESO Connection Assessment and Approval process. Any leave to construct application that is filed without either a final SIA or a draft SIA will be deemed incomplete.~~.~~

The IESO evaluates the design of the project and its impact on the reliability of the integrated power system, and identifies any transmission facility enhancements that may be required in order for the facilities to have no negative effect upon the reliability of the grid. The Applicant must provide a statement confirming that it will implement the Requirements noted by the IESO in the SIA.

Where a draft SIA is filed, the a~~A~~pplicant must inform the OEB when the final SIA will be available. Upon receipt of final SIA, the applicant must file it with the OEB and confirm any differences between the draft SIA and the final SIA.

Any material deviations to the approved route, design or operation following OEB approval will require further confirmation from the applicant that the results of the SIA remain valid.

~~**In the absence of a final SIA, the applicant must submit a draft SIA and inform the Board when the final SIA will be available. Final approval by the IESO and conformance with its conditions is a requirement for granting leave to construct.**~~

4.3.7 Exhibit G: Customer Impact Assessment ~~("CIA")~~

All applicants are required to provide evidence to the ~~Board~~ OEB that the incorporation of the ~~applied for facilities~~proposed project will not degrade the electricity service of customers of the transmitter to which the ~~applied for line~~proposed project is connecting. This evidence takes the form of
the Customer Impact Assessment (~~"~~CIA~~"~~).

The CIA report is to be completed by the transmitter to which the applicant's transmission facilities are proposed to be connected as specified in the TSC and in the transmitter's OEB-approved connection procedures.

~~A transmitter shall carry out a CIA for any proposed new or modified connection where:~~

~~• the connection is one for which the IESO's connection assessment and approval process requires a system impact assessment; or~~
~~• the transmitter determines that the connection may have an impact on existing customers.~~

~~A transmitter may decide not to carry out a CIA for any proposed new connection or modification that is not subject to an SIA. In such a case, the transmitter would notify existing customers in the vicinity, advising them of the proposed new connection or modification and of the transmitter's decision not to carry out a CIA on the basis that no customer impact is expected.~~

~~A transmitter would provide each affected customer with a new available fault current level at its delivery point(s). This would allow each customer to take, at its own expense, action to upgrade its facilities as may be required to accommodate the new available fault current level up to the maximum allowable fault levels set out in Appendix 2 of the TSC.~~
The applicant must submit a transmitter-approved CIA to the OEB, if applicable, as part of its application for leave to construct. Any material deviations to the approved route, design or operation following OEB approval will require further confirmation from the applicant that the results of the CIA remain valid.

4.3.8 Exhibit H: Regional Planning

4.3.8.1 Integrated Regional Resource Plan

An Integrated Regional Resource Planning (IRRP) process is led by the IESO to determine the appropriate mix of non-wire and wires solutions to meet the needs in a region. An application for a project that derives from a regional plan must include the full IRRP report.

4.3.8.2 Regional Infrastructure Plan

A Regional Infrastructure Planning (RIP) process is led by the lead transmitter to carry out a more detailed assessment of the wires solutions recommended in the IRRP. An application for a project that derives from a regional plan must include the full RIP report.

~~4.3.89~~ Exhibit H: Aboriginal Consultation

~~Duty to consult issues have arisen in a number of electricity leave to construct proceedings before the Board. The Board has made significant findings regarding its role respecting the duty to consult in the application by Yellow Falls FP to build a transmission line from a small hydro-electric generating facility to the IESO grid (the "Yellow Falls decision")[3]. Prior to hearing detailed evidence on the specifics of the dispute, the Board decided to hear submissions on the Board's jurisdiction to consider Aboriginal consultation issues at all in the context of an electricity leave to construct application.~~

~~After considering written argument on the issue, the Board decided that it did not have jurisdiction to consider Aboriginal consultation issues in an electricity leave to construct application[4]. The Board held that the restriction imposed by s. 96(2) of the Act limited its review to a consideration of price, reliability, the quality of electrical electricity service, and the promotion, where applicable, of the Government of Ontario's~~

4.4 Information required of Non-Rate-regulated Applicants

The following filing requirements apply to leave to construct applications made by non-rate-regulated applicants.

4.4.1 Exhibit A: The Index

4.4.1.1 The Index

The first schedule in the application should be an index of the application. The table below illustrates the typical layout expected for a leave to construct application and lists where further detail regarding the content of each section can be found. ~~Appendix A Applications Completeness/~~The Table of Concordance at Appendix A is to be completed

when transmitters do not provide the application information in the order specified in the ~~Index by OEB~~table below.

