



**EAST-WEST TIE LINE DESIGNATION HEARING
ORAL SUBMISSION**

Thunder Bay, Ontario
May 2, 2013

Good afternoon. My name is Gary Lipinski. I am the elected President of the Métis Nation of Ontario (“MNO”).

I want to thank and acknowledge those that provided opening prayers and comments this morning. I also want to thank the Board for providing this opportunity to hear from the local and regional interests that will be impacted by this designation. You have an important decision to make, and we hope our voices will be heard and that our presentations can assist you in your work.

Due to the limited amount time the MNO has to present today, I will be speaking on behalf of the regional rights-bearing Métis community whose traditional territory will be crossed and affected by the proposed East West Tie Project (“EWT”). Also, if our time permits, our legal counsel – Jason Madden – will make some concluding remarks in order to provide the Board a better understanding of the rights and legal claims of the Métis community in the region.

At the local level, the Métis community is represented by the Thunder Bay Métis Council, the Superior North Shore Métis Council and the Greenstone Métis Council. The respective Presidents of those Councils – Jean Carmirand, Trent Desaulnier and William Gordon – are here today. Cam Burgess, the elected MNO Regional Councillor for this area, is also here with me. As well, Ken Simard, the Captain of the Hunt for the region is present.¹

This local and regionally elected leadership, along with the provincially elected leadership of the MNO (myself and other members of the MNO Executive), work together to represent the collective rights and interests of MNO citizens in this region and ensure they are effectively represented.² All of these governance structures were created for Métis by Métis, and they all work together as part of one governance structure – the MNO.

¹ For a map of these MNO governance structures see: MNO Materials for Oral Session, Tab 1.

² For example, see MNO Materials for Oral Session, Tab 3, for the MNO Regional Consultation Protocol that sets out how local, regional and provincial structures work together on consultation.

We are all here today because this project is of immense importance and concern to the Métis community. If ultimately constructed, the EWT will be a part of this Métis community's traditional territory for generations.

And critically – it will be either a shining example of how “win-win” solutions can be achieved for ratepayers, industry, First Nations and Métis or it will represent a terrible failure – on all our parts. Specifically, a failure to live up to the promise of the laudable goals and commitments in the Long-Term Energy Plan (“LTEP”).

The Métis Nation of Ontario

To start off, I want to provide the Board with some general background on the MNO.

Since 1993, the MNO has represented Métis citizens and rights-bearing Métis communities throughout Ontario. It receives its mandate from Ontario Métis who have applied for and been registered as Métis citizens by the MNO's centralized Registry. These citizenship requirements are consistent with the requirements set out by the Supreme Court of Canada's in *R. v. Powley*, [2003] 2 S.C.R. 207.³

The MNO has 15,699 registered Métis citizens over the age of 16 years living throughout Ontario. When children are added into the MNO Registry, the MNO represents over 45,000 Métis living in Ontario. In this region, the MNO represents approximately 2,500 children and adults.

MNO citizens elect their leadership through ballot box elections held at the local, regional and provincial levels every four years.

- At the local level, Community Councils are mandated to represent MNO citizens in a defined geographic area based on a Charter agreement that is signed with the MNO. The MNO currently has 29 Community Councils located throughout the province.
- At the regional and provincial levels, MNO citizens elect the 19-member Provincial Council of the Métis Nation of Ontario (“PCMNO”). The PCMNO includes individuals elected for the MNO Executive (President, Chair, Vice-Chair and Secretary/Treasurer), representatives from each of the MNO's nine regions, a youth and post-secondary rep, along with four Senators.

The MNO is also recognized by both the federal and provincial government as representing the Métis Nation within Ontario. We deliver a wide range of programs and services, including, training, health services, housing and economic development supports, to Métis citizens. We currently have an annual budget of over \$25 million, 20 offices and over 150 staff across the province.

³ MNO Case Law for Oral Sessions, TAB 1, paras. 31-33.

The Métis Community in the Region

The history, rights and claims of the Métis community in this region are well-known and recognized. In *Powley*, the Supreme Court of Court held,

The trial judge found that a distinctive Métis community emerged in the Upper Great Lakes region in the mid-17th century, and peaked around 1850. We find no reviewable error in the trial judge's findings on this matter, which were confirmed by the Court of Appeal.⁴

Following the release of *Powley*, the Ministry of Natural Resources negotiated a harvesting agreement with the MNO that recognizes this Métis community's harvesting rights and traditional territory. Ontario has also acknowledged in the courts that Métis in this region meets the *Powley* test.⁵

The Métis community's traditional territory is shared with First Nations who are signatories to the Robinson Superior treaty. Our rights co-exist on these lands, similar to how our families and relations have co-existed in this region for almost 200 years. In law, our aboriginal rights are not "less than" treaty rights.

