

**Hydro One Networks Inc.**  
7<sup>th</sup> Floor, South Tower  
483 Bay Street  
Toronto, Ontario M5G 2P5  
www.HydroOne.com

Tel: (416) 345-5393  
Fax: (416) 345-6833  
Joanne.Richardson@HydroOne.com



**Joanne Richardson**  
Director – Major Projects and Partnerships  
Regulatory Affairs

BY COURIER

October 5, 2018

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
Suite 2700, 2300 Yonge Street  
P.O. Box 2319  
Toronto, ON M4P 1E4

Dear Ms. Walli:

**EB-2017-0364 – Hydro One Networks Inc.’s Section 92 – Lake Superior Link Project  
Application – Undertaking Response**

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Please find enclosed response to undertakings JT2.1 and JT3.1 from the Oral Hearing held October 3, 2018 and October 4, 2018 in regards to the above noted proceeding.

This filing has been submitted electronically using the Board's Regulatory Electronic Submission System (RESS) and two (2) hard copies will be sent via courier.

Sincerely,

ORIGINAL SIGNED BY PASQUALE CATALANO ON BEHALF OF JOANNE  
RICHARDSON

Joanne Richardson

1 **UNDERTAKING – J2.1**

2  
3 **Reference**

4 N/A

5  
6 **Undertaking**

7 To file the e-mail re: the publicly available information.

8  
9 **Response**

10 **From:** Testa, Antonia (MECP) [<mailto:Antonia.Testa@ontario.ca>]

11 **Sent:** Thursday, September 27, 2018 10:22 AM

12 **To:** HOPPER Bruce

13 **Cc:** Evers, Andrew (MECP); Cross, Annamaria (MECP)

14 **Subject:** Lake Superior Link - MECP Responses to Hydro One's Questions from the Aug  
15 21, 2018 Meeting

16 \*\*\* Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click  
17 links from unknown senders or unexpected email. \*\*\*

18 Hello Bruce,

19 I am following up with you regarding the two questions proposed to the MECP during  
20 our August 21, 2018 meeting:

- 21 1. Issuing a Notice of Commencement for the EA.

22 There is no explicit prohibition in the Environmental Assessment Act to prevent a  
23 proponent from issuing a Notice of Commencement for the EA prior to receiving  
24 a ToR decision. However, as the MECP communicated to you during the  
25 August 21, 2018 meeting, we do not recommend this practice for some of the  
26 following reasons:

- 27
- 28 • This presupposes a Minister's statutory decision.
  - 29 • It can be confusing to stakeholders who have been participating in the EA  
30 process. For example the stakeholder may have outstanding  
31 comments/concerns with the ToR and would like to see the outcome of the ToR  
32 application before being engaged in consultation on the EA.
  - 33 • If the Minister decides to approve, he may do so with amendments. These  
34 amendments could impose changes to the ToR which has the potential to effect  
35 any work done on the EA that would have commenced prior to receiving ToR  
36 decision. This may cause further delays.

36 The MECP is committed to working with Hydro One to facilitate the preparation,  
37 formal submission and review of the EA. The MECP does not recommend issuing  
38 a Notice of Commencement for the EA prior to receiving a ToR decision. If  
39 Hydro One does decide to proceed with issuing a Notice of Commencement for  
40 the EA, the wording in the notice should clearly state that Hydro One has not  
41 received ToR approval and that the ToR is currently under review.

1           2. Review of the NextBridge East West Tie draft EA.

2           We can confirm that a copy of the draft EA for the NextBridge's East West Tie  
3           project is part of the public file for this project. You can make a request to review  
4           the public file. To do so, please contact Adam Wright at (416) 314-3352 or by  
5           email at [adam.wright@ontario.ca](mailto:adam.wright@ontario.ca). Adam is the Special Project Officer assigned to  
6           the NextBridge East West Tie file and he can arrange a time with you to come in  
7           and review the file.

8           If you have any further questions, please feel free to contact me.

9           Cheers,

10          Antonia

11          **Antonia Testa** | Special Project Officer

12          Environmental Assessment Services | Environmental Assessment and Permissions  
13          Branch

14          **Ministry of the Environment, Conservation and Parks** | 135 St. Clair Ave. W, 1<sup>st</sup>  
15          Floor, Toronto ON M4V 1P5

16          T: 416.325.5500 | F: 416.314.8452 | E: [antonia.testa@ontario.ca](mailto:antonia.testa@ontario.ca)



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**UNDERTAKING – J3.1**

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**Reference**

**Undertaking**

To provide the letter requested by Ms. Strachan.

