

**ONTARIO ENERGY BOARD**

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B (“*Act*”);

**AND IN THE MATTER OF** an application by Hydro One Networks Inc. for an Order granting leave to construct to upgrade 70 km of transmission line facilities between the Lambton and Longwood Transformer Stations.

**NOTICE OF MOTION**

**TAKE NOTICE THAT** Chippewas of the Thames First Nation (“COTTFN”) will make a motion pursuant to Rules 4.03, 8.01 and 23.05 of the *Ontario Energy Board Rules of Practice and Procedure*.

**PROPOSED METHOD OF HEARING:** COTTFN proposes that the Motion be heard in writing.

**THE MOTION IS FOR** an Order or Orders of the Board:

1. granting COTTFN intervenor status in the EB-2012-0082 proceeding; and
2. amending the timetable established by the Board in Procedural Order No. 1 as follows:
  - (a) COTTFN shall request relevant information from Hydro One Networks Inc. (“Hydro One”) by means of written interrogatories filed with the Board and delivered to Hydro One on or before **June 20, 2012**;
  - (b) Hydro One shall, no later than **June 29, 2012**, file with the Board and deliver to all intervenors a complete response to COTTFN’s interrogatories;

- (c) Hydro One shall file with the Board and copy to all intervenors its written submissions by **July 4, 2012**;
  - (d) Intervenors and Board staff may file with the Board and copy to all other intervenors their written submissions on all matters by **July 18, 2012**; and
  - (e) Hydro One shall file its reply submission with the Board and copy to all intervenors by **July 23, 2012**;
- 3. granting costs of this motion to COTTFN; and
  - 4. such further or other relief as the Ontario Energy Board deems just.

**FACTS:**

- 5. Members of COTTFN identify themselves as Anishinaabeg people and descend from the Ojibway Nation. Their present reserve lands were established in southwestern Ontario prior to Confederation. COTTFN lays claim to a vast traditional territory encompassing much of present day southern Ontario, including the land on which Hydro One's transmission lines between the Lambton and Longwood Transformer Stations are located.
- 6. COTTFN asserts Aboriginal and Treaty rights on its reserve and in its traditional territory.
- 7. COTTFN's reserve is located in very close proximity to the Longwood Transformer Station. Hydro One owns transmission lines located on COTTFN's reserve. There appears to be some relationship between the proposed Project and the transmission lines crossing COTTFN's reserve. Hydro One's lease for its transmission lines located on COTTFN's reserve has expired and must be re-negotiated.
- 8. In an August 12, 2011 letter to Hydro One cited in the Application, the Ministry of Energy identified COTTFN as having known or asserted Aboriginal or Treaty rights in the proposed Project area.

9. Hydro One initially made COTTFN aware of the proposed upgrades in Fall 2011 as part of the environmental assessment process for the proposed Project.
10. COTTFN has done a pre-feasibility study for a 10 MW solar power project, and it has expressed its interests in potentially developing the project to Hydro One and the Ontario Power Authority.
11. COTTFN sent Hydro One a letter on February 6, 2012 in respect of the Class Environmental Assessment for the proposed Project indicating that the Project may adversely impact its Aboriginal and Treaty rights, and requesting Hydro One to contact its consultation staff to discuss a review of the proposed Project.
12. On March 28, 2012, Hydro One filed an Application and supporting evidence with the Ontario Energy Board ("Board") for an Order or Orders to grant leave to construct to upgrade approximately 70 km of transmission facilities between the Lambton and Longwood Transformer Stations.
13. In its March 28, 2012 Application Hydro One indicated to the Board that it is carrying out, on behalf of the Ontario Crown, the procedural aspects of the Crown's duty to consult with and, where required, accommodate Aboriginal groups whose Aboriginal and treaty rights may be adversely impacted by the proposed Project. Hydro One indicated in its Application that it had therefore contacted First Nations communities identified by the Ministry of Energy to provide notification of the proposed Project and to extend an offer to meet with Hydro One to discuss the proposed Project in more detail.
14. On April 19, 2012 the Board issued a Notice of Application and Written Hearing for this matter, which, *inter alia*, established a time frame for interested parties to request observer or intervenor status.
15. On May 8, 2012, Ms. Rolanda Elijah, Director, Land and Environment, COTTFN wrote an e-mail to the Board on behalf of COTTFN requesting the Board to grant COTTFN observer status. COTTFN did not immediately seek intervenor status at this time but rather chose to meet with Hydro One and to observe the proceeding to better understand the nature of the proposed Project. It did so because COTTFN has limited financial and

administrative capacity to review and respond to Applications, and Hydro One and/or the Ontario Crown have not provided COTTFN with any financial assistance to carry out the consultation process for the proposed Project.