The fundamental basis for these rights – whether they are treaty or aboriginal rights – is that an aboriginal group was organized and *on the land* prior to Canada's expansion into that area. Our pre-existence – as a distinct aboriginal group living, using and relying on the Upper Great Lakes – is indisputable based on the facts of history.⁶

Similar to First Nations, the Crown was and remains obligated to reconcile with our pre-existing Métis rights, interests and claims. By and large, reconciliation with the Métis remains "unfinished business" in the Canadian federation. This is what underlies the Supreme Court of Canada's decision in *Powley*. It is also what underlies the recent Métis court victories in *Daniels v. Canada*⁷ and *Manitoba Métis Federation v. Canada*.⁸

More specifically, reconciliation, through the negotiation of modern day agreements on lands, self-government, resources and rights, cannot continue to exclude the Métis. This is the trajectory the Métis are on, and only time will tell whether reconciliation with the Métis will be achieved through political negotiation processes or whether we will continue to be forced into the courts to achieve the promise of s. 35 in the *Constitution Act, 1982*.

⁴ MNO Case Law for Oral Sessions, TAB 1, para. 21.

⁵ MNO Case Law for Oral Sessions,

⁶ MNO Materials for Oral Session, Historic Reports on Métis Claims, Tabs 14, 15 16.

⁷ MNO Case Law for Oral Sessions, TAB 4.

⁸ MNO Case Law for Oral Sessions, TAB 5.

The Importance of the Long-Term Energy Plan

In recent years, we have been making some progress on reconciliation in Ontario. In 2008, the MNO signed a Framework Agreement with Ontario. A copy of this agreement has been provided in our materials.

This Framework Agreement is important because it set out a new path of recognition, respect and collaboration between the MNO and Ontario. Prior to this agreement, previous Ontario governments denied the very existence of our communities as well as our rights related to lands and resources.

For over a decade (1995-2007), we spent most of our time, energy and resources fighting the Ontario Government in the courts. From *R. v. Powley* to *R. v. Laurin*, we successfully pursued litigation to have our rightful place and our rights in this province recognized. (For those who count these things, at the end of that decade the score was Métis wins: 5, Ontario wins: 0).

However, for my presentation today, I want to focus on what happened after that difficult decade. Instead of continuing to resort to the courts, the McGuinty Government, and, now the Wynne Government, have embraced working with us.

We – MNO and Ontario – both recognized that we can accomplish much more by working together, rather than being at odds with each other. Since adopting that new approach, our joint successes under the Framework Agreement have been significant and too many to list.

So, how does this relate to the EWT? Because over the last few years, the Ontario Government has taken this same collaborative approach to advancing the energy file in this province – and this EWT designation is the most recent test for this new approach.

Instead of treating our communities as bystanders, inconvenient “road bumps” or casualties to energy development in this province, the Ontario Government has worked with us – First Nations and Métis – to place our communities “front and centre” in this province’s green energy future.

This new approach to collaboration with aboriginal peoples is what underlies the honourable policies and commitments in the LTEP. Both, First Nations and Métis communities were extensively consulted on the plan’s development.⁹ The LTEP includes an entire chapter on aboriginal communities. Most importantly for the MNO, throughout the plan, the commitments made apply equally to First Nations and Métis communities.

⁹ MNO Materials for Oral Session, Tab 4, LTEP, p. 10.

Following the release of the LTEP both First Nation and Métis leaders, including myself, applauded it. We saw the commitments in the plan as a “turning point”. It signaled that First Nation and Métis communities would be key **partners** in building a new green energy economy in this province.

The LTEP says we will benefit from and participate in energy development on our traditional territories. To us, this plan is not just “words”. It is a “promise” that things will be different and we have been working diligently with the Ontario Government over the last few years to fulfill these commitments.

We think it is extremely important for the Board to understand this background because under your new mandate you are tasked with “promot[ing] the use and generation of electricity from renewable energy in a manner consistent with the policies of the Government of Ontario, including the timely expansion or reinforcement of transmission systems...”.