Table 11 – Application Index

	Content	Described
Exhibit A	Index	4.4.1
Exhibit B	The Application	4.4.2
	Administrative Matters	4.4.2.1
	Project Overview ~~Documents~~	4.4.2.2
	Evidence in Support of Need of Non-rate-regulated Project	4.4.2.3
	Impact of Non-rate-regulated Project on Rate-regulated Transmitter	4.4.2.4
	Apportioning of Project Costs	4.4.2.5
	Connection Projects Requiring Network Reinforcement	4.4.2.6
	Project Schedule	4.4.2.7
Exhibit C	Project Details	4.4.3
	The Route	4.4.3.1
	Description of the Physical Design	4.4.3.2
	Maps	4.4.3.3
Exhibit D	Design Specification and Operational Data	4.4.4
	Operational Details	4.4.4.1
Exhibit E	Land Matters	4.4.5
	Description of Land Rights	4.4.5.1
	Land Easements Required	4.4.5.2
	The Land Acquisition Process~~Early Access to~~	4.4.5.3
	~~The Land Acquisition Process~~Land-related	4.4.5.4
	~~Land-related Forms~~	~~4.4.5.5~~
Exhibit F	System Impact Assessment	4.4.6
Exhibit G	Customer Impact Assessment	4.4.7

~~Exhibit H~~	~~Aboriginal Consultation~~	~~4.4.8~~

~~5 Ibid, pp. 9-10.~~

4.4.2 Exhibit B: The Application

4.4.2.1 Administrative Matters

This section must include the formal signed application, which must incorporate the following:

1. the name of the applicant and any other parties acting as partners or joint applicants in the application~~partnerships involved in the application;~~

~~2. details of the authorized representative of the applicant, including the name, phone and fax numbers, and email and delivery addresses;~~3~~2~~. ~~an~~ An outline of the business of the applicant and the parties in filing ~~to~~ the application~~;~~

4~~3~~. an explanation of the purpose of the project for which leave to construct is being sought

~~;~~ 4. a list of all other approvals requested from the OEB and reasoning for the need of such approvals and reference to applicable legislation

5. a concise description of the routing and location of the project, including the affected municipalities and regions~~;~~

6. an indication of any shared corridors where there could be cross circuit interference, and of any issues related thereto with the owning authority~~;~~

7. a description of project components~~,~~ ~~and~~ their locations~~, activities, and related undertakings;~~, and purposes

8. an explanation of how the project is in the public interest, as defined by section 96(2) of the Act~~; and~~

9. the current project schedule[46]~~. Note that the Order of the Board will likely have an expiry date by when the project must have commenced.~~

10. details of the authorized representative of the applicant, including the name, phone number, and email and delivery addresses

The OEB has developed a standard Issues List for electricity transmission leave to construct applications.[47] The OEB recognizes that some cases can raise unique issues,

[46] Note that any order of the OEB approving the project will likely have an expiry date by which time project construction must have commenced

[47] The OEB's standard Issues List for electricity transmission leave to construct applications is available on the OEB website. The issues list may be updated from time to time. Applicants are encouraged to check the OEB website for the current version.

and the OEB's process recognizes that in some circumstances, submissions on the issues list may be needed. The OEB anticipates that the standard Issues List will be sufficient for most electricity transmission infrastructure applications. There may be circumstances where certain of these issues do not apply to an application.

The OEB typically imposes a set of standard conditions as part of its leave to construct approvals.[48] Applicants should expect to meet those standard conditions. If an applicant believes that a condition should be modified, the applicant must request any proposed changes and provide supporting rationale in its application for the OEB's consideration.

The OEB has established performance standards for leave to construct applications. Performance standards outline the typical procedural steps associated with processing a particular type of application and the typical number of calendar days for each step. The OEB has established one performance standard for more complex applications and one performance standard for more straightforward applications. Along with the performance standards, the OEB developed criteria for assessing which performance standard will apply to leave to construct applications.[49]

4.4.2.2 Project Overview ~~Documents~~

This section provides the background and a summary of the application which will assist the OEB ~~, and assists the Board~~ in drafting a Notice of Hearing. ~~This~~ It must include:

- ~~•~~ a detailed description of location of the project and its components~~;~~
- ~~•~~ maps (1:50,000 or ~~larger~~more detailed) showing: the route, facility sites and any proposed ancillary facilities~~;• a description of the location of project components and related undertakings;~~
- ~~•~~ a draft of a ~~drawing~~ project map suitable for publication with the Notice of Hearing: The map must be in black and white, uncluttered, have large readable font. The map is to indicate the general area of the project and identify features so that potentially affected landowners can determine if they have an interest in the application. It must contain at least one landmark (city/town, major street, lake,

[48] The OEB's standard conditions of approval for electricity transmission leave to construct applications are available on the OEB website as Schedule 1 to the OEB's standard Issues List for electricity transmission leave to construct applications. The standard conditions may be updated from time to time. Applicants are encouraged to check the OEB website for the current version.

[49] The OEB's performance standards for processing electricity transmission leave to construct applications are available on the OEB website. The performance standards may be updated from time to time. Applicants are encouraged to check the OEB website for the current version. The actual performance standard that will apply will depend on the exact nature of the application and its content. The actual procedural steps and timelines for individual proceedings may vary and may be affected by statutory holidays.

railway line, etc.), a legend (that uses symbols, dashed lines and hashes rather than colours), a north arrow, a scale, and major features mentioned in the application (lines, stations). The final version of this drawing for publication will be decided following discussion with the ~~Board~~ OEB case manager and the applicant.