**Response**

See Attachment 1

July 25, 2018

VIA EMAIL

Derek Chum, Vice President, Indigenous Relations  
Hydro One Networks, Inc.  
483 Bay Street, TCT6 South Tower  
Toronto, ON  
M5G 2P5

Dear Mr. Chum:

**Re: Rescheduling Meeting between Métis Nation of Ontario and Hydro One Senior Leadership and Holding Initial Meeting for Information Purposes**

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We are counsel to the Métis Nation of Ontario (“MNO”) in relation to Hydro One’s proposed Lake Superior Link Transmission Line Project (the “Project” or “LSL”).

A meeting was scheduled on July 16, 2018 between the MNO and Hydro One to discuss how to begin to move forward with a new relationship, both generally and specifically with reference to Hydro One’s LSL. Unfortunately, this meeting—meant to include both Hydro One and MNO’s senior leadership—did not occur because the Chief Executive Officer of Hydro One, who was necessary to the meeting, was dismissed from his position just three days prior. This meeting—that Hydro One has committed to in writing—remains outstanding. It is necessary to reschedule this meeting as soon as possible because the systemic biases and challenges that continue to plague the MNO-Hydro One relationship remain unresolved. Our client looks forward to this meeting being rescheduled as soon as possible.

Pending this meeting being rescheduled, the MNO proposes that an initial meeting with yourself and other relevant members of Hydro One’s Indigenous Relations team, which would have the objective of providing information to Hydro One about the MNO, its consultation structure, and the rights-bearing Métis communities the MNO represents. This initial meeting would focus on the communities and Métis rights and claims impacted by the LSL: the Northern Lake Superior Métis Community and the Sault Ste Marie and Environs Métis Community. These two Communities are represented by Regional Consultation Committees (“RCCs”). Representatives of these RCCs would attend this meeting, along with MNO staff and legal counsel.

This initial meeting is necessary because it is clear to the MNO that Hydro One has flawed and pre-conceived biases and misinformation about the unique governance structure, rights, and

claims of the MNO in general and the Northern Lake Superior and Sault Ste. Marie and Environs Métis Communities in particular. As well, Hydro One is not up to date on recent advancements in the recognition of Métis rights across the province and in the Project area—which are publicly available and filed in evidence by the MNO before the Ontario Energy Board (“OEB”) in the recent NextBridge motion to dismiss Hydro One’s leave to construct application for the Project. The MNO hopes that Hydro One has now taken the time to review these documents carefully.

The MNO believes that it is critical that the right foundation is built for consultation and a new relationship—one that is not based on the incorrect assumptions or misinformation that the MNO has seen in recent months. Until these systemic biases and challenges are addressed, Hydro One cannot meaningfully discharge procedural aspects of the Crown’s duty to consult with respect to the LSL or any other project it is pursuing. Our client recognizes it has corollary obligations in relation to the Crown’s duty, however, it will not participate in a consultation process where the proponent has already pre-determined that Métis communities, along with Métis rights and claims, are “less than” other Indigenous groups, without the proponent even understanding what those rights and claims are. Moreover, the MNO will not participate in a process that is nothing more than window dressing because Hydro One is coming into it with a “closed mind” and will not be respectful of Métis rights and claims in an attempt to curry favour with proximate First Nations, which it continues to believe are more important to its interests than the MNO.

In addition, at this meeting, it would be helpful to discuss further misunderstandings that Hydro One staff seem to operate under with respect to the MNO’s governance structure relating to economic participation. One example of such misinformation regarding the MNO’s governance structure was a statement made by a Senior Manager of Indigenous Relations for Hydro One, Ms. Christine Goulais, on the record at the OEB recently. Ms. Goulais stated that the Project would realize certain tax benefits by offering six First Nations 34% of the LSL.<sup>1</sup> Ms. Goulais conveyed Hydro One’s understanding that such benefits are tied exclusively to partnering with First Nations,<sup>2</sup> because “First Nations are tax-exempt. My understanding is that the Métis are not.”<sup>3</sup>

While it is true that the MNO is not tax-exempt in the way that an *Indian Act* band is, the MNO does enjoy special tax treatment as a not-for-profit corporation without share capital.<sup>4</sup> As a not-for-profit, the MNO is largely tax exempt. Furthermore, the MNO has created an arms-length trust, called Infinity Trust, of which the MNO is the sole beneficiary. Infinity Trust owns 99.9% of Infinity Investments, which participates in projects on a for-profit basis.<sup>5</sup> Infinity Investments

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<sup>1</sup> May 17, 2018 OEB Technical Conference, transcript p 144, line 17-18

<sup>2</sup> May 17 transcript p 144, lines 23-24

<sup>3</sup> May 17 transcript p 147, line 1

<sup>4</sup> The Métis Nation of Ontario Secretariat Inc. is incorporated as the legal and administrative arm of the Métis Nation of Ontario under the Ontario *Corporations Act*, RSO 1990, c. C 38.

