

ONTARIO ENERGY BOARD

**NOTICE OF PROCEEDING TO DESIGNATE
A TRANSMITTER TO CARRY OUT DEVELOPMENT WORK
FOR THE EAST-WEST TIE LINE**

**SUBMISSIONS
OF THE OJIBWAYS OF PIC RIVER FIRST NATION
("PRFN")
ON ISSUES IDENTIFIED
IN THE BOARD'S PROCEDURAL ORDER NO. 2**

May 7, 2012

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SUBMISSIONS OF THE PRFN

Further to the Board's Procedural Order No. 2, PRFN is pleased to provide the following submissions in response to those matters identified on the Issues List. In accordance with the Board's Decision on Costs Eligibility dated March 30, 2012, PRFN has made submissions on those issues which are related to the First Nation's interests in land and rights arising from those interests in the development of the East-West Tie.

Decision Criteria: Issues 1-4

1. What additions, deletions or changes, if any should be made to the general decision criteria listed by the Board in its policy Framework for Transmission Project Development Plans (EB-2010-0059)?
2. Should the Board add the criterion of First Nations and Metis Participation? If yes, how will that criterion be assessed?
3. Should the Board add the criterion of the ability to carry out the procedural aspects of First Nations and Metis consultation? If yes, how will that criterion be assessed?
4. What is the effect of the Minister's letter to the Board dated March 29, 2011, on the above two questions?

PRFN submits that the decision criteria originally identified in the policy "Framework for Transmission Project Development Plans" EB-2010-0059 on August 26, 2010 should be modified to include the following as separate and distinct criteria:

- (a) aboriginal¹ participation; and
- (b) the capacity to carry out the procedural aspects of aboriginal consultation.

¹ PRFN has used the term "aboriginal" rather than First Nation and Metis throughout these submissions. The term "aboriginal" is consistent with the language contained in the Minister's March 29, 2011, letter. It is also the term most often used in other policies and legislation that PFRN refers to throughout these submissions.

The above amendments would demonstrate consistency with the Minister's expectation expressed in his March 29, 2011 correspondence as well as consistency with Ontario's broader policy initiatives geared to aboriginal inclusion in the energy sector.

Over the past several years, the Ontario government has made a concerted effort to encourage aboriginal involvement in its long term goal to maintain a clean, modern and reliable electricity system for all Ontarians. As part of this effort, Ontario introduced the Feed-in-Tariff ("FIT") Program through the *Green Energy Act, 2009*.² The FIT Program offers long-term price guarantees for renewable electricity generators. These guarantees are designed to increase investor confidence and make it easier to finance renewable energy projects. Notably, the FIT program included the following incentives for aboriginal participation:

- reduced security payments – projects for which an aboriginal group has a 50% interest are eligible for reduced application security;
- price adders – if an aboriginal group has 10% or more of economic interest in a project, it is eligible to receive an increased price per kwh (adder) above standard FIT prices.

In addition to the above incentives, a \$250 million Aboriginal Loan Guarantee and the Aboriginal Energy Partnership Programs were developed to support aboriginal communities in renewable energy development.

In March, 2012, the Ontario Government released the results of its FIT Review and concluded, among other things, that the price adder for aboriginal projects would be maintained.

Ontario has clearly encouraged aboriginal participation in renewable generation and is developing a similar climate for aboriginal participation with respect to new transmission. The Province's Long-Term Energy Plan, "Building our Clean Energy Future" provides that the Ontario Government "*is committed to encouraging opportunities for Aboriginal*

² S.O. 2009, ch. 12, Sch A.

participation in the energy sector” and references the FIT, Loan Guarantee and Energy Partnership Programs discussed earlier.³

Where new transmission lines are proposed, the Long-Term Energy Plan provides:

Ontario is committed to meeting its duty to consult First Nation and Metis communities in respect of their aboriginal and treaty rights and accommodate where those rights have the potential to be adversely impacted.⁴

Ontario’s Long-Term Energy Plan goes on to state that,

Ontario also recognizes that Aboriginal communities have an interest in economic benefits from future transmission projects crossing through their traditional territories and that the nature of this interest may vary between communities.