- ~~•~~ line drawings of the proposed ~~facility~~project, showing supply connection(s) to the proposed facility and delivery facilities from the proposed facility to any adjacent transmission and/or distribution system(s); and
- ~~•~~ the nominal rating of the main components of the project, including transformers.

4.4.2.3 Evidence in Support of Need for ~~of~~ Non-Rate-regulated Project~~Project justification delineates the responsibilities and necessary evidentiary components required for the project review. The responsibility for the provision of all evidence for the entire case rests with the applicant.~~

The ~~Board~~OEB, in accordance with section 96 (2) of the ~~OEB Act~~Act, requires an applicant of a non-rate-regulated proponent-funded project to establish that the project fulfills needs which are in the public interest. This would normally include items such as the need to connect a generator to supply the IESO-controlled grid, or the need to connect a load to the IESO-controlled grid, etc. ~~It is expected that the applicant will submit evidence that it has a valid contract with the OPA to supply renewable generation.~~Price is generally not a factor that is considered where the proponent is not rate-regulated, as the costs for the project are not passed on to consumers through transmission rates.

4.4.2.4 Impact of Non-rate-regulated Project on Rate-regulated Transmitter

Sometimes there may be related works to be completed in relation to the applied-for project.~~Since a project to transmit electricity cannot be isolated from the grid there are likely related works to be completed in relation to the applied for project.~~ In circumstances in which the project will trigger the requirement for investment in the transmission network of a rate-regulated transmitter, the applicant shall file a forecast of these costs.

The ~~Board~~ OEB requires a detailed reference to any applications or approvals for any other projects relating to the applied-for project, such as stations. The need for the other project(s) that are triggered by the non-rate-regulated funded project ~~project/s~~ must also be described. For example, if there is an intermediate transmitter connection required

outside of the current application then the applicant must provide the details in this section of the application, regardless of whether or not the related transmitter connection or station facility might in itself require leave to construct approval.

The ~~Board~~OEB, for example, may not grant leave to construct a transmission line if a related project to connect it to the grid was not allowed to proceed, or if the proponent was not granted a generation licence to own and/operate the generation facility from which the line is intended to convey power. ~~did not have the required approvalswas not allowed to proceed, or if theproponent was not granted a generation licence to own and/or operate the generation facility from which the line is intended to convey power.~~ In such a case, the ~~Board~~ OEB may require evidence that the generation licence has been ~~will be~~granted, or make the leave to construct conditional on receipt of the licence.

Most of the projects proposed by non-rate-regulated applicants are designed to connect generation or load sites or plants to the existing IESO-~~-~~controlled grid. The financial risk of constructing new transmission facilities lies with the project owner(s) ~~and shareholders of the company~~, and not with ~~rate payers~~customers.

As customer funding ~~rate payer money~~ is typically not involved, non-regulated applicants generally do not need to satisfy the ~~Board~~ OEB that the expenditures on their own transmission facilities are cost-~~-~~effective. However, in certain circumstances, owners of such facilities ~~these owners and shareholders~~ may be required by the ~~Board~~ OEB to share some or all of the costs associated with a transmission network reinforcement that their project triggered~~Network Reinforcement~~, as set out in Section 6.3 of the ~~Transmission System Code (~~"TSC~~)~~. In that case, the ~~Board~~ OEB will want to ensure that the shared costs are appropriately allocated and will require detailed information to demonstrate the allocation of costs is appropriate.~~assigned and will require appropriate detailed information.~~

The TSC sets out how cost sharing will be determined.[50] ~~need to be justified. Transmitters and distributors applying for transmission connection projects must include additional informationthey are (. as set out in the TSC, in their applications to the Board, such asthe calculation of any capital contributions, and the relevant annualconnection rate revenues over the applicable evaluation period if the costs are not fully recoverable in connection rate revenues).~~

4.4.2.5 Apportioning of Project Costs

Where there are costs which need to be apportioned between rate-regulated and

[50] Transmission System Code, Section 6.3

non-rate-regulated parties, the non-rate-regulated applicant must provide details of an agreement on the apportioning of these costs to the rate-regulated party and applicants must provide details to the ~~Board~~ OEB which includes the costs to be borne by the rate-regulated transmitter. This must include the following, for line and station components separately, as applicable:

1. labour ~~- including a breakdown by facility installations;~~
2. materials ~~- including a breakdown of all facility costs;~~

~~3. cost of similar projects constructed by the applicant or by other entities for baseline cost comparisons covering:~~

~~a. in-service year of the comparator project;~~

3. ~~b. similarities and differences in terms of voltage level, type of towers, type of terrain, etc.4.~~ acquisition of land use rights, and land acquisition including permanent and working easements, survey and appraisals, legal fees, crop and damage compensation~~;~~
4. ~~5.~~ direct and indirect overheads ~~broken down by facility installation; and,~~
5. ~~6.~~ capitalized interest
6. ~~5.~~6. contingency
7. other
8. class of the project cost estimate, consistent with applicable Association for the Advancement of Cost Engineering (AACE) recommended practice

The applicant should describe the process by which costs and contingencies to be borne by the rate regulated party were estimated and identify the class of the project cost estimate, consistent with applicable AACE recommended practice.