16. On May 25, 2012, the Board issued Procedural Order No. 1 in which the Board granted COTTFN observer status and established a timeline for the procedural steps in this matter.
17. By way of a May 25, 2012 e-mail from Ashley Jones, Hydro One to Rolanda Elijah, COTTFN, Hydro One indicated that it had only just received COTTFN's February 6, 2012 letter requesting a meeting with Hydro One to discuss the proposed Project.
18. On May 31, 2012, representatives of COTTFN met with representatives from Hydro One to discuss the proposed Project and review in greater detail documents served in the proceeding.
19. Following the May 31, 2012 meeting and after having further reviewed the documents filed by Hydro One in this proceeding, COTTFN determined that it should seek intervenor status to bring key information to the Board's attention in respect of Hydro One's Application for leave to upgrade transmission facilities.
20. COTTFN quickly retained legal counsel, who put the Board on notice on June 8, 2012 that COTTFN would be seeking intervenor status.
21. COTTFN seeks to intervene in this proceeding on both issues before the Board: (1) whether the proposed upgrades to the 70 km of transmission line facilities between the Lambton and Longwood Transformer Stations are in the public interest; and (2) whether the Ontario Crown discharged its duty to consult and, where required, accommodate COTTFN in respect of the proposed Project.

**THE GROUNDS FOR THE MOTION ARE:**

22. COTTFN is an interested party and has an interest in all aspects of the proceeding for two reasons.

23. First, the proposed Project may have direct economic impacts on COTTFN and COTTFN's interests and rights may increase the costs of the Project. As an interested and impacted party, COTTFN has information relevant to the Board's determination of whether the proposed upgrades to the transmission lines are in the public interest.
24. COTTFN would like to request information from Hydro One by means of written interrogatories and make written submissions to the Board on whether:
  - (a) the proposed Project has been designed to ensure that COTTFN will be able to connect its proposed 10 MW solar power project or any other renewable energy project to the transmission grid;
  - (b) the proposed Project's estimated costs take into account the Ontario Government's commitment to reserve a minimum of 10% of remaining capacity for renewable energy projects with significant participation from local or Aboriginal communities, including the costs of connecting COTTFN's proposed solar project to the transmission grid if it is approved;
  - (c) the proposed Project is related to Hydro One's transmission lines located on COTTFN's reserve; and
  - (d) to the extent that they are related, whether the costs of the proposed Project account for Hydro One's need to re-negotiate an expired lease for its transmission lines located on COTTFN's reserve.
25. Issues 22(a) – (d) are before the Board pursuant to s. 96(2) of the *Act*. Hydro One's Application makes it clear that the primary purpose of constructing the upgrades is to add capacity to the transmission system in southwestern Ontario to transmit electricity produced by new, local renewable energy projects.
26. Second, COTTFN asserts that:
  - (a) it has Aboriginal and Treaty rights in the proposed Project area;

- (b) the proposed Project has the potential to adversely impact COTTFN's Aboriginal and Treaty rights;
  - (c) the Ontario Crown's duties to consult and accommodate COTTFN have therefore been triggered by the proposed Project; and
  - (d) the Board cannot issue an Order or Orders granting Hydro One leave to construct without satisfying itself that the Crown's duties have been discharged.
27. COTTFN wishes to make submissions to the Board with respect to whether the Ontario Crown's consultation and accommodation duties have been properly discharged.
28. This motion is made pursuant to Rules 4.03, 8.01, and 23.05 of the *Ontario Energy Board Rules of Practice and Procedure*, and such further and other grounds as counsel may advise and the Board may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

29. Rules 4.03, 8.01, and 23.05 of the *Ontario Energy Board Rules of Practice and Procedure*;
30. May 25, 2012 e-mail from Ashley Jones, Hydro One to Rolanda Elijah, COTTFN;
31. Evidence provided by Hydro One in this proceeding; and
32. Such further and other documents as counsel may advise and the Board may permit.

DATED AT Toronto, Ontario this 13<sup>th</sup> day of June, 2012.



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