*There are a number of ways in which First Nation and Metis communities could participate in transmission projects. Where a new transmission line crosses the traditional territories of aboriginal communities, Ontario will **expect** opportunities to be explored to:*

- *Provide job training and skills upgrading to encourage employment on the transmission project development and construction*
- *Further Aboriginal employment on the project*
- *Enable Aboriginal participation in the procurement of supplies and contractor services.*

Ontario will encourage transmission companies to enter into partnerships with aboriginal communities where commercially feasible and where those communities have expressed interest. *The government will also work with the OPA to adjust the Aboriginal Energy Partnerships Program, currently focused on renewable*

³ <http://www.energy.gov.on.ca/en/ltep/> at page 48 of 68.

⁴ <http://www.energy.gov.on.ca/en/ltep/> at page 49 of 68.

*energy projects to provide capacity funding for aboriginal communities that are discussing partnerships on future transmission projects.*⁵[emphasis added]

In his March 29, 2011 letter to the Board Chair, the Minister of Energy referred to Ontario's Long-Term Energy Plan referenced above and expressed "**interest**" that the Board undertake a designation process to select the most qualified and cost-effective transmission company to develop the East-West Tie. The Board has, in fact, undertaken that process. In the same letter, the Minister also expressed his "**expectation**" that in respect of the Board's objectives and given the location and value of the East-West Tie, the weighting of decision criteria would take into account the significance of aboriginal participation and the proponents' ability to carry out the procedural aspects of the Crown consultation. It would be difficult, PRFN submits, for the Board to act in accordance with the Minister's expressed interest but ignore his expressed expectation.

It is noteworthy that when the Minister references the weighting of the decision criteria, aboriginal participation and consultation are the only two factors specifically delineated. PRFN submits that in order for the Board to effectively account for the significance of these factors, they must be identified as discrete decision criteria and afforded substantial weight.

Further, the manner in which the Minister has framed his expectation, that is, in reference to the Board's objectives, and the location and value of the East West Tie, suggest that the Board objectives may not be advanced **unless** aboriginal participation and consultation were significant considerations in the Board's analysis.

PRFN submits that the Board act in a manner consistent with both the Minister's expectation expressed in the March 29, 2011, letter and with Ontario's general approach to encourage aboriginal participation and conduct proper consultation in the energy sector by recognizing these elements as discrete decision criteria.

⁵ <http://www.energy.gov.on.ca/en/ltep/> at page 49 of 68.

Aboriginal Participation – How would that criterion be assessed?

PRFN submits that the proposal for aboriginal participation is as important as an applicant's organization, technical capability and financial capacity. Whatever evaluation or assessment methodology is adopted by the Board, PRFN submits that aboriginal participation be afforded the same weight as the other critical elements noted by the Board Staff at page 4 of their submissions, such that failure to account for or include it would likely lead to the failure of the project. (PRFN is proposing a separate evaluation for aboriginal consultation which is discussed later in these submissions).

In evaluating the strength of an applicant's proposal for aboriginal participation, PRFN submits that the Board be guided by a process used by the Ministry of Natural Resources ("MNR") to evaluate plans to develop waterpower sites in Ontario. Under the MNR's "Waterpower Site Release – Crown Land" policy issued April 16, 2010 (the "WPR"), the Crown states that the policy's goal is to:

[C]ontribute to the environmental, social and economic well being of the people of Ontario, including Aboriginal communities, through the provision of opportunities for waterpower development and the sustainable development of Ontario's Crown land, while recognizing the Ministry's mission of ecological sustainability.⁶

The WPR's "Guiding Principles" provide that the Crown would "support creation of environmentally sustainable economic opportunities for Aboriginal communities through the disposition of Crown land for greenfield sites." PRFN submits that this language is similar to the language contained in Ontario's Long Term Energy Policy.

⁶ <http://www.mnr.gov.on.ca/stdprodconsume/groups/lr/@mnr/@renewable/documents/document/290575.pdf> at pages 2-3 of 9, section 2.1. The WPR policy was released as a draft in 2007.

In order to give weight to its objectives articulated in the WPR, the Crown determined that it would: “*demonstrate a preference for proposals that provide benefits to the Identified Aboriginal communities*”.⁷

Further to the procedural direction to implement the WPR (“Procedural Direction”),⁸ a protocol to evaluate the aboriginal participation component was developed for reviewing an applicant’s plan of development (“POD”), for waterpower sites as follows:

In situations where the Applicant has not included Proposal(s) in their POD for all of the identified Aboriginal community(ies) the Competitive Release Team (CRT) will assign a score of zero(0) to the Aboriginal participation component.