The following table should be included to summarize the costs of the proposed project for line and station components separately, as applicable. The table may be modified as necessary.

Table 12 – Estimated Cost of Work ($M)

	Line	Station	Total
Labour			
Materials			
Land rights			

Overheads (direct and indirect)			
Capitalized Interest			
Contingency			
Other (specify)			
Total Cost of Work			

Cost responsibility for the project is based on the trigger (cause) of the new or modified facility (e.g., customer load increase, end-of-life asset, etc.) and the beneficiary of the project. The applicant must explain how cost responsibility for the project was determined. Where the proportional benefit approach set out in the Transmission System Code (TSC) applies[51], the cost apportionment between the triggering customer(s) and the Network Pool[52] is to be provided using the table below.

Table 13 – Project Cost Responsibility by Facility Type

	Total Project Connection Cost (by Facility Type)	**Cost Responsibility**			
		Customer		**Network Pool**	
	($M)	**($M)**	%	**($M)**	%
Transmission Line Facilities					
Station Facilities					
Total			-		-

Where the applicant proposes to apportion costs with a rate regulated party, information must also be provided on the costs of similar projects constructed by the applicant or by other entities for comparison purposes. The applicant is required to provide information about the cost of the three most recent comparable projects constructed by the applicant or by other entities (if the applicant has less than three comparable projects), escalated by inflation to the current year.

The information on comparable projects should include a brief description of the projects and their costs, the in-service year of the comparator projects, and similarities and differences in voltage level, number of circuits, type of towers, type of terrain, etc. The

[51] Section 6.3.18 of the Transmission System Code
[52] The transmission lines that are used for the common benefit of all customers are categorized as Network Lines and the corresponding terminating facilities are Network Stations. These facilities make up the Network Pool.

applicant may add additional comparison items as necessary. The applicant should provide a summary comparison in a table like the one below, which may be modified as necessary.

Table 14 – Cost of Comparable Projects

	Proposed Project	**Project A**	**Project B**	**Project C**
Technical Details				
Length (circuit km)/ Location/ Transmission Connections				
Project Surroundings (i.e., urban, semi-urban, rural)				
Environmental Issues				
In-Service Date				
OEB-Approved Cost Estimate				
Actual Total Cost				
Less: Non-Comparable Costs				
Total Comparable Project Costs				
Escalation Adjustment (if any)				
TOTAL Escalated Comparable Project Costs				
Total cost per km ($M/km)				

4.4.2.6 Connection Projects Requiring Network Reinforcement

Certain connection projects may require network reinforcement in order to proceed. In addition to specifying the network reinforcement costs payable by the applicant under the TSC~~the cost benefit analysis~~, the applicant must supply specific information on the nature and magnitude of the network impacts (e.g. changes in generation dispatch and transmission line losses).

With these types of applications, the ~~Board~~ OEB may determine that a transmitter(s) needs to apply for a leave to construct to make the required network upgrades triggered by

the proposed connection project. If a leave to construct is necessary, the ~~Board~~ OEB may invite the transmitter(s) to make the needed applications at the same time, or immediately following, the application of the connecting customer.

Applicants are referred to the TSC in regard to cost responsibility for necessary network reinforcement. Section 6.3.5 of the TSC states that:

> "A transmitter shall not require any customer to make a capital contribution for the construction of or modifications to the transmitter's network facilities that may be required to accommodate a new or modified connection. If exceptional circumstances exist so as to reasonably require a customer to make a capital contribution for network construction or modifications, the transmitter or any other interested person may apply to the Board for direction."

4.4.2.7 Project Schedule

The applicant must summarize the proposed project's key milestones, for line and station work as applicable, including estimated start and completion dates for the following:

1. leave to construct approval
2. receipt of other key permits and approvals
3. property rights acquisition
4. completion of detailed engineering
5. major material ordered
6. construction
7. commissioning
8. in-service
9. completion of site remediation

If necessary, the applicant may provide start and completion dates for other schedule milestones.

4.4.3 Exhibit C: Project Details

This section of the application must provide detailed information on the project, focusing on identifying project design features of and operational procedures for the

proposed facilities.

4.4.3.1 The Route

The ~~Board~~ OEB expects the leave to construct application to be for a single specific route, and that the route will be quite specific from engineering, economic and practical viewpoints. For example, it must be clear which side of the road a line is on, and the specific location of the support towers etc. in relation to affected properties. The route of the line is critical because the ~~Board~~ OEB will only provide leave to construct for a specific route.

Any variances ~~material deviations~~ to the approved route following ~~Board~~ OEB approval may ~~will~~ require further review by the ~~Board~~OEB. In the course of detailed design and construction some minor deviations from the original route may be required, and the applicant is obligated to advise the ~~Board~~OEB, which will decide if such changes are of sufficient significance to warrant an examination ~~by the Board and affected parties~~. Generally, changes will be significant if new or existing landowners or public land are affected.

