

E-mail Message

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Sent: 10/9/2012 at 4:03 PM
Received: 10/9/2012 at 4:04 PM
Subject: Response to Board letter of August 30, 2012 - Hydro One Networks Inc. - Leave to Construct - Board File No. EB-2012-0082 (Our File No. 030-099-003)

Attachments: [R_v._Ireland,_\[1991\]_2_C.N.L.R._120.PDF](#)
[HCCC o-g MOE Sept 30 2011.pdf](#)

Dear Ms. Walli:

Thank you for your correspondence of August 30, 2012.

Facts

I can advise that the Haudenosaunee Development Institute is the body that has been legislated and otherwise authorized to undertake engagement activities on behalf of the Haudenosaunee Confederacy Chiefs Council (HCCC). A copy of correspondence confirming our authority is attached and we would be pleased to provide an updated letter if necessary.

The HCCC has recently signed a Communications Protocol in relation to communications with the Ministry of Aboriginal Affairs. A copy is attached for your ease of reference.

The HCCC are the representative government of the Haudenosaunee people who hold and exercise rights within that area of land contemplated by the Lambton to Longwood Transmission Upgrade (Project).

The treaty rights of the Haudenosaunee are derived in part from the 1701 of Fort Albany (which is often referred to as the Nanfan Treaty) which guarantees to the Haudenosaunee "free and undisturbed" harvesting within the prescribed treaty territory. A copy of the treaty is attached for your ease of reference.

The 1701 Treaty has been recognized within the Canadian court system by way of the case of R. v. Ireland which is attached for your ease of reference.

The 1701 Treaty rights have also been recently recognized by way of the Renewable Energy Approval process where the Ministry of the Environment has recognized that HCCC must be notified pursuant to section 14 of O.Reg 359/09.

As we indicate in our earlier correspondence HDI first became aware of the Project on or about August 20, 2012. HDI and/or the HCCC were not notified by the Province of Ontario and/or Hydro One despite knowledge, both real and constructive of Haudenosaunee treaty rights within the Project area.

We wish to confirm that the failure of the Province of Ontario to meet even minimal standards of engagement (i.e. notification).

We also wish to confirm that the Province of Ontario has failed to adhere to and/or follow its own policy in terms of engagement obligations arising in the context of the promotion of renewable energy.

The failure of the Province of Ontario to may cause significant cost consequences for Hydro One where the Haudenosaunee may maintain that their consent is required for the Project to proceed by way of the section 32 of the United Nation Declaration of the Rights of Indigenous Peoples.

Established Rights

As Haudenosaunee rights are established treaty rights that are not merely asserted something over and above 'consultation' is required in regards upholding the Honour of the Crown where Crown action which may impair or infringe upon the treaty right.

We have a number of issues in relation to this Project however we are limited at this juncture as the failure of the Province of Ontario to notify has preempted our ability to set out and clarify the nature of the infringements of our rights.

Board Jurisdiction

Section 97

You have indicated that the Board's jurisdiction is limited however we note that our interests in the land constitute an ownership interest for the purposes of section 97. As you are aware the Board shall not grant leave to construct by way of section 96 where the applicant has not satisfied the Board that it has offered or will offer an agreement in a form approved by the Board.

Section 96 - Renewable Energy Policy

We note that this Project is being considered and advanced in the context of "the promotion of the use of renewable energy sources."

We have alleged that the Province of Ontario has failed to act in accordance with its own policies in relation to engagement obligations involving renewable energy.

Where Projects are considered in the context of renewable energy the Board may consider the public interest "in a manner consistent with the policies of the Government of Ontario". There are specific and numerous policies dealing with the Province of Ontario's engagement obligations in relation to indigenous interests where renewable energy is considered. None of those policies have been followed. As such the Board has jurisdiction.

Section 96 - Price

We have alleged that the failure of the Province of Ontario to notify the Haudenosaunee constitutes a breach of fiduciary duties owed by Province of Ontario and at the same time is a failure of the Province of Ontario to uphold the Honour of the Crown.

We are submitting that the failure of the Province of Ontario to meet basic commitments and obligations may have an impact upon the price of electricity where Hydro One incurs costs associated with legal action and/or direct action which may be taken upon the basis that rights must be respected. If given the opportunity, we would be able to establish clear examples where the Province of Ontario's failure to meet constitutional obligations has impacted price.

To date we have been denied the opportunity to make any substantive submissions and at the same time we have been denied any procedural fairness by way of the approach adopted by Hydro One and/or the Province of Ontario.

Section 96 - Reliability

We can also provide evidence and argument in relation to how the Province of Ontario's failures to uphold constitutional obligations have impacted the reliability and quality of service i.e. Niagara Enabler.

Conclusion

Again we look forward to hearing from you and/or the Board in relation to how our concerns can be addressed in the most expeditious and cost effective manner.

Regards,

Aaron Detlor

On Sep 10, 2012, at 3:00 PM, HDI wrote:

On 30-Aug-12, at 4:08 PM, Batul Rahimtoola wrote:

Dear Mr. Detlor:

Please see the attached correspondence from the Board.

Thank you.

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c: All participants in EB-2012-0082

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