In situations where the Applicant has included Proposal(s) in their POD for all of the identified Aboriginal community(ies), the CRT will contact the identified Aboriginal communities to invite them to evaluate only the Aboriginal participation component of each POD from the perspective of the benefits that will be forthcoming to their individual communities. Using a numeric score of one (1) to twenty-five (25) reflecting a top score, with one (1) reflecting virtually no benefits and a score of twenty-five(25) reflecting a top score, they will assign a numeric score to the Aboriginal participation component of each POD.

*In the event that an identified Aboriginal community(ies) does not provide an evaluation, the CRT will evaluate the Aboriginal participation component on behalf of that community(ies). The evaluation will be based on the same numeric scoring system with a score of one (1) reflecting virtually no benefits and a score of twenty-five(25) reflecting a top score.*⁹

⁷ <http://www.mnr.gov.on.ca/stdprodconsume/groups/lr/@mnr/@renewable/documents/document/290575.pdf> at page 3 of 9 under “Guiding Principles”.

⁸ <http://www.mnr.gov.on.ca/stdprodconsume/groups/lr/@mnr/@renewable/documents/document/290576.pdf>

⁹ <http://www.mnr.gov.on.ca/stdprodconsume/groups/lr/@mnr/@renewable/documents/document/290576.pdf> at pages 15-16 of 36.

PRFN proposes that a similar evaluation and scoring methodology should be employed by the Board in this designation process.

Specifically, PRFN submits that the best evaluators of this component are those locally affected aboriginal communities with recognized interests/rights in the land who are proximate to the development of the East West Tie (the “Impacted Aboriginal Communities”). It would not be appropriate in PRFN’s respectful submission, to have aboriginal participation evaluated without aboriginal input or by an evaluator without specific and intimate knowledge of the communities, their members, the land and how each may be potentially affected by the East Wet Tie.

Methodology for Assessing Aboriginal Participation

In order to ensure anonymity and fairness in the evaluation process, PRFN proposes that, prior to submitting the bids for evaluation by the Impacted Aboriginal Communities on the aboriginal participation criteria, each applicant’s proposal would have the various elements associated with the proposed aboriginal participation identified and placed in a category. The Impacted Aboriginal Communities representatives would then review each of the categories, which would contain the proposals of each of the prospective transmitters without identifying the source of the proposal. A score or ranking would be assigned to each proposal within the category. That process would be undertaken for each category and by each of the Impacted Aboriginal Communities, with the results being provided to the Board. An overall score for each applicant would then be determined by the Board by taking the overall score received by an applicant, dividing that score by the theoretical maximum score an applicant might have received and multiplying that result by the score weighting in the overall designation assessment criteria associated with aboriginal participation.

The broad categories that PRFN has identified are set forth below:

- ownership and/or revenue sharing opportunities with aboriginal community(ies) (including any investment requirement and any offer to provide financial assistance to fund the investment requirement);
- employment and job training during the Construction Phase;
- employment and job training for maintenance requirements after completion of construction;
- business partnering opportunities for aboriginal businesses during the Construction Phase;
- business partnering opportunities for aboriginal businesses during the Maintenance Phase;
- community and program support;
- permanent commercial establishments created by the Designated Transmitter on First Nations' lands for administrative and/or maintenance purposes;
- other participation opportunities not otherwise set forth.

PRFN submits that the Impacted Aboriginal Communities should have the opportunity to establish the relative weights for each of the categories, as the particular requirements of one may not be perfectly aligned with the others. The proposed evaluation would require that: (i) the Board confirm the relative weighting that aboriginal participation is to be accorded within the overall designation process; (ii) the Board provide the aboriginal communities with the applicants' participation proposals, segregated, without identification, into the established categories; (iii) each community establish the relative weighting of each category and communicate that determination to the Board (with the proviso that the total theoretical maximum score achievable for each community's scoring would be equal, say 100 points); (iv) each community scores the proposals set forth in each category and communicates those results to the Board; and (v) the Board would then compile the scores to determine each applicant's overall score based upon on the communities' scoring, with each community's score having equal weight.

