

**N'Daki Menan Negotiation Office
Teme-Augama Anishnabai/Temagami First Nation**

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Wednesday, July 21, 2010

Ontario Energy Board
P.O. Box 2319
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Kirsten Walli, Board Secretary

**Re: Northgate Minerals *Leave to Construct* Transmission Facilities application,
Young-Davidson Power Project: Transmission line from Matachewan
Junction to the Young-Davison Project Site, Cairo township, District of
Temiskaming, *Traditional Territory of the Teme-Augama Anishnabai*.**

Although your providing an opportunity for the TFN/TAA to respond to Northgate's letter of July 6th, 2010, is appreciated, with respect, the period provided is wholly inadequate for us to apply a reasonable and responsible level of diligence to this case.

As mentioned previously, the ability of the TFN/TAA to properly address the many and varied concerns, that naturally accompany a project the size and scope of the proposed Young/Davidson mine, is severely hampered by a lack of capacity.

This burden, inequitably imposed on the First Nation by the Provincial Crown, via its many departments and Ministries, aided by a massive company such as Northgate, is made all the more apparent by the July 6th letter from a Law Firm written on behalf of the company.

We are in no way capable of responding to a legal letter, drafted by a lawyer, in a way that would ensure that any notion of a "level playing field" may be achieved here. Quite frankly, it would seem that any reasonable person would be inclined to conclude that the honour of the Crown and its duty to consult with First Nations regarding such projects, effectively amounts to little more than legal tricks and intimidation.

Regarding the duty to consult in this case, notwithstanding the Northgate lawyer's insistence that this has been satisfied, we likewise must insist that the claimed level of "consultation" regarding this project has been utterly inadequate and is in no way satisfactory. There is a massive project

being undertaken on our Ancestral Territory, and it is not reasonable to assume that it may be properly and responsibly examined within the effective timeframe. We have been asked to review, assess and reasonably respond to technical matters. Civil engineering, electrical engineering, hydrology, and environmental science all seem to be involved in this proposal. We have been provided with the technical specifications, but unless we have this training, or can retain those experts to review and advise us on those aspects of the proposal, the consultation is meaningless. Furthermore, a question and answer session with the proponent of the project, or their retained experts, is not an impartial or reasonable alternative. We feel strongly that this does not, and cannot, constitute the fulfillment of the Crown's constitutional duty to consult with our First Nation. It simply is not in keeping with the honour of the Crown.

It should also be emphasized that consultation has to be with the whole of the First Nation, not simply notice given to an administrator or elected official. The Band Council needs to take these matters back to the community, and the response to the consultation efforts must come from the community. Clearly, sufficient time is a factor towards completing this process, even after having good expert advice, and those costs involved, resources must be put towards Community meetings also.

We must object to a number of claims and positions expressed in the July 6th letter. The notion of the distance of the TFN reserve from the mine site highlights significant ignorance of the historical reality of the Teme-Augama Anishnabai. Our people had no say in the creation of the Bear Island Reserve, indeed, we petitioned against it. The reserve was created by an Order in Council without our being consulted. The notion that the Crown may unilaterally "create" a Reserve for the Temagami, against our wishes and in an arbitrary location, and then suggest that its distance from a mine project is evidence of our diminished interest in our land is preposterous and quite offensive. The fact is that our 10 000 sq. km claim within N'Daki Menan (our homeland) remains unsettled. The Supreme Court has acknowledged the precise boundary of N'Daki Menan, it has acknowledged our history within our territory from a time before we were first mentioned in the records of the European explorers in the early years of the seventeenth century. The Supreme Court, and our adherence to the Robinson Huron Treaty of 1850 acknowledged the Crown's outstanding fiduciary obligations. As a part of a settlement, potential reserve lands have been "set aside". These lands are approx. 80 km from the mine site, however, the draft settlement agreement specifies that we have yet to select up to 14 areas, (totalling 3 sq. mi.), within N'Daki Menan. These lands may be selected within or immediately adjacent to the areas concerned as the mine location is within traditional family lands of our First Nation.

The fact that the project areas concerned are in our northern territory and near the boundary of N'Daki Menan, in no way lessens our interests in the area, and certainly one ought not conclude that to simply provide notice should somehow be equated with satisfactory consultation, the notion seems utterly nonsensical. By way of example, the fact that the Arctic lies within Canada's northern boundaries and far from the most heavily populated region does not diminish Canada's territorial interest in the Arctic!

The suggestion that we must have either "chose not to engage" in this process, or did not engage because we had no concerns, implies exhaustive options, when that is not the case, indeed, in spite of capacity issues, we chose to engage because we are concerned. However, our best efforts

to participate should also be met with the best, and most honourable efforts of the Crown to fulfill its constitutional duties. We do not believe that has been the case so far.

Perhaps we could suggest some potential pathways for a resolution of this matter.

- i) We could commit to a response within 30 days of an agreement of a process.
- ii) We would require funding to retain appropriate expert consultants and carry out proper community consultations.
- iii) As Northgate is not in agreement with our position, we could ask to meet with them and attend the OEB, or have both parties make formal submissions to you.

Again, we must insist that appropriate time be provided so that we may do our due diligence regarding this project.

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Yours truly

Chief Roxane Ayotte, Temagami First Nation

Chief John McKenzie, Teme-Augama Anishnabai

cc Northgate Minerals

cc Chris Bentley: Minister of Aboriginal Affairs

cc Doug Carr: Assistant Deputy Minister and Secretary for Aboriginal Affairs