4.4.3.2 Description~~s~~ of the Physical Design

The applicant should provide the following information on the physical design of the project:

1. ~~1.~~ a ~~section by section~~section-by-section description of the physical form of the line~~;~~
2. ~~2.~~ transmission line details, including conductor type, ratings~~;~~
3. ~~3.~~ transmission structure description including the variety of towers~~;~~
4. ~~4.~~ transmission cable burial information and cross-section~~; and~~
5. ~~5.~~ a description of line terminations
6. a description of any associated stations~~.~~

4.4.3.3 Maps

The applicant should provide maps of the proposed route. The maps should provide the following information:

1. ~~1.~~ the route of the line and the Lot number and Concession number of the land over, under, on or adjacent to which the line runs~~;~~

2. ~~2.~~ the plan of each section of the transmission line in relation to the description and indicating clearances to the land profile or, where buried, in relation to the surface

3. ~~3.~~ the right-of-way dimensions and an indication of where the route crosses privately owned land.~~, and~~

~~4. indication of where Section 41(9) of the Electricity Act, regarding disagreement over the location of structures, equipment or facilities over, under or on Public streets and highways, may be applicable.~~

4.4.4 Exhibit D: Design Specification and Operational Data

4.4.4.1 Operational Details

The applicant must provide ~~the following details~~information on the planned operation of the transmission line, including details on the control stations and monitoring and metering locations. ~~:~~

~~• the control stations~~
~~• monitoring and metering locations~~

4.4.5 Exhibit E: Land Matters

The following information with respect to land matters is required in support of an application:

4.4.5.1 Description of Land Rights

A description and summary table of the land rights required must be provided including:

1. the type of land rights proposed to be acquired for the project and related facilities (~~e.g.~~e.g., purchase, permanent easement or temporary easement requirements~~, fee simple~~)~~;~~

2. the nature ~~and relative proportions~~ of land ownership along the proposed route (~~i.e.~~i.e., freehold, Crown or public lands)~~;~~

3. where no new land rights are required, a description of the existing land rights that allow for the project~~; and~~

~~4. where no new land rights are required, but the land rights of adjacent properties might be affected e.g. building restrictions on those lands;~~
4. where section 41(9) of the *Electricity Act* may be brought to bear for the use of public roads and highways as part of the route.

4.4.5.2 Land Easements Required

A description and summary table of the land area required including:

1. the width(s) of any right-of-way required on new and/or existing easements~~;~~
2. the location and ownership of land with existing easements and of any new easements or land use rights that will be required~~; and~~
3. the need and amount of additional temporary working rights required at designated locations such as crossings of rivers, roads, railways, drains and other facilities.

4.4.5.3 Early Access to Land

As discussed in section 4.2.1 (Legislation), under section 98(1) of the Act, certain persons may enter on land at the intended location of a proposed transmission facility and are not required to make an application to the OEB for permission to enter onto the subject land. As discussed above, other persons may apply to the OEB for authorization to enter on land for certain purposes if the person meets the requirements of sections 98(3) and 98(4).

~~Section 98 of the Act allows a person to apply to the Board for an interim order authorizing that person to enter on land for certain purposes if the person has applied for leave under section 90 or 92 and has complied with section 94. Section 94, as noted in section 4.2.1 of these filing requirements, requires an applicant to file with the application a map showing the general location of the proposed work and the municipalities, highways, railways, utility lines and navigable waters through, under, over, upon or across which the proposed work is to pass.~~

4.4.5.4 The Land Acquisition Process

A description of the land acquisition process including:

1. ~~1.~~ identification of the properties and the property owners ~~and/or tenants~~ affected by the proposed construction ~~(landowners line list);~~ and a summary table of all land negotiations to date including their status and any contentious issues and the applicant's proposed approach to resolution~~;~~

2. an affidavit of title search attesting to the work that was done to identify affected landowners and listing the affected landowners and

   a. ~~Provide~~ a confidential listing of affected landowners, their contact information, and a description of their property.[53]

   b. ~~Provide~~ a second non-confidential copy of this listing with any personal information redacted.

~~1.~~3. ~~2. Ee~~vidence of discussion and/or agreements regarding sections of the route where section 41(9) of the *Electricity Act* may be applicable, as well as discussion regarding any disagreement over the location of structures, equipment or facilities over, under or on public streets and highways, as may be applicable.

4.4.5.5 Land-related Forms

~~Section 97 operates as a condition precedent to the exercise of the Board's power to grant a leave to construct order pursuant to section 92 of the Act. Under section 97 the Board exercises discretion to approve the form of the agreements that an applicant may offer to an Ontario landowner in relation to the approved route of the proposed transmission or distribution line.~~

~~Section 97 of the Act states, "leave to construct shall not be granted until the applicant satisfies the Board that it has offered or will offer to each owner of land affected by the approved route or location an agreement in a form approved by the Board."~~
Section 97 of the Act states that the OEB may not grant leave to construct until the applicant satisfies the OEB that they have offered or will offer an agreement in the form approved by the OEB to each owner of land affected by the approved route or location of the facilities to be constructed.

