

**BY EMAIL AND RESS**

December 15, 2022

Ms. Nancy Marconi  
Registrar  
Ontario Energy Board  
Suite 2700, 2300 Yonge Street  
P.O. Box 2319  
Toronto, ON M4P 1E4

Dear Ms. Marconi,

**EB-2022-0261 – Electricity Transmission Leave to Construct Filing Requirements Update –  
Hydro One Networks Inc. Comments**

Hydro One Networks Inc. (“Hydro One”) offers the following comments regarding the OEB’s draft update to the Chapter 4 Filing Requirements (the “Proposed Filing Requirements”). These comments are informed by Hydro One’s experience as a transmitter in the province of Ontario who has sought multiple leave to construct approvals from the OEB since the enactment of the *OEB Act, 1998*.

Hydro One supports the revisions made to the Proposed Filing Requirements issued on November 10, 2022 and commends the efforts of OEB Staff in compiling this extensive update to the Chapter 4 Filing Requirements.

Hydro One has a few comments for consideration on the Proposed Filing Requirements that may provide further clarity and ensure consistency with the OEB’s objectives as it pertains to its review of applications made under S.92 of the OEB Act. Hydro One’s comments are limited to the Proposed Filing Requirements for rate-regulated applicants.

When addressing a specific revision to the Proposed Filing Requirements, if reasonable, the specific filing requirement has been extracted and embedded into this document for ease of reference.

**Legislation & Regulation**

Hydro One notes that the Proposed Filing Requirements were issued a few days apart from when the recent amendments to Ontario Regulation 161/99 took effect. Hydro One believes it is pertinent for the OEB to update the language in section 4.2.1 of the Proposed Filing Requirements to reflect these recent amendments and to document the OEB’s interpretation of those amendments. Hydro One understands the amendments will now effectively exempt proponents from seeking leave to construct for projects exclusively funded by commercial and industrial load and generator customers.

**Section 4.3.2.6: Project Costs - Table 3 Avoided Sustainment Work**

Hydro One recognizes that the OEB has established the form it wants to receive documentation regarding avoided sustainment work. Hydro One recommends that the justification for Table 3 be added to the Proposed Filing Requirements. Hydro One understands that the purpose of the documentation is *to assess*

*the cost responsibility split between an individual customer and the pool, as required. If there is no avoided sustainment work, Table 3 is not required.*

Hydro One notes that the Proposed Filing Requirements do not address the quality of the cost estimate for avoided sustainment work. Cost estimates are developed over a period of time. They generally start with a Class 5 estimate, which is refined to a Class 3 estimate at the time a Leave to Construct application is filed. An estimate for the avoided sustainment work is undertaken prior to receiving a customer request for an upgrade. Once the customer request is received and pursued the sustainment alternative would then be dismissed and no longer studied because it no longer meets the need of the Project. To complete a higher quality cost estimate for work that will not be executed adds considerable costs and timing delays to the project that are not to the benefit of ratepayers. If comparing a preliminary cost estimate for sustainment work (potentially years prior to the leave to construct application), with that of the preferred solution, significant information may have changed that would have impacted the cost of the alternatives (e.g., scope definition, a change in real estate requirements, environmental concerns, etc.). The forecast cost to complete a detailed estimate for a sustainment alternative, that will not be pursued, can cost up to \$1M and can take approximately a year to study. Based on experience, Hydro One has heard that customers do not want to fund this cost, given it provides minimal customer benefit. Consequently, how this cost should be funded is unclear. The Proposed Filing Requirements should ask the applicant to provide the best available cost information on avoided sustainment work.

Hydro One also notes that the stratification requested in Table 3 is only available when a project is studied in extensive detail, therefore the detail requested in Table 3 may not be available for the Avoided Sustainment Work and therefore only a total cost can be provided for the avoided sustainment work option.

#### **Section 4.3.2.8: Comparable Projects**

Hydro One's submissions on section 4.3.2.8 of the Proposed Filing Requirements, Comparable Projects, is limited to the conclusion of the section that reads as follows:

*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.***

Hydro One suggests that the second sentence in the above quote should be deleted from the Chapter 4 Filing Requirements final version as it is more appropriately addressed in a review of the OEB Chapter 2 Filing Requirements for revenue requirement applications.

Hydro One also suggests that the filing of a post construction financial report may be better addressed in the *Standard Conditions of Approval*.

## **Land Matters & Route Definition**

### **Section 4.3.5.4: Land Acquisition Process**

The Proposed Filing Requirements outline that an applicant is required to provide *a summary table of all land negotiations to date, including their status and any contentious issues and the applicant's proposed approach to resolution.*

Hydro One suggests that providing such a summary table would unduly prejudice an applicant's ability to negotiate with property owners in good faith to the detriment of Hydro One and Ontario ratepayers. Hydro One submits that this information is more suitable for review in an expropriation proceeding. In that forum the OEB has typically assessed whether appropriate and reasonable steps were taken to minimize the impact of the proposed expropriation on the subject properties, as well as whether appropriate steps have been taken to minimize the disruption to landowners by requesting easements that are no longer and no more extensive than necessary. Hydro One suggests that the Chapter 4 Filing requirements regarding the status of land negotiations be limited to informing the Board of the number of properties that require land rights and the current number still outstanding at the time of filing the Leave to Construct application.