Moreover, in order to meaningfully implement Ontario Government policies, the Board needs to appreciate what underlies them. This Board cannot be passive or indifferent in relation to these policies. It must embrace and fulfill its important role in the same way the Minister of Energy, the Ontario Power Authority (“OPA”) and the Ontario Government has with respect to advancing aboriginal partnerships.

The Board must get it “right” here, by ensuring the commitments of the LTEP are fulfilled. If not, a negative and dangerous precedent will be set. These policies will be gutted and become “empty promises” for the Métis as well as other aboriginal communities. This will breed disillusionment, mistrust and delays with respect to new transmission.

Implementing the Long-Term Energy Plan’s Policies and Commitments

It’s important to recognize that the Ontario Government – as a whole – has embraced these LTEP policy commitments over the last few years and has shown that concrete action and decision-making aligned with these commitments is needed in order to make them real. In particular, the Minister of Energy has shown consistent leadership in giving effect to these policies.

For example, in implementing the Feed-In-Tariff (“FIT”) program, the Minister of Energy issued directives to the OPA to ensure aboriginal ownership projects were prioritized, and that support from aboriginal communities for proposed FIT projects received additional points in scoring.¹⁰ Most notably, the Minister directed that 25MW of the 200MW available for small FIT projects be set aside for projects with more than 50.1% aboriginal ownership.¹¹

¹⁰ MNO Materials for Oral Session, Tab 5.

¹¹ MNO Materials for Oral Session, Tab 6.

In addition to providing directives on the FIT program, the Ontario Government has also created a suite of supports to assist aboriginal communities in becoming partners in energy projects. These supports include:

- The creation of the Aboriginal Loan Guarantee Program (“ALGP”) to support First Nation and Métis community equity ownership in green energy infrastructure, including, new transmission. This equity ownership is designed to “provide a community with guaranteed and sustainable long term sources of revenue.”¹²
- The creation of the Aboriginal Renewal Energy Program (“AREP”) that provides First Nation and Métis communities funding for ownership and participation in projects under three streams: (1) organizational development, (2) partnership stream, and (3) development and approvals.¹³

These policies, directives and actions show that aboriginal ownership in energy development in Ontario is not just rhetoric or even an aspiration. It is a fundamental tenet of Ontario Government policy and that must be followed up on with action in order to be achieved.

Métis and First Nation Partnerships in New Transmission

More specifically, in the context of new transmission such as the EWT, the LTEP makes the following commitment to First Nations and Métis communities,

Ontario will encourage transmission companies to enter into partnerships with aboriginal communities, where commercially feasible and where those communities have expressed interest.¹⁴

In order to ensure these types of partnerships could happen with both First Nation and Métis communities, the Minister of Energy issued a directive which stated,

Accordingly, I hereby direct the OPA to adjust the AREP to provide funding support to Aboriginal communities that are exploring equity positions in future planned, major transmission lines in Ontario where the OPA has identified a need for transmission capacity.¹⁵

Consistent with the commitment in the LTEP, the Minister goes further and states “[f]unding preference for this initiative should be given to Aboriginal communities where these lines cross a community’s traditional territory.”

¹² MNO Materials for Oral Session, Tab 10.

¹³ MNO Materials for Oral Session, Tab 11.

¹⁴ MNO Materials for Oral Session, Tab 4, LTEP, p. 49.

¹⁵ MNO Materials for Oral Session, Tab 7.

Further, as the Board is aware, the Minister of Energy has repeatedly reminded all parties in this proceeding of the LTEP policy as well as the importance of aboriginal participation in the EWT.

The MNO also wants to draw the Board's attention to the following Métis-specific policy considerations that need to be appreciated in the context of the EWT:

- Based on consultation with the MNO, the FIT Rules were modified to explicitly include the MNO and its Chartered Community Councils as eligible "Aboriginal communities". As already noted above, the FIT Rule definition – which includes Métis communities – is what is used to determine eligibility for AREP funding specific to new transmission such as EWT.¹⁶
- The Minister of Energy directed the OPA to establish a Métis-specific set aside within the overall aboriginal FIT contract set aside. This was done to send a clear signal to proponents that Métis communities should also be engaged in equity ownership discussions, but also ensure that Métis communities have the same opportunities as First Nations.¹⁷
- The terms and conditions for the ALGP program explicitly state that First Nation and Métis communities are eligible for loans related to generation and transmission projects. In addition, the MNO's leadership was asked to provide a support quote for Ontario's press release announcing the expansion of the program to include new transmission.¹⁸
- The Ontario Government has committed \$30 million over the next 10 years to the Métis Voyageur Development Fund ("MVDF") in order for Métis businesses and communities to increase their participation in the resource sector, including, energy development and transmission. Specifically, this includes equity loan funding for projects like the EWT.¹⁹
- In the EWT designation process, the MNO's Community Councils, whose traditional territories will be crossed by the EWT, were explicitly identified by the Crown for consultation and accommodation.²⁰
- The Ontario Government has consistently provided direction, explicit inclusion and supports that enable Métis community partnership in new transmission (i.e., ALGP, AREP, MVDF, etc.).

¹⁶ MNO Materials for Oral Session, Tab 7.

¹⁷ MNO Materials for Oral Session, Tab 10.

¹⁸ MNO Materials for Oral Session, Tab 6.

¹⁹ MNO Materials for Oral Session, Tab 12.

²⁰ Letter from Ministry of Energy to Ontario Power Authority re: Aboriginal Consultation dated May 31, 2011.

- The MNO’s Community Councils have clearly indicated their interest in exploring partnership with respect to the EWT.²¹

Given all of this, the Board cannot interpret Ontario Government policy to allow a designation in the EWT that would completely exclude even the possibility of a Métis community partnership. We do not say that the Board must ensure that a partnership is ultimately reached. But what is clear, is that designating a transmitter who refuses to even discuss the possibility of a partnership with impacted Métis communities would be a breach of Ontario Government policy. Moreover, the MNO believes that such a result would amount to discrimination against Métis.

Clearly, such a result is wholly unacceptable. It would quickly bog the EWT down in controversy, delays and litigation. Moreover, the Board needs to ask the question – what was the point of the LTEP commitment or the Ontario Government creating all of these policy levers, support tools and going out of its way to include Métis communities with respect to the EWT, if a prospective transmitter can render them worthless, if their plan is designated?

Ontario Policy and the East West Tie Designation Process

The clear answer is that the Board is obligated to implement Ontario Government policy and it is unquestionable that this policy is to encourage First Nation and Métis partnership in the EWT --- not “claw back” these commitments or render them meaningless to the Métis communities whose traditional territories are affected.

The Opportunity for First Nation and Métis Partnerships

In this designation process, only one prospective transmitter has proposed a plan that completely excludes the opportunity for Métis communities to partner in the EWT --- East West Tie LP (“EWT LP”). This partnership is made up of Hydro One, Great Lake Power Transmission (“GLPT”) and six First Nations (“Bamkushwada LP”).

This type of approach undermines Ontario’s policy commitments to both First Nation and Métis communities. It makes a mockery of all the work Ontario, First Nations and Métis communities have done together over the last few years. This model is a non-starter for the EWT project specifically as well as for all future transmission projects.

The MNO cannot emphasize enough that getting it right in this designation is critical. If prospective transmitters are sent the message that all they can “pick and choose”

²¹ Letter from MNO to Minister of Energy re: East West Tie Designation Process dated January 15, 2013.

between affected First Nations, or between First Nations and Métis, it will inevitably lead to government sanctioned discrimination and arbitrariness.

It will also encourage backroom dealings – not open, fair and principled negotiations. We will not have paved a fresh way forward for First Nation and Métis partnership in a new energy future, but rather, we will put up significant new road blocks in the form of delays, controversy and litigation.

That said, the MNO has faith that the Board will see this and act to ensure that the Ontario Government's policies will not be ignored or breached. We do not want EWT to become a new Métis litigation "test case", but a "test case" on how, when the right policies are put in place and implemented --- the interests of government, the ratepayer, the private sector, First Nations and the Métis can align.

The Prospective Transmitters Participation Plans

In the MNO's written submissions that will be submitted next week, we will critique each prospective transmitters' First Nation and Métis participation plan. However, we want to make the point today that many of the other prospective transmitters have recognized the importance of providing partnership opportunities to both First Nations and Métis communities.

For example, the plan put forth by AltaLink has offered up to 49% equity ownership to First Nation and Métis communities. We think this is a precedent-setting offer for aboriginal ownership of transmission in Ontario. It also aligns with the percentages of aboriginal ownership encouraged under the FIT program.