The scoring proposed, for a single applicant, can be illustrated in the following matrix (which presumes, for simplicity, 4 First Nations and 5 categories):

	First Nation #1	First Nation #2	First Nation #3	First Nation #4
Category A	20 out of 25	14 out of 20	13 out of 15	27 out of 30
Category B	7 out of 10	16 out of 20	16 out of 20	8 out of 10
Category C	22 out of 30	18 out of 20	9 out of 15	16 out of 20
Category D	12 out of 20	13 out of 20	21 out of 25	10 out of 15
Category E	12 out of 15	16 out of 20	17 out of 25	18 out of 25
Total	73 out of 100	76 out of 100	76 out of 100	79 out of 100

The average score for this applicant is 76 out of 100. The Board would score their aboriginal participation score on the designation process as 76% of the weight assigned in the overall scoring criteria (if the aboriginal participation was 25%, this applicant would score 19). The results of the aboriginal participation review would be compiled with the balance of the assessment criteria established by the Board to determine an applicant's overall score.

Upon receiving the results of the aboriginal participation criteria, the applications would be assessed overall by the Board.

PFRN has not proposed a scoring methodology for the other criteria, however would reiterate its position noted earlier that aboriginal participation, however assessed, needs to be given at least the same weight as the other criteria critical to the success of the project.

Consultation – How should this criterion be assessed?

PRFN submits that aboriginal consultation must be added, distinct and separate from other "landowner consultations". There is a vast body of law that has now considered aboriginal consultation; the reasons for it; the circumstances under which it is conducted; and the

considerations that frame the Crown's duty to consult where developments such as the construction of the East-West Tie may have impacts on constitutionally protected rights.

The Crown has a legal duty to consult with aboriginal peoples and, if appropriate, accommodate their interests when the Crown has knowledge, real or constructive, of the potential existence of the aboriginal right or title and contemplates conduct that might adversely affect it. The Crown has a special relationship with aboriginal peoples and must act honourably in its dealings with aboriginal peoples in order to achieve the reconciliation of the pre-existence of aboriginal societies with the sovereignty of the Crown.

The ability to carry out the procedural aspects of consultation, are distinct from and should not form part of "other consultations" as Board Staff has suggested. The ability to carry out aboriginal consultations calls for unique skills, specialized knowledge and an appreciation and respect for the history and the culture of the aboriginal people being engaged. PRFN submits that the Crown has recognized the importance of aboriginal consultation in not only the energy sector but more broadly, through the development of policies and programs which facilitate aboriginal engagement and build opportunities and capacity for aboriginal people.¹⁰

In this designation process, the Crown will be delegating the procedural aspects of its duty to consult to a designated transmitter. This duty must be fulfilled, honourably and adequately. Therefore, how the Board evaluates an applicant's proposed plan and ability to carry out aboriginal consultations should reflect the gravity of this legal obligation.

PRFN proposes that the ability to carry out consultation with aboriginal people be a pass/fail requirement. An applicant must demonstrate through their proposed consultation plans that

¹⁰ Ontario's, Ministry of Aboriginal Affairs for example, has developed the New Relationships Fund which assists First Nations and Metis communities to build fundamental consultation and engagement capacity so that they can better engage with governments and the private sector on lands and resources issues.

it has the ability, capacity and resources to carry out the Crown's delegated duty. If their proposal is deficient in this regard or indeed, the applicant fails to submit a plan for consultation, then its application would be disqualified from the process.

PRFN acknowledges that there is no requirement for the applicants to have carried out consultation with aboriginal communities prior to filing applications. PRFN further acknowledges the advice provided at the all-parties meeting on March 23, 2012, that it will only be upon designation that the procedural aspects of the Crown's duty to consult will be delegated to the successful applicant. Therefore it would be impossible for the Board to evaluate pre-filing "C"onsultation.

In light of the foregoing, PRFN submits that the Board should evaluate prospective plans in light of their potential for success and as such should have regard to the following factors which PRFN submits should be added to those suggested by Board Staff on this issue, but under a separate "Aboriginal Consultation" section:

- what experience does the applicant have in carrying out aboriginal consultation; what projects, with what communities?
- what is the track record of the applicant in carrying out aboriginal consultation and what is the source of that evidence?
- does the applicant have aboriginal consultation expertise in-house or does it need to contract for this expertise?
- if the applicant is contracting out, who does the applicant propose to use to facilitate aboriginal consultation – what is their experience and track record? What references can be provided?
- does the applicant have any history or connection with the aboriginal communities involved?
- what resources is the applicant devoting to its aboriginal consultation plan?
- how detailed is the plan for aboriginal consultation and does it reflect an appreciation for the different aboriginal communities involved and their respective levels of interest/impact?