Similarly, under section 4.3.5.4 of the Proposed Filing Requirements an applicant is directed to provide *a discussion regarding any disagreement over the location of structures, equipment or facilities over, under or on public streets and highways, that may be applicable.* Hydro One does not believe that an applicant can provide this granular level of detail at the time of a leave to construct application and that revisions may be necessary to this section as well as section 4.3.3.1 to reflect that reality.

Section 4.3.3.1 which remains unchanged from previous versions of the Proposed Filing Requirements reads as follows:

*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 OEB will only provide leave to construct for a specific route (emphasis added).*

Hydro One agrees that a leave to construct application should only be for a single route. However, the specificity of the defined route is of concern to Hydro One and Hydro One submits that the request for a route that is as specific to describe specific tower placements is inconsistent with other sections of the OEB Act that are applicable to leave to construct applications. Notably, and directly related to this topic, under s.94 of the OEB Act<sup>1</sup>, an applicant is required to file a *general* route map of a project, not a specific route map. This general route map is utilized by the OEB for its official Notice of Application process.

The difficulty associated with the requirement to provide specific routing is exacerbated if leave to construct approval precedes the completion of any route assessments pursuant to requirements of the Environmental Assessment Act. It is common for a leave to construct application to the OEB to occur in parallel with an Environmental Assessment submission to the Minister of the Environment, Conservation and Parks. Specific

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<sup>1</sup> Hydro One notes that s.94 is not listed as an applicable section of the OEB Act in section 4.2.1 of the Proposed Filing Requirements but suggests that it should be.

route definition is a continuous process that occurs after the completion of any approvals pursuant to the requirements of the Environmental Assessment Act and after the OEB has granted an applicant approval to construct a project.

Hydro One submits that to determine the exact location of infrastructure, land surveys may be needed. Section 98 (1)1. of the OEB Act documents that “...persons may enter on land at the intended location of any part of a proposed work and may make such surveys and examinations as are necessary for fixing the site of the work” only after leave to construct approval is secured. Absent a distinct approval pursuant to section 98 (3) of the OEB Act, or a voluntary agreement in which the property owner allows the applicant access to the required lands prior to leave to construct approval, it would be impractical, if not impossible, for a leave to construct applicant to provide the specific documentation requested without having had the opportunity to conduct necessary surveys and examination as are necessary for fixing the site of the work. Only after these necessary studies can an applicant finalize preferred tower locations with potentially impacted property owners, which may also include minor tower movements to address property owner needs.

Consequently, Hydro One recommends that any references or requirements to provide documentation relating to a specific route or specific tower locations should be revised to “general route/location”.

Lastly, in section 4.3.5.4, the Proposed Filing Requirements impose a new obligation on an applicant to provide, “a confidential listing of affected landowners, their contact information, and a description of their property.” Hydro One does not believe that this should be considered a filing requirement as it unnecessarily burdens an applicant with no clarity on how the information benefits the OEB’s decision in a leave to construct application. Furthermore, the information is also, in part, already provided through the Affidavit of Service for the Notice of Application, i.e., the applicant must attest via an affidavit that a search of title was conducted and that all directly affected property owners and encumbrancers have been notified of the application.

In addition, it is important to consider that a title search is only relevant when it is undertaken and does not account for any property divestitures that may occur post-search. It is precisely for that reason that OEB’s Notice of Application process requires a leave to construct applicant to conduct a title search forthwith receipt of the Letter of Direction. Given the duplicative efforts<sup>2</sup> required and that the contact information is readily available through the Affidavit of Service for the Notice of Application, Hydro One submits that the requirement to provide a confidential listing of affected landowners, their contact information, and a description of their property should be removed from the Proposed Filing Requirements.

#### **Section 4.4.5.5: The Land Acquisition Process**

Further with respect to land matters, section 4.4.5.5 describes *Appendix B* of the Proposed Filing Requirements as setting out types of clauses that are expected to be included in the form of agreements that will be offered to affected property owners. Hydro One recommends that this language be revised to depict that Appendix B provides standards elements for the form of agreements and not types of clauses to be included therein.

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<sup>2</sup> Hydro One highlights that undertaking a title search for transmission line works greater than 2 km, and could be hundreds of km long, is a costly and labour-intensive exercise.

Hydro One appreciates the opportunity to provide these comments on the Proposed Filing Requirements and is amenable to clarifying these comments, as necessary, and/or having further consultative discussions with any interested parties prior to the implementation of these Proposed Filing Requirements.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Joanne Richardson', written in a cursive style.

Joanne Richardson