## **BATCHEWANA FIRST NATION OF OJIBWAYS**

RANKIN RESERVE 15D GOULAIS BAY RESERVE 15A OBADJIWAN RESERVE 15E WHITEFISH ISLAND 15

> Administration Office 236 Frontenac Street Rankin Reserve 15D Batchewana First Nation, Ontario P6A 6Z1 Ph. (705) 759-0914 / C&C Fax (705) 759-8213 www.batchewana.ca

May 7, 2018

Via email: boardsec@oeb.ca Kirsten Walli Board Secretary Ontario Energy Board 2300 Yonge Street, Suite 2700 Toronto ON M4P 1E4

Dear Ms. Walli

Re: Hydro One Networks Inc. Lake Superior Link Project

Re: NextBridge Motion returnable May 24, 2018

Your File No. EB-2017-0364

#### **BATCHEWANA FIRST NATION EVIDENCE**

Please find attached BFN's Evidence on the above-captioned motion in form of an Affidavit and Exhibits from Chief Dean Sayers, filed electronically by e-mail to yourself and the other parties and individuals specified in Procedural Order No. 1 dated April 27, 2018.

This will further advise that Chief Sayers will be available by teleconference for the Technical Hearing scheduled for May 16, 2018, and that he will be assisted by counsel, Mr. Bill Henderson, lawyer@bloorstreet.com, 416-413-9878.

It is BFN's present intention to appear by counsel at the return of the motion on May 24, 2018, while the First Nation reserves the right to make written submissions in lieu in accordance with the Board's Rules and Procedures.

Yours very truly,

Chief Dean Sayers

cc. Parties Listed in Schedule B to Procedural Order No. 1 (April 27, 2018)

#### **ONTARIO ENERGY BOARD**

IN THE MATTER OF the Ontario Energy Board Act, 1998;

AND IN THE MATTER OF an Application by Hydro One Networks Inc. pursuant to s. 92 of the *Act* for an order or Orders granting leave to construct new transmission facilities ("Lake Superior Link") in northwestern Ontario;

AND IN THE MATTER OF an Application by Hydro One Networks Inc. pursuant to s. 97 of the *Act* for an Order granting approval of the forms of the agreement offered or to be offered to affected landowners.

# EVIDENCE OF THE INTERVENOR BATCHEWANA FIRST NATION

#### **BATCHEWANA FIRST NATION**

Attn: Chief Dean Sayers
Administration Office
236 Frontenac Street
Rankin Reserve 15D
Batchewana First Nation, Ontario
P6A 6Z1

Phone: (705) 759-0914 C&C Fax (705) 759-8213

chiefdeansayers@batchewana.ca councilsecretary@batchewana.ca TO: Ontario Energy Board

P.O. Box 2319 2300 Yonge Street, 27th Floor Toronto, ON M4P 1E4 Attention: Registrar

Ms. Kristen Walli, Board Secretary Ms. Zora Crnojacki, Case Manager Ms. Lawren Murray, OEB Counsel boardsec@oeb.ca Zora.Crnojacki@oeb.ca Lawren.Murray@oeb.ca

TO: Parties Listed in Schedule B to Procedural Order No. 1 dated April 27, 2018

cc: Aboriginal Business Network:

Wayne Greer, President 1340 Terrace Ridge Drive Carp, ON K0A 1L0

Phone: (519) 580-3150

wayne@abnetwork.ca

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## EVIDENCE OF THE INTERVENOR BATCHEWANA FIRST NATION

INDEX				
			Tab	
1.	Affidavit of	Chief Dean Sayers, sworn May 7, 2018	1	
2.	Exhibit "A"	BFN Letter of Support dated April 18, 2018	2	
3.	Exhibit "B "	Plan of Lake Superior (Vidal-Anderson, 1849)	3	
4.	Exhibit "C"	Proposed E-W Tie Route showing 1849 Lines	4	
5.	Exhibit "D"	BFN Notice of Assertions, pub. June 22, 2011	5	

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#### AFFIDAVIT OF CHIEF DEAN SAYERS

- I, CHIEF DEAN SAYERS, of the Batchewana First Nation, in the Province of Ontario,

  MAKE OATH AND SAY AS FOLLOWS:
- 1. I am a member and elected Chief of the Batchewana First Nation ("BFN "), and thus have knowledge of the matters to which I here depose, except for those matters that are stated to be based on information and belief and, where so stated, I have provided the source of the information and believe it to be true.
- 2. I have served as Chief of BFN for 6 terms, starting in 2005, and am now in my seventh term. I currently live at the Rankin Reserve of the First Nation at Sault Ste. Marie but I grew up at Batchewana Bay on Lake Superior. The Obadjiwon Reserve on Batchewana Bay is the northernmost of our four BFN reserves.

