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Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Board Secretary:

RE: EB-2011-0140 – EAST-WEST TIE TRANSMISSION LINE

I am legal counsel for the Métis Nation of Ontario (MNO). Please accept the following as the MNO's request for intervenor status and an award of costs for participation in the abovementioned proceeding.

The Proposed Intervenor

The MNO represents the citizens of the Métis Nation living in Ontario as well as regional rights-bearing Métis communities throughout Ontario. The Métis are one of the three aboriginal peoples of Canada recognized within s. 35 of the *Constitution Act, 1982*. The MNO obtains its mandate to represent the Métis Nation and its citizens in Ontario through a Métis-specific governance structure which includes: a centralized citizenship registry; democratically elected leadership at the regional and provincial levels; and 29 Chartered Community Councils. For more information about the MNO see: www.metisnation.org.

More specifically, in relation to the proposed East-West Tie Transmission Line (the "Project"), the MNO represents two regional rights-bearing Métis communities whose traditional territories will be impacted. These Métis communities, as represented through the MNO's governance structures, meet the criteria set out in *R. v. Powley*, [2003] 2 S.C.R. 207. These communities have and exercise aboriginal rights throughout their respective territories, including, among other things, hunting, fishing (food and commercial), trapping (food and commercial), gathering, sugaring, wood harvesting, use of sacred and communal sites and use of water. These rights are protected as aboriginal rights within the *Constitution Act, 1982*. These rights have not been extinguished by the Crown by way of treaty or other means. As well, these Métis communities have outstanding title and land related claims and interests in these territories.

The first affected regional rights-bearing Métis community represented by the MNO is the Upper Lake Superior Métis community, which lives in, uses and relies on a territory that includes the Métis harvesting areas of Lakehead, Nipigon and Michipicoten. This community is represented by the MNO's regionally elected leadership and the Thunder Bay Métis Council, the Greenstone Métis Council and the Superior North Métis Council.¹ These Councils, along with the MNO's provincial and regional leadership, have executed a Regional Consultation Protocol, which sets out how they will work together to ensure this Métis community is meaningfully consulted and accommodated. A copy of this Protocol is available at www.metisnation.org/governance/reference-documents.aspx.

The second affected regional rights-bearing Métis community represented by the MNO is the Sault Ste. Marie Métis community, which is the Métis community whose rights and traditional territory were recognized in *R. v. Powley*, [2003] 2 S.C.R. 207. This community is represented by the MNO's regionally elected leadership and the Historic Sault Ste. Marie Métis Council and the North Channel Métis Council.² These Councils, along with the MNO's provincial and regional leadership, have executed a Regional Consultation Protocol, which sets out how they will work together to ensure this Métis community is meaningfully consulted and accommodated. A copy of this Protocol is available at www.metisnation.org/governance/reference-documents.aspx.

A map outlining the geography of the abovementioned Métis communities and the administrative boundaries of the MNO's governance structures at the local and regional levels, in relation to the Project, is attached.

Interests in the Proceeding

The Project will pass through and impact the traditional territories of the abovementioned Métis communities. As such, Métis rights and interests are potentially impacted in relation to the planning and development of the Project. As well, the Project will enable future generation and transmission projects within these Métis traditional territories, which the MNO has concerns with respect to.

¹ These MNO Councils are "Crown-identified Aboriginal communities" for the purposes of consultation related to the Project, but the MNO and its Councils do not accept the Crown's unilateral and ill-informed determination that they are separate and distinct Métis communities. They collectively represent a regional rights-bearing Métis community based on historic and contemporary facts, consistent with *R. v. Powley*, [2003] 2 S.C.R. 207 and subsequent Métis rights case law.

² The MNO and its Sault Ste. Marie and North Channel Métis Councils, as the collective representatives of the Sault Ste. Marie Métis community, have not been identified by the Crown for consultation related to the Project, despite the fact that First Nations (i.e., Ojibways of Garden River, Ojibways of Batchewana) who are similarly situated and have a common territory with this Métis community have been identified for consultation. The MNO believes this exclusion of the Sault Ste. Marie Métis community from identification for consultation is a breach of the Crown's duty to consult and accommodate this Métis community, which has been recognized by the Supreme Court of Canada in *R. v. Powley*, [2003] 2 S.C.R. 207.



Further, on March 29th, 2011, the Ontario Minister of Energy wrote to the Chair of the Ontario Energy Board, stating that:

... given the location and value of the East-West Tie in ensuring reliability and maintaining efficiency and flexibility in the system, I would expect that weighting of decision criteria in the Board's designation process takes into account the significance of aboriginal participation to the delivery of the transmission project, as well as the proponent's ability to carry out the procedural aspects of Crown consultation.

As such, in the MNO's opinion, the Board will need to assess how a proposed transmitter will ensure First Nations and Métis participation in order to meet the Minister's directive vis-à-vis "aboriginal participation". As well, the Board must ensure that the proposed transmitter can carry out the procedural aspects of Crown consultation with First Nations and Métis communities in a fair, equitable and respectful manner. In order for the Board to have this information, the affected Métis communities, as represented by the MNO, must be intervenors in the proceeding.

Request for Costs

The MNO is seeking costs in order to participate as an intervenor in the proceeding. As set out above, the MNO is a necessary intervenor in order to assist the Board in meeting the Minister's directives vis-à-vis aboriginal participation and consultation.