Moreover, this type of offer would allow the 33% ownership interest of the 6 First Nations to be preserved, while opening up another 16% ownership for other impacted communities. The MNO's Community Councils feel their interests could be more than adequately addressed within that remaining percentage of ownership available. We believe that this type of inclusive and credible participation plan allows for the LTEP's policy to be advanced.

The MNO is also encouraged that six out of the seven prospective transmitters have indicated their willingness to explore partnership opportunities with the identified First Nation and Métis communities, if they were designated. The MNO believes this speaks well to the objective and commitments in the LTEP policy being achieved through this designation.

However, the MNO believes that prospective transmitters that have provided actual commitments and details on the percentage of ownership that would be available to First Nation and Métis communities should be preferred to those that make vague statements about exploring the potential of aboriginal partnership.

The MNO also wants to comment on the other participation commitments in the LTEP. Specifically, the plan stated,

There are a number of ways in which First Nations and Métis communities could participate in transmission projects. Where a new transmission line crosses the traditional territories of aboriginal communities, Ontario will expect opportunities to be explored:

- Provide job training and skills upgrading to encourage employment on the transmission project development and construction.
- Further Aboriginal employment on the project.
- Enable Aboriginal participation in the procurement of supplies and contractor services.²² (emphasis added)

The MNO is encouraged that all of the prospective transmitters, with the exception of EWT LP, are willing to listen to and work with Métis communities to discuss these opportunities.

Unfortunately, the EWT LP model once again ignores that the LTEP requires that the opportunities listed above (i.e., training, employment, contracts, etc.) be explored with both impacted First Nation and Métis communities.

Instead, EWT LP dictates that the only participation that may be available to Métis is limited to the following:

Where all applicable technical and professional standards are met, the costs are commercially reasonable and the BLP Participating First Nations are not selected to provide the goods or services (due to lack of ability to provide or higher cost option), then EWT LP will give priority with respect to employment, training and commercial opportunities to other Aboriginal community members and to the businesses which they own or control.²³

This type of approach does not allow participation options to be “explored”. It sets out a participation plan that would limit Métis participation to the mere potential of contracts or employment that the Bamkushwada First Nations do not want. With respect, this approach equates to Métis “potentially” having access to some discarded “scraps”. It is insulting to the Métis communities and undermines the ability for mutually agreeable participation opportunities to be discussed and agreed to between transmitters and Métis communities.

More concerning is that this type of approach essentially creates two classes of aboriginal communities whose territories will be crossed by the EWT. This is contradictory to the explicit directions in the LTEP. It speaks to why participation plans that allow the transmitter to aboriginal communities to “explore” opportunities should be preferred over ones that dictate and limit opportunities.

²² MNO Materials for Oral Session, Tab 4, LTEP, p. 49.

²³ EWT LP Plan, Part A, Exhibit 7, p. 7.

The Prospective Transmitter Consultation Plans

In our written submissions, the MNO will also detail and critique the consultation plans proposed by prospective transmitters. However, the MNO raises the overall concern that these plans cannot be fixed at the outset. Instead, they need to be able to be adaptive and responsive to First Nation and Métis communities, and what is actually required in order for meaningful consultation to take place.

The MNO also wants to express its deep concerns and objections to EWT LP's consultation plan. I am attaching a document that details the MNO's concerns with this plan. We want the Board to know that if this plan was approved by the Board, it would lead to an acrimonious relationship as well as the MNO formally requesting that procedural aspects of the Crown's duty not be delegated to EWT LP.

This consultation plan, consistent with EWT LP's overall plans and submissions, treats the Métis as a "lesser than" aboriginal group. The plan's approach is disrespectful and inequitable towards Métis. The methodology for traditional knowledge collection is unsound. The proposed consultation approach would essentially put Métis in a position where consultation is being undertaken by individuals who are adverse in interests to MNO. This is unacceptable.

Specifically, the consultation plan proposes that consultation and traditional knowledge collection will be facilitated by 6 individuals selected from the Bamkushwada First Nations. However, these 6 First Nations, are a part of the Union of Ontario Indians, which unanimously adopted the position that Métis "are not entitled to consultation and accommodation in regards to land, water and resources in the treaty and traditional territories of the Anishnabek" in June 2012.²⁴

How can MNO be expected to participate in a consultation process whereby information shared on Métis rights and culturally-sensitive traditional knowledge will be collected by groups that deny Métis rights? The answer is the MNO will not participate in such a consultation plan.