- 3. BFN is a "band" within the meaning and for the purposes of the *Indian Act*, RSC 1985, c I-5, s. 2(1), with two reserves at Sault Ste. Marie, Rankin Reserve and Whitefish Island Reserve on the St. Mary's River, and two reserves, Goulais Bay Reserve and Obadjiwon Reserve, on Lake Superior north of Sault Ste. Marie.
- 4. As directed by Council and on behalf of BFN, I am providing this Affidavit as evidence in support of the First Nation's intervention in this proceeding.
- 5. At this point I can indicate that BFN has engaged with both NextBridge and Hydro One with respect to different projects in recent years. Those engagements and negotiations have been respectful and successful. One of the major points to be made in terms of the East-West Tie Line Proposals, however, is that NextBridge has engaged with BFN, as described below, while there has been no engagement or contact with BFN on the part of Hydro One.
- 6. On the basis of our engagement with NextBridge, BFN has provided a letter of support dated April 18, 2018, attached to this my Affidavit as Exhibit "A".

#### <u>ISSUES</u>

- 7. In this Affidavit, and in oral submissions to be made to the Board commencing May 24, 2018, the following topics are and will be addressed:
  - (a) The Original Reserve of the Batchewana First Nation
  - (b) First Nation Rights and Jurisdiction

- (c) Indigenous Consultation
- (d) The EA Transfer
- (e) The In-Service Date

#### THE ORIGINAL RESERVE OF THE BATCHEWANA FIRST NATION

- 8. Our Elders and Ancestors have found it strange that anyone other than Indigenous Nations should determine or define their traditional lands and resources. In the context of Canadian constitutional arrangements, however, the Royal Proclamation of 1763 was an act of the British Crown stating that, as one of "the several Nations or Tribes of Indians, with whom We [the Crown] are connected", BFN lands and resources were "reserved" to us as our "Hunting Grounds".
- 9. It was another 76 years before the Crown attempted to delineate our lands. In 1849, in preparation for the treaty to be negotiated the following year, Messrs. Vidal and Anderson were sent out to travel along the north shore of Lake Huron and the north and east shores of Lake Superior to enquire into the nature, populations and territories of the First Nations. Part of their Report was a plan showing their estimation of the lands of the respective First Nations, and part of that plan is attached to this my Affidavit as <a href="Exhibit">Exhibit "B"</a>.
- 10. On Exhibit "B", there is an area outlined commencing at the mouth of the Pukaskwa River, moving north and east until it meets an arc intended, I believe, to approximate

- the height of land, and along that arc are the words "Batchewaunnung, Michipicoten, Sault Ste. Marie Bands."
- 11. We consider Exhibit "B" to present a reasonably accurate depiction of our Original Reserve, though we take exception to the apparent exclusion of Otter Head and other lands in, north and east of present day Pukaskwa National Park. On the other hand, the failure of Vidal-Anderson to delineate the irregular contour of the height of land may properly indicate lands beyond that contour our people did use.
- 12. In 1850, Treaty Commissioner William Benjamin Robinson decided to negotiate two treaties rather than one: <u>The Robinson Huron Treaty</u> and <u>The Robinson Superior Treaty</u>. The stated boundary between the two runs from Batchewana Bay on Lake Superior to the height of land. While BFN is a signatory only to the Robinson Huron Treaty, our harvesting and other rights in the other treaty area consistent with our Original Reserve have been recognized by court decisions.
- 13. Attached to this my Affidavit as <a href="Exhibit" C" is a map showing the East-West Tie Line Proposed Route with the Vidal-Anderson "boundaries" added as broken red lines. I am advised by our consultant, Mr. Greer, that the length of the Proposed Route within our Original Reserve is slightly more than 100 km.

#### FIRST NATION RIGHTS AND JURISDICTION

14. BFN has consistently maintained and asserted its rights to resources, resourcesharing and resource management within its Original Reserve. These are consistent with the responsibilities conferred on us by the Creator and we see our relationships with the Crown, including the Covenant Chain and our Treaties as also consistent with those continuing responsibilities.

- 15. BFN made its position clear to all concerned by publication of its Notice of Assertions, a copy of which is attached to this my Affidavit as <a href="Exhibit "D"</a>. The Notice appeared in newspapers in Ottawa, Toronto, Sault Ste. Marie and Thunder Bay in June of 2011. Its purpose was to assist interested parties, including other governments, "in understanding BFN's position historically and in the modern political, social, economic and legal fabric." BFN also relies upon the requirement for "free, prior and informed consent" as prescribed by the <a href="United Nations">United Nations</a>
  Declaration of the Rights of Indigenous Peoples to which Canada has adhered.
- 16. BFN does not shy away from the exercise of its rights and jurisdiction, though it does not seek or desire confrontation. As the Notice of Assertions indicates, however, and experience demonstrates, BFN is always willing to engage in respectful negotiations and has been many times successful in achieving mutually beneficial results.

#### **INDIGENOUS CONSULTATION**

17. This is a matter of constitutional entitlement, as we have been advised by our legal counsel and informed by many decisions of the Supreme Court of Canada.