Appendix B sets out the types of clauses that it is expected will be ~~which must be~~ included in an agreement.[54] Different clauses may be appropriate for different types of land use agreement, however the OEB considers a provision for independent legal advice to be a

[53] For guidance on filing personal information, applicants should consult Rule 9A of the OEB's *Rules of Practice and Procedure* and Part 10 of the OEB's *Practice Direction on Confidential Filings*.
[54] A sample easement agreement may be found at EB-2018-0108, Exhibit E, Tab 1, Schedule 3, Attachment 1. A sample working area agreement may be found at EB-2018-0263, Exhibit A, Tab 10, Schedule 2, Page 12.

particularly important element to any proposed land use agreement. An applicant must provide the ~~this~~ form of agreement to the land~~-~~owner's attention and it is expected that this form of agreement will be the initial starting point for a negotiation between a landowner and applicant~~a utility~~.[55] However, it is open to the landowner and applicant ~~utility~~ to develop the substantive content of these clauses and any other clauses mutually agreed ~~-~~ to in the agreement~~6~~. Further, with the mutual agreement of both the landowner and applicant~~the utility~~, certain clauses may be eliminated in appropriate circumstances.

An applicant may file for approval of its forms of land use agreements even if it is not certain they will be needed (e.g., in some cases it is not certain that a temporary work area easement will be required).

The applicant should confirm if the forms of agreements are consistent with any similar agreements approved by the OEB in previous leave to construct decisions. If so, the case number of the Decision and Order in which they were approved must be referenced. In the instance in which two or more parties file a joint application, clarity must be provided as to which party, or parties, is/are requesting approval of the forms of agreements.

The following table should be used to provide information regarding the forms of agreements. The information in the chart below is provided as an example only.

Table 15 – Overview of Forms of Agreements

Forms of Agreements	Location in Application	File Number of any OEB Decision and Order Approving a similar Form of Agreement
Early Access Agreement	Attachment 7 to Exhibit E, Tab 1, Schedule 1	EB-2019-0077

4.4.6 Exhibit F: System Impact Assessment

All applicants are required to provide evidence to the ~~Board~~ OEB that connection of the ~~applied for line~~proposed transmission project will not affect the reliability of the IESO-controlled grid. This takes the form of a System Impact Assessment ("SIA") ~~an~~

[55] In *Conserve Our Rural Environment v Dufferin Wind Power Inc.* (2013) ONSC 7307, ("CORE") Justice Gordon stated:

> It is important to understand that what the Board approved was a *form* of agreement which is the subject of subsequent negotiation between the parties. It represents terms from which the party propounding the project may not unilaterally resile.

~~SIA~~ conducted by the IESO as a part of the IESO Connection Assessment and Approval process. Any leave to construct application that is filed without either a final SIA or a draft SIA will be deemed incomplete.

The IESO evaluates the design of the project and its impact on the reliability of the integrated power system, and identifies any transmission facility enhancements that may be required in order for the facilities to have no negative effect upon the reliability of the grid. The ~~Applicant~~ applicant must provide a statement confirming that it will implement the Requirements noted by the IESO in the SIA.

Where a draft SIA is filed, the Applicant must inform the OEB when the final SIA will be available. Upon receipt of final SIA, the applicant must file it with the OEB and confirm any differences between the draft SIA and the final SIA.

Any material deviations to the approved route, design or operation following OEB approval will require further confirmation from the applicant that the results of the SIA remain valid.

~~**In the absence of a final SIA, the applicant must submit a draft SIA and inform the Board when the final SIA will be available. Final approval by the IESO and conformance with its conditions is a requirement for granting leave to construct.**~~

4.4.7 Exhibit G: Customer Impact Assessment ~~("CIA")~~

All applicants are required to provide evidence to the ~~Board~~ OEB that the incorporation of the applied for facilities will not degrade the electricity service of customers of the transmitter to which the ~~applied for line~~proposed project is connecting. This evidence takes the form of the Customer Impact Assessment ("CIA").

The CIA report is to be completed by the transmitter to which the applicant's transmission facilities are proposed to be connected as specified in the ~~Transmission System Code~~TSC and in the ~~OEB approved~~ transmitter's OEB-approved connection procedures.

~~The CIA report is to be completed by the transmitter to which the applicant's transmission facilities are proposed to be connected. A transmitter shall carry out a CIA for any proposed new or modified connection where:~~

- ~~the connection is one for which the IESO's connection assessment and approval process requires a system impact assessment; or~~

The applicant must submit a transmitter-approved CIA to the OEB, if applicable, as part of its application for leave to construct. Any material deviations to the approved route, design or operation following OEB approval will require further confirmation from the applicant that the results of the CIA remain valid.

6 In *Conserve Our Rural Environment v Dufferin Wind Power Inc.* (2013) ONSC 7307, ("CORE") Justice Gordon stated:e

> It is important to understand that what the Board approved was a *form* of agreement which is
> the subject of subsequent negotiation between the parties. It represents terms from which the party propounding the project may not unilaterally resile.

- the transmitter determines that the connection may have an impact on existing customers.

