

June 13, 2012

VIA E-MAIL AND MAIL

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File No. T88002

Dear Ms. Walli:

**Re: Hydro One Networks Inc.
Application for Leave to Construct Transmission Facilities between Lambton TS and
Longwood TS
Board File No. EB-2012-0082
Chippewas of the Thames First Nation's Request for Intervenor Status**

We are lawyers for Chippewas of the Thames First Nation ("COTTFN") in this matter. The Board previously granted COTTFN observer status in this proceeding. We are writing to respectfully request the Board to now grant COTTFN intervenor status in this proceeding.

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 Networks Inc.'s ("Hydro One") transmission lines between the Lambton and Longwood Transformer Stations are located. COTTFN's reserve is located in very close proximity to the Longwood Transformer Station. The proposed Project therefore has the potential to adversely impact COTTFN's Aboriginal and Treaty rights. Moreover, Hydro One owns transmission lines that traverse 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.

As such, COTTFN is an interested party and has an interest in all aspects of this proceeding. It seeks to intervene 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 has discharged its duty to consult and, where required, accommodate COTTFN in respect of the proposed Project.

COTTFN would like to request information from Hydro One by means of written interrogatories and make written submissions to the Board on these two issues having regard to whether:

- (a) the proposed Project has been designed to ensure that COTTFN will be able to connect their 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 "reserving a minimum of 10 per cent of remaining capacity for [renewable energy] projects with significant participation from local or Aboriginal communities",¹ 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 the transmission lines that run through COTTFN's reserve;
- (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 that run through COTTFN's reserve;
- (e) the proposed Project may cause significant adverse impacts on COTTFN's Aboriginal and Treaty rights; and
- (f) the Ontario Crown has discharged its duties to consult and accommodate COTTFN in respect of the proposed Project.

Issues (a) – (d) are before the Board pursuant to s. 96(2) of the *Ontario Energy Board Act*. In particular, 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. Hydro One stated in its application that the proposed facilities are:

- required, *inter alia*, to "increase transfer capability and enable the connection of additional renewable generation to the transmission grid to contribute to meeting the Long Term Energy Plan's target of 10,700 MW of installed non-hydroelectric renewable capacity by 2018";² and
- in the public interest for several reasons, including that "The existing capability of the transmission system west of London is not sufficient to transmit the additional renewable generation that is forecast in the future".³

¹ April 5, 2012 Directive from the Honourable Chris Bentley, Minister of Energy, to Mr. Colin Andersen, CEO of the Ontario Power Authority, RE: Feed-in Tariff Program Review.

² Hydro One Network Inc.'s March 28, 2012 Application, Exhibit A, Tab 1, Schedule 1, para. 2(a).

³ Hydro One Network Inc.'s March 28, 2012 Application, Exhibit A, Tab 3, Schedule 1, Page 4 of 4.

Issues (e) – (f) are before the Board as the Board cannot grant Hydro One leave to construct if the Ontario Crown has failed to discharge its duties to consult and, where required, accommodate Aboriginal groups who may be adversely impacted by the proposed Project. We note that Hydro One's application clearly expresses its understanding that the issue of Crown consultation is before the Board. Hydro One states in its Application that it is carrying out, on behalf of the Ontario Crown, the procedural aspects of the Crown's duty to consult and, where appropriate, to accommodate Aboriginal communities whose Aboriginal and treaty rights may be adversely impacted by the proposed Project.⁴ It would be a reviewable error for the Board to grant Hydro One leave to construct without ensuring that the Ontario Crown's consultation and accommodation duties have been discharged.

COTTFN is a community with very limited financial resources. It did not, therefore, immediately seek intervenor status but rather chose to meet with Hydro One and to seek observer status to better understand the nature of the proposed Project.⁵ Subsequent developments, including a May 31, 2012 meeting between COTTFN and Hydro One as well as a review of documents served in this proceeding, now require COTTFN to intervene in order to bring key information to the Board's attention in respect of Hydro One's Application for leave to construct.

Should the Board grant COTTFN intervenor status, we respectfully request that the Board amend the schedule set out in Procedural Order No. 1 as follows:

- Written interrogatories from COTTFN to be submitted on or before **June 20, 2012**.
- 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.
- Hydro One shall file with the Board and copy to all intervenors its written submissions by **July 4, 2012**.
- 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**.
- Hydro One shall file its reply submission with the Board and copy to all intervenors by **July 23, 2012**.

The proposed modifications to the timetable in this proceeding would only delay the proceeding by less than a month while allowing COTTFN to meaningfully participate in the proceeding and to bring its concerns to the Board's attention.

⁴ Hydro One Network Inc.'s March 28, 2012 Application, Exhibit A, Tab 1, Schedule 1, para. 10; Hydro One Network Inc.'s March 28, 2012 Application, Exhibit A, Tab 3, Schedule 1, Page 3 of 4; Hydro One Network Inc.'s March 28, 2012 Application, Exhibit B, Tab 6, Schedule 5, Page 4 of 4.

⁵ COTTFN sent Hydro One a letter on February 6, 2012 indicating that the proposed 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. The letter appears to only have been received by Hydro One on or around May 25, 2012 [Ashley Jones, Hydro One, May 25, 2012 e-mail to Rolanda Elijah, COTTFN]. Representatives of COTTFN and Hydro One met on May 31, 2012 to discuss the proposed Project.

COTTEN intends to seek an award of costs to cover the costs of its intervention in the proceedings.

Service and delivery of documents in this proceeding should be sent to:

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Yours sincerely,

GOWLING LAFLEUR HENDERSON LLP

A handwritten signature in black ink, appearing to read 'Scott A. Smith', with a stylized flourish at the end.

Scott A. Smith

cc:

Chief Miskokomon, Chippewas of the Thames First Nation

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