- what is the proposed time frame for aboriginal consultation? Has the applicant incorporated/established an understanding for the “ongoing” aspect of the duty to consult with the aboriginal communities?
- what (if any) is the applicant’s plan for long term engagement with the aboriginal communities?

PRFN would also note that the starting point for effective consultation is the proper identification of the communities potentially impacted. On this point, PRFN would draw the Board’s attention to the letter dated January 27, 2012 from Chief Michano to the Board wherein Chief Michano advises that the list of potentially affected aboriginal communities provided by the Crown to the OPA was not accurate. The development of the East-West Tie will take place solely within the Robinson Superior Treaty area. As such, only Nations within this Treaty area will be potentially impacted. For reference, PRFN has attached the Robinson Superior Treaty including the map identifying the Treaty area to its submissions as Schedule “A”¹¹. To date, PRFN has not received a response to the concerns raised in Chief Michano’s letter. PRFN recognizes that it is not the Board’s responsibility to identify potentially affected aboriginal communities; however, PFRN submits that given the importance of consultation to the process, the Board would want to ensure the accuracy of this list. It would therefore be of assistance in this process if a response to Chief Michano’s letter was obtained through the OPA or otherwise, and an accurate list provided.

Use of Decision Criteria

5. Should the Board assign relative importance to the decision criteria through ranking, groupings or weightings? If yes, what should those rankings, grouping or weightings be?
6. Should the Board articulate an assessment methodology to apply to the decision criteria? If yes, what should this methodology be?

¹¹ PRFN has asserted aboriginal title to land affected by the development of the East-West Tie.

PRFN submits that whatever methodology is adopted, the process for and mechanism of the Board's evaluation be open, fair and transparent. PRFN's submissions in respect of the "Use of Decision Criteria" have been made in the context of its submissions on Issues 1-4 above.

Filing Requirements

7. What additions, deletions or changes should be made to the Filing Requirements (G-2010-0059)?

PRFN has noted possible amendments to the filing requirements in the context of its submissions made on Issues 1-4 above.

8. May applicants submit, in addition or in the alternative to plans for the entire East-West Tie Line, plans for separate segments of the East-West Tie Line?

This does not fall within the scope of PRFN's intervention, save that PRFN's submissions would similarly apply to any separate segments proposed by an applicant.

Obligations and Milestones: Issues 9-12

9. What reporting obligations should be imposed on the designated transmitter (subject matter and timing)? When should these obligations be determined? When should they be imposed?
10. What performance obligation should be imposed on the designated transmitter? When should these obligations be determined? When should they be imposed?
11. What are the performance milestones that the designated transmitter should be required to meet: for both the development period and the construction period? When should these milestones be determined? When should they be imposed?

12. What should the consequences be of failure to meet these obligations and milestones?
When should these consequences be determined? When should they be imposed?

PRFN is mindful of the scope of its intervention in this proceeding and therefore offers limited submissions as to how failure to comply with aboriginal consultation and participation proposals may impact the East-West Tie.

Aboriginal Participation Milestones and Reporting

On the matter of aboriginal participation, the applicant need only submit a plan for proposed participation and not any actual arrangement or agreements with aboriginal parties. It is therefore critical that the applicant follow through in practice on what they have committed to in theory. There must be real and adequate enforcement mechanisms to ensure compliance.

PRFN submits that the designated transmitter must be able to demonstrate that it has substantially fulfilled its participation plan and that the Board will be required to consider the transmitter's compliance with the participation plan either before or during the Leave to Construct ("LTC") Application. Therefore, before the transmitter brings its LTC Application, it should have in hand, a duly executed Memorandum of Understanding or a Letter of Intent and/or other agreements with its aboriginal partners.

In the event the transmitter has failed to fulfill its proposed aboriginal participation plan due to some incompetence or failure within the transmitter's control then the transmitter would not be granted Board approval to proceed with construction; it may risk losing its designation; and it may risk some or all of its development costs.

Where a transmitter has been unable to fulfil the aboriginal participation plan due to circumstances beyond its control, then PRFN suggests that the Board hear evidence as to why this is the case.