A transmitter may decide not to carry out a CIA for any proposed new connection or modification that is not subject to an SIA. In such a case, the transmitter would notify existing customers in the vicinity, advising them of the proposed new connection or modification and of the transmitter's decision not to carry out a CIA on the basis that no customer impact is expected.

A transmitter would provide each affected customer with a new available fault current level at its delivery point(s). This would allow each customer to take, at its own expense, action to upgrade its facilities as may be required to accommodate the new available fault current level up to the maximum allowable fault levels set out in Appendix 2 of the TSC.

4.4.8 Exhibit H: Aboriginal Consultation

Duty to consult issues have arisen in a number of electricity leave to construct proceedings before the Board. The Board has made significant findings regarding its role respecting the duty to consult in the application by Yellow Falls FP to build a transmission line from a small hydro-electric generating facility to the IESO grid (the "Yellow Falls decision")[7]. Prior to hearing detailed evidence on the specifics of the dispute, the Board decided to hear submissions on the Board's jurisdiction to consider Aboriginal consultation issues at all in the context of an electricity leave to construct application.

After considering written argument on the issue, the Board decided that it did not have jurisdiction to consider Aboriginal consultation issues in an electricity leave to construct application[8]. The Board held that the restriction imposed by s. 96(2) of the Act limited its review to a consideration of price, reliability, the quality of electrical service, and the promotion, where applicable, of the Government of Ontario's renewable energy policies. The Board was clear that its decision did not mean that

~~no duty to consult existed in this case. It found, rather, that the Board had no authority to consider these issues. The Board pointed to the Environmental Assessment process as a suitable forum for the hearing of duty to consult issues[9].~~

4.5. Expropriation

4.5.1 Introduction

A person that has received leave to construct from the OEB~~,~~ may apply for authorization to expropriate land for the work under section 99 of the ~~OEB Act~~Act. As discussed in section 4.2.1 (Legislation) of these filing requirements, the OEB may make an order authorizing the expropriation if it determines that the expropriation is in the public interest. Applicants are expected to make best efforts to negotiate an agreement with landowners and other persons having an interest in the subject land before resorting to an expropriation application.

The main issue in an expropriation proceeding is not whether *the project* itself is in the public interest (as this will already have been determined in the leave to construct approval), but whether the specific expropriations requested are in the public interest.

In assessing whether proposed expropriations are in the public interest, the OEB has generally considered the following issues[56]:

1. Are the specific interests in the lands requested for expropriation appropriate and have reasonable steps been taken to minimize the impact of the proposed expropriation on the subject properties?

2. What conditions, if any, should be attached to the OEB's order?

4.5.2 Legislation

Section 99 (3) of the Act requires that the applicant file with the OEB a plan and description of the land required, together with the names of all persons having an apparent interest in the land.

[56] See for example, EB-2010-0023 (Hydro One: Bruce to Milton Transmission Reinforcement Project). The OEB considered similar issues~~,~~ in EB-2019-0127 related to NextBridge Infrastructure LP's application for authority to expropriate certain interests in land required to construct the East West Tie Project.

If the OEB grants authority to expropriate land, absent agreement between the parties, the process set out in the *Expropriations Act* must be followed to determine the amount of compensation to be paid.

4.5.3 Filing Requirements

Expropriation applications must contain:

1. A draft Expropriation Plan (i.e., technical drawing) that is suitable for registration at an Ontario Land Registry Office, that shows the location of electricity infrastructure on the land, and the boundaries of the land that is proposed to be expropriated

2. A description of the land rights subject to the expropriation application (e.g., fee simple purchase, permanent easements, term of temporary land use rights) including such things as the general location (e.g., town, municipality), size (e.g., m2, acres),and unique identifier (e.g., Property Identification Number, lot/concession)

3. The names of all persons having an apparent interest in the land

The applicant must demonstrate due diligence in negotiating settlements with impacted landowners, relevant lienholders, and other encumbrancers, including a list of issues and explanation(s) of how each issue was resolved or proposed to be resolved.

4.5.4 Post-hearing Filings

A person that has received authorization from the OEB for expropriation is required by the OEB to:

1. ~~1.~~ Provide to the OEB a Mylar original of the final Expropriation Plan for each property subject to the OEB's expropriation decision.[57] Once the final Expropriation Plan is approved and endorsed by the OEB, the OEB will return it to the person for certification so that the certified Expropriation Plan can be registered with the appropriate Land Registry Office. The purpose of the OEB's endorsement is to confirm that the legal description of the affected property shown in the Expropriation Plan is exactly the same as the legal description of that property in the OEB's expropriation decision. The person must file the certified Expropriation Plan with the Land Registry Office within three months of the date of the OEB's decision.

[57] The exact wording of the certification text that the applicant places on the Expropriation Plan before it provides it to the OEB for certification should be obtained from the Land Registry Office.

2. ~~2.~~ Inform the OEB of any modifications in the legal description of interests in lands authorized for expropriation by the OEB decision. If there are changes, the OEB's decision will need to be varied to reflect the changes in legal description.

3. ~~3.~~ Inform the OEB immediately if it has reached a negotiated settlement with respect to any of the properties authorized for expropriation by the OEB decision. In that event, the OEB decision will need~~have~~ to be varied to remove the authorization for properties where expropriation is no longer needed.