<sup>5</sup> A diagram of this general structure is available on the [MNO’s website](#).

is currently involved in a number of partnerships and joint ventures in the province, including energy projects.<sup>6</sup>

Assets owned by the Infinity Trust (including those held through Infinity Investments), once allocated to the beneficiary (MNO), are taxed in the beneficiary's hands. As a not-for-profit, therefore, Trust assets allocated to the MNO are largely tax exempt.<sup>7</sup> There is an existing mechanism in place that allows the MNO—through an arm's length economic development structure—to legally participate in infrastructure and other projects as well as accrue tax benefits. As such, a transmission project would also accrue savings for the ratepayer by offering equity participation to the MNO. Simply put, the MNO's partnership in a transmission project would offer similar saving to the ratepayer, as has been demonstrated to the OEB previously.

Clearly, if Hydro One officials had bothered to engage with the MNO prior to filing its LSL application, this critical information, along with clarity on the strength of Métis rights and claims, would have come to light. Unlike other Indigenous groups, the MNO has not had been able to have a meeting to discuss these sort of economic participation opportunities with Hydro One until very recently. Again, from the MNO's perspective, we can only assume that because of the systemic biases described above, Hydro One did not consider any discussion with the MNO to be worth its time. Instead, it pursued a strategy that insulted our client, in writing, and, made it clear that from Hydro One's perspective Métis rights and claims are “less than.”

Irrespective of what may be the ultimate outcome in relation to the LSL, our client believes general information sharing and relationship building between the MNO and Hydro One is desperately needed. As a transmitter that operates throughout the province, Hydro One must have a meaningful and respectful relationship with the MNO. As noted above, the MNO believes the current overall relationship has systemic biases and challenges, which must be overcome. In the MNO's opinion, what has happened with respect to the LSL are symptoms of a much larger MNO-Hydro One relationship problem that has deteriorated in recent years.

We believe an initial general information meeting amongst MNO officials and legal counsel—in preparation for the committed-to meeting between the MNO and Hydro One's senior leadership—would be helpful. At this meeting, we can discuss Métis rights and interests in Ontario, the MNO's consultation model as well as what the MNO considers to be system biases and challenges in the MNO-Hydro One relationship. Flowing from this meeting, we would hope that Hydro One's new senior management (once appointed) would be briefed in order to then hold the President-to-President meeting Hydro One has already committed to in writing. In advance of this initial meeting, we believe the development of a mutually agreeable agenda is necessary. Colin Salter from our firm will be reaching out to you to initiate this discussion with

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<sup>6</sup> A list of some of the current ventures that Infinity Investments is involved in are listed on the [MNO's website](#).

<sup>7</sup> This is a general simplification.

respect to an agenda. In addition, we wish to make clear that there are certain subject matters that the MNO is unable to discuss with Hydro One due to contractual obligations with NextBridge in relation to the proposed East West Tie Project. Specifically, the MNO cannot engage in any negotiations or discussions whatsoever (including proposals from Hydro One) on any potential economic participation for the MNO in the LSL.

Related to this, and as we recently outlined at the OEB, the MNO has and continues to rely on the commitments made by the Crown to Indigenous groups with respect to new transmission projects. Based on these commitments, we have arrived at an accommodation arrangement, which included economic participation components, with NextBridge in relation to the East West Tie Project. This agreement precludes us from discussing accommodation measures in relation to the LSL with Hydro One. Courts have been clear that consultation without any potential of accommodation is no consultation at all. As such, we want to make it clear that this initial meeting should not be considered consultation given the position the MNO now finds itself in based on its reliance on the Crown's commitments. With that being said, the MNO is not precluded from engaging in overarching MNO-Hydro One relationship discussions with respect to Métis consultation and accommodation generally in Ontario.

If Hydro One is willing to participate in this initial meeting, please contact Joanne Meyer, Chief Operating Officer at the MNO to identify a mutually agreeable date, time and location.

Yours sincerely,



Jason Madden

c.c.: Margaret Froh, President, MNO

MNO Lakehead/Nipigon/Michipicoten Regional Consultation Committee including the Thunder Bay Métis Council, the Greenstone Métis Council, and the Superior Northshore Métis Council

MNO Historic Sault Ste. Marie Regional Consultation Committee including the Historic Sault Ste. Marie Métis Council and the North Channel Métis Council

Joanne Meyer, Chief Operating Officer, MNO