In order to be as efficient as possible, PFRN does not object to having the Board consider compliance with the aboriginal participation plan within the LTC Application. Given the potential risks however, in the event non-compliance is found, it may be in the interests of all parties and the rate payers to have this assessment done separately, in advance of the LTC Application.

PRFN understands that the designated transmitter would be reporting to the Board as a matter of course throughout development. Updates on the progress of fulfilling the aboriginal participation plan should form part of the regular reporting schedule. PFRN does not advocate for a special reporting schedule on the aboriginal participation plan which could lead to increased costs for ratepayers, unless circumstances warrant the filing of a special report. Where a report provided to the Board includes an update on the aboriginal participation component, any such report (or applicable portions therein) should also be served on the aboriginal communities involved or impacted and they would have the opportunity to make submissions on any such report.

Aboriginal Consultation Milestones and Reporting

PRFN submits that with respect to reporting on consultation activities, this could also be done in the course of regular reporting to the Board. The communities involved in consultation should be provided with copies of the transmitter's reports on consultation activities and be allowed to make submissions with respect to them.

As with the aboriginal participation component, it is critical here as well that the transmitter be able to demonstrate substantial compliance with its consultation plan either within the LTC Application or immediately beforehand. Regardless of when this review occurs, the Board will need to assess compliance, that is, the adequacy of consultation **even if consultation may be carried out elsewhere** (i.e. under an Environmental Assessment process). The Board will ultimately designate a transmitter based on its evaluation of the plans submitted. The Board is therefore vested with the jurisdiction to monitor compliance with the plan submitted and to enforce compliance where needed. It would be inappropriate for the Board to monitor compliance with all other aspects of the designated transmitter's

plan except consultation, leaving the aboriginal community(ies) having to search for remedies elsewhere. Where the designated transmitter fails to substantially comply with their proposed consultation plan, PRFN submits that the following consequences are appropriate:

- The Board not grant approval to proceed with construction;
- Possible revocation of designation unless compliance met within certain timeframes
- No automatic recovery of part or all of development costs

Where it is alleged that the failure to complete the consultation plan was outside of the transmitter's control, the Board would hear evidence as to why this is the case and issue the appropriate order.

Consequences of Designation: Issues 13-16

13. On what basis and when does the Board determine the prudence of budgeted development costs?

14. Should the designated transmitter be permitted to recover its prudently incurred costs associated with preparing its application for designation? If yes, what accounting mechanism(s) are required to allow for such recovery?

15. To what extent will the designated transmitter be held to the content of its application for designation?

16. What costs will a designated transmitter be entitled to recover in the event that the project does not move forward to a successful application for leave to construct?

Issues 13, 14, and 16 are outside of the scope of PRFN's intervention.

PFRN will address the matter of weight afforded to construction costs in the context of Issue #15 as this is directly relevant to aboriginal consultation.

PRFN submits that virtually no weight can be given to the budget advanced by a transmitter for proposed construction costs. Construction costs will be based on a route which, inevitably, will cross a number of First Nations' traditional territories, including territory that is the subject of PRFN's aboriginal title claim. PRFN submits that there has not been consultation with respect to routes for the East West Tie. Accordingly, any construction costs advanced by a transmitter in their plan are purely speculative. It may well be that the proposed route runs through sacred burial grounds or over a unique medicine gathering site that grows only in that area, in which case, that route will not be viable. As such, one can not know what the route will be without first conducting consultation with the potentially impacted communities. Consequently, PRFN proposes that little or no weight be assigned to construction costs by the Board.

Process: Issues 17-23

17. The Board has stated its intention to proceed by way of a written hearing and has received objections to a written hearing. What should the process be for the phase of the hearing in which a designator transmitter is selected (phase 2)?
18. Should the Board clarify the roles of the Board's expert advisor, the IESO, the OPA, Hydro One Networks Inc. and Great Lakes Power Transmission LP in the designation process? If yes, what should those roles be?
19. What information should Hydro One Networks Inc. and Great Lakes Power Transmission LP be required to disclose?
20. Are any special conditions required regarding the participation in the designation process of any or all registered transmitters?

21. Are the protocols put in place by Hydro One Networks Inc. and Great Lakes Power Transmission LP, and described in response to the Board's letter of December 22, 2011, adequate, and if not, should the Board require modification of the protocols?
22. Given the EWT LP shares a common parent with Great Lakes Power Transmission LP and Hydro One Networks Inc., should the relationship between EWT LP and each of the Great Lakes Power Transmission LP and Hydro One Networks Inc. be governed by the Board's regulatory requirements (in particular the Affiliate Relationships Code) that pertain to the relationship between licensed transmission utilities and their energy service provider affiliates?
23. What should be the required date for filing an application for designation?