These flaws in EWT LP's consultation plan make it untenable and unacceptable. It is not the "best" plan – far from it. From the MNO's perspective, it is unworkable and consultation would be extensively delayed because the Métis would not participate in this plan.

This underlying tone of disrespect and disregard for Métis communities and Métis rights permeates EWT LP's consultation plan. It sets out a recipe for disaster and delays --- not a credible plan for consultation with Métis communities. We want the Board to be well aware of that.

²⁴ MNO Materials for Oral Session, Tab 13.

Conclusion

In closing, I want to thank the Board again for taking the time to come to Thunder Bay and to hear from local and regional interests directly.

If it is ultimately built, the EWT will be here for generations. As such, I can't stress enough just how important it is to get this designation "right". We need to recognize that no matter what happens, First Nations, Métis communities and other communities need to work together. We need this project and a designated transmitter that brings us closer together – not further apart.

For the Métis community, we also want this project to ultimately be a symbol of the results that come from the respectful and collaborative Ontario Government policies that have been developed to encourage aboriginal participation in the energy sector. We do not want the EWT to become synonymous with disappointment, mistrust and litigation.

Without question, this Board has an important role to play in advancing these Ontario Government policies. We hope our interventions and submissions will assist you in that regard.

Thank you.

MNO CONCERNS WITH EWT LP CONSULTATION PLAN

Consultation with 6 First Nations	Consultation with the Métis	Métis Concerns with Consultation Plan
<p>An Aboriginal Liaison Officer (“ALO”) will be identified in each of the 6 First Nations to assist in consultations. (EWT LP Plan, Exhibit 10, Part B, Appendix 10A, p. 24, 31)</p>	<p>No equivalent ALO in any Métis community.</p>	<p>The MNO and its communities do not want or feel comfortable with a member of a First Nation being unilaterally identified to “provide ongoing support for consultation activities” within Métis communities for the project. This prescriptive approach to consultation is contradictory to EWT LP’s claims that it will respect how other Aboriginal communities want to be consulted. It demonstrates the lack of equity and fairness in the EWT LP Consultation Plan.</p>
<p>Training, orientation and costs for Aboriginal Liaison Officers. (EWT LP Plan, Exhibit 10, Part B, p. 7)</p>	<p>No training, orientation or costs for any Métis community.</p>	<p>This commitment further illustrates the lack of equity and fairness within the EWT LP Consultation Plan in relation to MNO and its communities. Métis communities will be excluded from this training and ability to build internal capacity, while the 6 First Nations will.</p>
<p>Because of the “far-reaching traditional knowledge and traditional ecological knowledge within the project study area ... [the 6 First Nations] will have a representative present at all meetings with the public and with Aboriginal communities.” (EWT LP Consultation Plan, p. 6)</p>	<p>No similar acknowledgement of Métis knowledge in project study area and Métis community. No Métis participation in meetings with public or other Aboriginal communities.”</p>	<p>The MNO and its communities do not want the identified First Nation ALOs attending Métis meetings given the UOI Resolution and the fact that Métis citizens will not feel comfortable or be willing to speak freely. Moreover, the MNO will not feel comfortable discussing its rights and legal claims in the presence of groups that are adverse in interest to those claims and could use that information in a detrimental manner against the MNO.</p>
<p>“EWT LP will work to understand the Traditional Territories of all potentially affected First Nation communities early in the project.” (EWT LP Plan, Exhibit 10, Part B, p. 8)</p>	<p>“EWT LP will work to understand the traditional land use of potentially affected Métis communities in accordance with the above mitigation strategy.” (EWT LP Plan, Exhibit 10, Part B, p. 8)</p>	<p>The plan does not acknowledge that Métis communities also have traditional territories. This lack of understanding or deliberate prejudice permeates the plan and approach to Métis consultation. This will contribute to mistrust and likely a failed consultation process.</p>