4.6 Changes to OEB-Approved Project

One of the OEB's standard conditions of approval for electricity leave to construct applications requires the applicant to advise the OEB of any changes to the OEB-approved project, including but not limited to changes in the proposed route, construction schedule, necessary environmental assessment approvals, and all other approvals, permits, licences, certificates and rights required to construct the project (Notice of Change).

A Notice of Change may be made in the form of a letter that addresses the nature and extent of any changes. The letter must clearly explain the nature and extent of the proposed change, the rationale for the proposed change, and its impact on the following, as applicable: the need for the project, project costs, reliability and the conclusions of the SIA and CIA and impacts on municipalities and landowners. Where applicable, the location of the proposed change should be illustrated on a map or drawing.

Whenever possible, tables should be used to summarize the change (e.g., in cases where several parcels of land are impacted, a table should be used to summarize the property identification numbers, the landowner names, the size of the impact in acres or other unit, the status of negotiations, and the type of agreements such as a fee simple purchase an easement).

~~[7] EB-2009-0120, Decision on Questions of Jurisdiction and Procedural Order No. 4, issued November 18, 2009 ("Yellow Falls").~~
~~[8] *Ibid*~~
~~[9] *Ibid*, pp. 9-10.~~

Appendix A: Application Table of Concordance

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B	The Application	4.3.2	
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Appendix ~~A~~B: ~~Draft Form of Lease or Easement Agreement~~ Standard Elements of Land Use Agreements

The elements below provide the initial starting point for a negotiation between a landowner and an LTC applicant. However, it is open to the landowner and applicant to develop the substantive content of these elements and any other mutually agreed items to be included in the agreement. Incorporation of these elements does not limit the OEB's discretion to either approve or not approve a form of agreement submitted in a proceeding.~~Essential Easement Considerations~~

~~The form of agreement will be the initial starting point for a negotiation between a landowner and utility. However it is open to the landowner and utility to develop the substantive content of these clauses and any other clauses mutually agreed to in the agreement. Please note that adhering to this form of agreement does not limit the Board's discretion to either approve or not approve a form of agreement submitted in a proceeding.~~

1. Legal Description of Properties

A section in the form of agreement for identifying the full legal description of each of the affected properties.

~~A complete and accurate description of each of the affected properties must be provided. A full legal description is ideal, but even when this is not available, some description is necessary, even if only described by address, visual depiction or reference to the owners.~~

2. Description of the Area in Use ~~Easement Area~~

The ~~easement area (in other words the~~ portion of property to which the applicant ~~one party~~ is granted permission to use or access~~)~~ must be depicted visually. Such a depiction need not be elaborate, but a clear "drawing" of the relevant easement area will help provide clarity and avoid potential disputes. A professional survey is helpful.

3. Covenant Not to Disturb the Applicant's Use of ~~Use of the Easement –~~ Right ~~to of~~ Access

Although it may have a clearly defined right to use the owner's property, the applicant ~~party granted easement rights~~ must also be sure that the landowner's use of the property will not create practical problems. The land use ~~easement~~ agreement should include language that protects the ~~party granted the easement~~ rights of the applicant ~~a right~~ to undisturbed use of the easement.

4. Determination of Maintenance Obligations

Even after rights and non-disturbance issues are clarified, the parties to an easement agreement face the issue of who will take care of that portion of the property, pay for any needed repairs or address related problems that occur. The parties should determine who will maintain the ~~easement~~ area in use.

5. Decommissioning

A decommission clause should set out that the energy company will be responsible to cover the cost of decommissioning the facilities and restoring any damage done to the area in use~~easement lands~~. This clause should also have specific procedures for the decommissioning process.

6. Independent Legal Advice ("ILA")

Provision must be made that both parties have had the option to obtain legal advice. ILA is commonly paid for by the applicant. ~~Note in some cases before the Board, the agreement has provided that the ILA for the landowner would be paid for by the utility~~

7. Liability: Indemnification and Exculpation

The agreement should reflect the parties' consideration of ~~The parties should consider~~ their potential liabilities with respect to their ownership or use of the property.

8. Insurance

An easement agreement needs to clearly state any obligations of the parties to maintain any forms of insurance. Considerations would obviously include property insurance, but may also include other coverage as well, as dictated by the circumstances.

9. Default Provisions and Termination

Some consideration must be made for events or behavior on the part of either party that will terminate the easement. ~~A property owner may want to include certain activities (including failure to make any required payments) that will result in termination of the easement. Conversely, the other party will want to clarify that breaches (or at least certain breaches) of the agreement explicitly do not result in termination of its easement rights. Possible considerations must include failure to make requirement payments to the property owner, failure to fulfill any maintenance obligations, failure to pay any required taxes or insurance premiums, and any other matters that are deemed relevant by the parties. Much of the detail with respect to default and termination will be dependent upon the unique nature of each situation.~~

10. Dispute Resolution

Provision setting out the dispute resolution procedure to be used in case of disagreement.

End of document