PRFN agrees with the Board staff submissions on Issues 18-21 inclusive and 23. PFRN has no position on Issue 22 as it is outside the scope of its intervention.

With respect to Issue 17, PRFN agrees substantially with Board Staff's submission as to process with the following caveat.

PRFN submits it will be necessary to properly identify the scope of consultation BEFORE the plans for designation are filed. There is a substantial risk of inefficiency in this process if applicants file, for instance, consultation plans, which contemplate engagement with aboriginal communities who are not potentially impacted by the development of the East West Tie. For this reason, PRFN submits that this discrete matters should be predetermined by the Board either at an oral hearing or through written submissions once the parties have had an opportunity to consider the OPA's consultation record and once a response to Chief Michano's January 27, 2012 correspondence is obtained.

All of which is respectfully submitted to the Board, this 7th day of May. 2012

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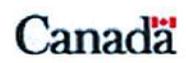
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SCHEDULE "A"



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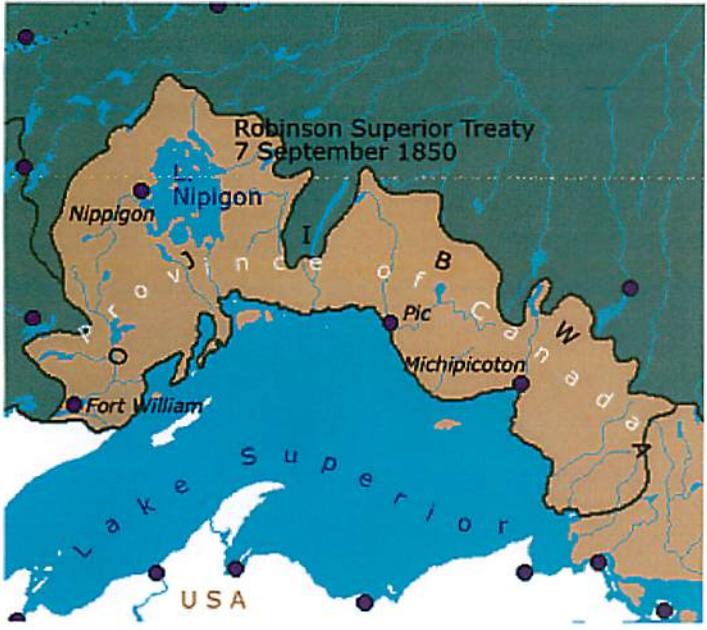
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Map of the Area of the 7 September 1850 Treaty [Robinson-Superior Treaty]



Date Modified: 2004-02-17

Copy of the Robinson Treaty Made in the Year 1850 with the Ojibewa Indians of Lake Superior Conveying Certain Lands to the Crown¹

(Copy.)

THIS AGREEMENT, made and entered into on the seventh day of September, in the year of Our Lord one thousand eight hundred and fifty, at Sault Ste. Marie, in the Province of Canada, between the Honorable WILLIAM BENJAMIN ROBINSON, of the one part, on behalf of HER MAJESTY THE QUEEN, and JOSEPH PEANDECHAT, JOHN IUINWAY, MISHE-MUCKQUA, TOTOMENCIE, Chiefs, and JACOB WARPELA, AHMUTCHIWAGABOU, MICHEL SHELAGESHICK, MANITSHAINSE, and CHIGINANS, principal men of the OJIBEWA Indians inhabiting the Northern Shore of Lake Superior, in the said Province of Canada, from Batchewana Bay to Pigeon River, at the western extremity of said Lake, and inland throughout that extent to the height of land which separates the territory covered by the charter of the Honorable the Hudson's Bay Company from the said tract, and also the Islands in the said Lake within the boundaries of the British possessions therein, of the other part, witnesseth:

THAT for and in consideration of the sum of two thousand pounds of good and lawful money of Upper Canada, to them in hand paid, and for the further perpetual annuity of five hundred pounds, the same to be paid and delivered to the said Chiefs and their Tribes at a convenient season of each summer, not later than the first day of August at the Honorable the Hudson's Bay Company's Posts of Michipicoton and Fort William, they the said chiefs and principal men do freely, fully and voluntarily surrender, cede, grant and convey unto Her Majesty, Her heirs and successors forever, all their right, title and interest in the whole of the territory above described, save and except the reservations set forth in the schedule hereunto annexed, which reservations shall be held and occupied by the said Chiefs and their Tribes in common, for the purpose of residence and cultivation, and should the said Chiefs and their respective Tribes at any time desire to dispose of any mineral or other valuable productions upon the said reservations, the same will be at their request sold by order of the Superintendent General of the Indian Department for the time being, for their sole use and benefit, and to the best advantage.

And the said William Benjamin Robinson of the first part, on behalf of Her Majesty and the Government of this Province, hereby promises and agrees to make the payments as before mentioned; and further to allow the said chiefs and their tribes the full and free privilege to hunt over the territory now ceded by them, and to fish in the waters thereof as they have heretofore been in the habit of doing, saving and excepting only such portions of the said territory as may from time to time be sold or leased to individuals, or companies of individuals, and occupied by them with the consent of the Provincial Government. The parties of the second part further promise and agree that they will not sell, lease, or otherwise dispose of any portion of their reservations without the consent of the Superintendent General of Indian Affairs being first had and obtained; nor will they at any time hinder or prevent persons from exploring or searching for mineral or other valuable productions in any part of the territory hereby ceded to Her Majesty as before mentioned. The parties of the second part also agree that in case the Government of this Province should before the date of this agreement have sold, or bargained to sell, any mining locations or other property on the portions of the territory hereby reserved for their use and benefit, then and in that case such sale, or promise of sale, shall be forfeited, if the parties interested desire it, by the Government, and the amount accruing therefrom shall be paid to the tribe to whom the reservation belongs. The said William Benjamin Robinson on behalf of Her Majesty, who desires to deal liberally and justly with

all Her subjects, further promises and agrees that in case the territory hereby ceded by the parties of the second part shall at any future period produce an amount which will enable the Government of this Province without incurring loss to increase the annuity hereby secured to them, then, and in that case, the same shall be augmented from time to time, provided that the amount paid to each individual shall not exceed the sum of one pound provincial currency in any one year, or such further sum as Her Majesty may be graciously pleased to order; and provided further that the number of Indians entitled to the benefit of this Treaty shall amount to two thirds of their present numbers (which is twelve hundred and forty) to entitle them to claim the full benefit thereof, and should their numbers at any future period not amount to two thirds of twelve hundred and forty, the annuity shall be diminished in proportion to their actual numbers.

Schedule of Reservations made by the above named subscribing Chiefs and principal men.

FIRST - Joseph Pean-de-chat and his Tribe, the reserve to commence about two miles from Fort William (inland), on the right bank of the River Kiminitiquia thence westerly six miles, parallel to the shores of the lake; thence northerly five miles; thence easterly to the right bank of the said river, so as not to interfere with any acquired rights of the Honorable Hudson's Bay Company.

SECOND - Four miles square at Gros Cap, being a valley near the Honorable Hudson's Bay Company's post of Michipicoton, for Totominai and Tribe.

THIRD - Four miles square on Gull River, near Lake Nipigon, on both sides of said river, for the Chief Mishimuckqua and Tribe.

Signed, sealed and delivered at Sault Ste. Marie, the day and year first above written in presence of,	W. B. ROBINSON,	his	
	JOSEPH PEAN-DE-CHAT,	+ mark.	[L. S.]
	GEORGE IRONSIDE, <i>S. J. Affairs.</i>	his + mark.	[L. S.]
	ARTHUR F. COOPER, <i>Capt. Com. Rifle Brig.</i>	his + mark.	[L. S.]
	H. M. BALFOUR, <i>Ensl. Lieut. Rifle Brig.</i>	his + mark.	[L. S.]
	JOHN SWANSTON, <i>C. P. Hon. Hud. Bay Co.</i>	his + mark.	[L. S.]
	GEORGE JOHNSON, <i>Interpreter.</i>	his + mark.	[L. S.]
	F. W. KEATING,	his + mark.	[L. S.]
		his + mark.	[L. S.]
		his + mark.	[L. S.]

¹ From: <http://www.aadnc-aandc.gc.ca/eng/1100100028978> accessed May 1, 2012.