MNO CONCERNS WITH EWT LP CONSULTATION PLAN

<p>“The communities of the Participating First Nation are all located with 40 km of the existing East-West Tie line, which lies entirely within their traditional territories ...” (EWT LP Argument in Chief, p. 5 (footnote 1).</p>	<p>There is no recognition of the fact that the East-West Tie will cross areas that are common traditional territories with Métis communities.</p>	<p>Consistent with the UOI Resolution, the plan portrays a level of exclusivity of the 6 First Nations and that the rights and interests of other Aboriginal groups are subordinate. This approach cannot be sanctioned by a Crown actor. The MNO is also concerned that EWT LP’s partners may be beholden to the political and legal positions of the 6 First Nations to Métis rights, consultation and accommodation (i.e. UOI Resolution) and given the governance structure of EWT LP this bias and discrimination may be institutionalized and affect consultation.</p>
<p>“EWT LP plans to produce a traditional knowledge and land use report as a part of the environmental assessment process.” (EWT LP Plan, Exhibit 10, Part B, p. 8)</p> <p>EWT LP will initiate an Aboriginal Land Use and Occupancy study (“TK/LUO”) for the region. (EWT LP Plan, Exhibit 10, Part B, p. 25-26)</p>	<p>Métis traditional knowledge will be collected by First Nation ALOs as a part of an overall TK/LUO study. The distinct impacts of the project on Métis use and occupancy will not be understood or assessed.</p> <p>Métis will not be allowed to complete their own TK/LUO study through an adequate representative sampling of the Métis community, interviews being conducted in an environment where Métis do not need to feel guarded or free from judgment and a level of confidence over the security and quality of the study completed.</p>	<p>The MNO and its communities will not participate in the TK/LUO study proposed by EWT LP. The methodology is unsound (see below). Métis will not feel comfortable providing sensitive traditional knowledge to ALOs whose communities deny Métis right or the need to consult and accommodate Métis. The Métis should not be forced to disclose confidential information to ALOs that are adverse in interests to Métis rights and claims. Nor will MNO allow the distinct use and occupancy of Métis to be subsumed under one “Aboriginal” TK/LUO study. The MNO objects to a process that does not allow for an independent Métis TK/LUO study to inform routing, environmental assessment, etc. The MNO also believes that the costs associated with creating a documentary film are a waste of ratepayer resources and diverts resources away from undertaking more interviews to better understand First Nation and Métis use.</p>

MNO CONCERNS WITH EWT LP CONSULTATION PLAN

<p>A total of 96 TK/LOU interviews will be undertaken with the 6 First Nations. (EWT LP Plan, Exhibit 10, Part B, p. 28-29)</p>	<p>Less than 31 TK/LUO interviews will be undertaken with the MNO and its communities. Given the fact that these 31 interviews are to be allocated amongst other First Nation as well, it is likely MNO and its communities could have less than 15 interviews.</p>	<p>The methodology proposed by EWT LP is professionally and methodologically unsound. By and large, professionals agree that a sampling of 5-10% of an Aboriginal community’s population is required for a credible TK/LUO study. The number of interviews proposed are arbitrary and do not correlate with obtaining an adequately samplings from the distinct First Nation and Métis populations in the study area. This type of inadequate sampling data would not result in a study that could assist with effective routing avoidance, identification of Métis community values and interests in the environmental assessment process, etc.</p>
<p>“EWT will initiate the training of Aboriginal community environmental monitors ...” (EWT LP Plan, Exhibit 10, Part B, p. 28-29)</p>	<p>There is no commitment to Métis community monitors.</p>	<p>The MNO is concerned that consistent with the rest of the EWT LP’s Consultation Plan, the Métis community will be excluded. Instead of indicating First Nation and Métis monitors will be hired, the term “Aboriginal” is used. Based on EWT LP’s overall approach to Aboriginal consultation, the MNO does not trust that these consultation commitments will be implemented in an equitable or fair manner towards the Métis community. Explicit commitments for MNO community monitors are required.</p>
<p>“EWT LP wishes to develop an MOU with the Crown on the delegation of the procedural aspects of consultation” (EWT LP Plan, Exhibit 10, Part B, Appendix 10A, p. 24, 31)</p>	<p>MNO will object to procedural aspects of the Crown’s duty being delegated to EWT LP based on the inequity and unfairness of the current Consultation Plan as well as the apprehension of bias by EWT LP’s partners against Métis consultation and accommodation.</p>	<p>Given the lack of fairness and equity within the EWT LP’s Consultation Plan and the apprehension of bias towards Métis consultation and accommodation by partners in the EWT LP (i.e., the UOI Resolution), the MNO will ask that procedural aspects of Crown consultation not be delegated to EWT LP.</p>