I look forward to hearing from the Board with respect to my client's request for Intervenor status in EB-2011-0140.

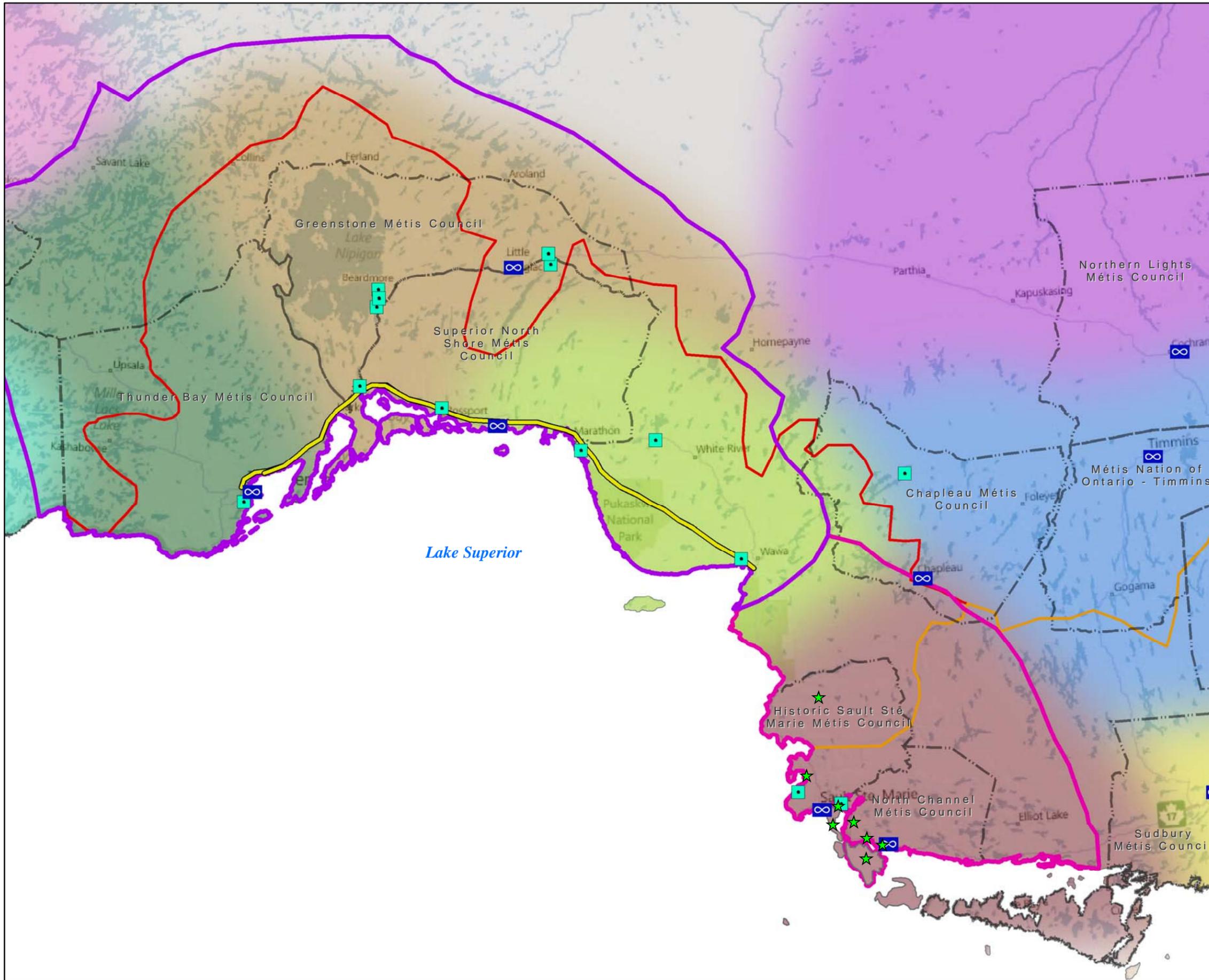
Yours very truly,

Jason Madden

Attach: Map of Métis Communities and East-West Tie Line

c.c. Gary Lipinski, MNO President
MNO Consultation Committee – Lakehead/Nipigon/Michipicoten Territories
MNO Consultation Committee – Sault Ste. Marie Territory
Doug Wilson, MNO Chief Operating Officer
Melanie Paradis, MNO Director, Lands, Resources and Consultation Branch

DOC#164659_1



Legend

- East-West Transmission Line
- Métis Consultation Protocol Areas**
- Lakehead/Nipigon/Michipicoten
- Sault Ste Marie Region
- Métis Traditional Harvesting Territories**
- Abitibi/Temiscamingue
- Historic Sault Ste. Marie
- James Bay
- Lake of the Woods/Lac Seul
- Lakehead
- Michipicoten
- Nipigon
- Rainy Lake/Rainy River
- Locations Identified As Part of Sault Ste. Marie Métis Community in R. v. Powley
- MNO Community Councils**
- Administrative Boundaries
- Office or Mailing Address Location
- Treaty Territories**
- Robinson Huron Treaty
- Robinson Superior Treaty
- First Nations Identified for Consultation**
- First Nation

Métis Communities and Proposed East-West Tie Transmission Project (Territories and Administrative Geography)