- 18. In the context of the present proceeding before the OEB, it is apparent that Ontario has directed NextBridge to consult with, among others, "the Ojibways of Batchewana" (see NextBridge Application herein filed 2017-07-31, Exhibit H, Tab 1, Schedule I, Attachment I at p. 389). I can report that NextBridge has engaged with BFN in an appropriate and respectful manner consistent with its role as mandated by the Province.
- 19. NextBridge is currently close to concluding a Relationship Agreement it has negotiated with BFN regarding the East-West Tie Project. BFN believes it will be signed within the next eight weeks.
- 20. I regret to say that Hydro One has not engaged with BFN with respect to the East-West Tie Project. There has been a complete failure to consult on the part of Hydro One on the Lake Superior Link. Information provided to Batchewana First Nation to date has only dealt with proposed work by Hydro One at the Wawa Transmission facility and, in that regard, there has been no direct contact and no communications between Hydro One and BFN.
- 21. BFN is profoundly concerned at what appears to be an estimate of as little as 45 days to complete a full program of Indigenous Consultation. Even more concerning is the lack of a plan to consult, in advance of major decisions, including decisions by this Board.

22. It is the experience of BFN, consistent that Hydro One cannot conclude proper consultation and accommodation in advance of the proposed In-Service Date. Such a dilatory process and such a result would be completely unacceptable to BFN.

#### THE IN-SERVICE DATE

- 23. The proposed In-Service Date by NextBridge is the end of 2020. Hydro One proposes a date sometime in 2021. From the materials we have reviewed, it appears to BFN that any or all of the following factors might adversely affect Hydro One's ability to meet that date:
  - (a) Proper Indigenous Consultation as detailed above;
  - (b) Timely Agreement with Parks Canada noting that there is no prospect of any early agreement to upgrade the existing line through Pukaskwa National Park;
  - (c) Permission for Hydro One to rely on the Environmental Assessment work done by NextBridge to support Hydro One's Application for a Licence to Construct which appears to turn on a determination of whether Hydro One's latest version of its Application is a "new" proposal requiring a new environmental assessment, and which raises issues of fairness as well; and
  - (d) The "Completeness" of Hydro One's Application.

25. I make this Affidavit in support of BFN's intervention on the said Motion as set out above and for no other or improper purpose.

### **SWORN BEFORE ME** at the Rankin

Reserve in the City of Sault Ste. Marie,
Province of Ontario, this 7<sup>th</sup> day of May,2018.

A Commissioner, etc.

Lisa Anna Marie McCorrick, a Commissioner etc. District of Algoma, full batchewana Pinst Mation of Opbways. Exones August 7, 2019.

## **EXHIBIT "A"**

THIS IS Exhibit "A" to the Affidavit of CHIEF DEAN SAYERS, sworn before me at the Rankin Reserve in the City of Sault Ste. Marie, Province of Ontario, this 7th day of May, 2018.

A Commissioner, etc.

Lise Anne Morte McCormick, a Commissioner etc. C. must of Algome, for Batonewania First Februs of Octoways.

Expires August 7, 2019



### **BATCHEWANA FIRST NATION OF OJIBWAYS**

RANKIN RESERVE 15D GOULAIS BAY RESERVE 15A OBADJIWAN RESERVE 15E WHITEFISH ISLAND 15

> Administration Office 236 Frontenac Street Rankin Reserve 15D Batchewana First Nation, Ontario P6A 6Z1 Ph. (705) 759-0914 / C&C Fax (705) 759-8213 www.batchewana.ca

April 18, 2018

Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th floor
P.O. Box 2319
Toronto, ON
M4P 1E4

Subject: Nextbridge East-West Tie Application – Your File No. EB-2017-0182

I am instructed by the Council of the Batchewana First Nation ("BFN") to provide this letter of support for the above application as set out in this letter.

We confirm that BFN and NextBridge Infrastructure LP ("NextBridge") have engaged in good faith consultation with each other concerning the East-West Tie Transmission Project, a proposed 400-kilometre electricity transmission line between Wawa and Thunder Bay, Ontario (the "Project"), that is intended to be located on traditional lands of the First Nation.

We confirm that these consultation activities have enhanced the First Nations' understanding of the Project, its potential impacts and benefits, and we believe they have also enhanced NextBridge's understanding of the concerns of the First Nation regarding BFN's treaty and other rights in the Project lands, and other interests related to the Project.

As a result of these consultation activities, BFN and NextBridge have agreed in principle to create a Relationship Agreement, which still requires additional negotiation. This agreement will describe in more detail the future participation of BFN in the project development activities including the environmental assessment process and will also formalize the accommodations to be provided by Nextbridge.

Subject to successful conclusion of that agreement, BFN affirms:

- (a) its support for NextBridge's consultation interactions with the First Nation in respect of the Project;
- (b) its support for NextBridge's development of the Project and Project approvals sought by NextBridge, including the environmental assessment for the Project, and the leave-to-construction application to the Ontario Energy Board; and
- (c) BFN's expectation that NextBridge will continue to be, respectful of BFN's rights and interests, and will continue to engage and dialogue with the First Nation and work cooperatively with BFN during the development, construction and operation of the Project.



## **BATCHEWANA FIRST NATION OF OJIBWAYS**

RANKIN RESERVE 15D GOULAIS BAY RESERVE 15A OBADJIWAN RESERVE 15E WHITEFISH ISLAND 15

> Administration Office 236 Frontenac Street Rankin Reserve 15D Batchewana First Nation, Ontario P6A 6Z1 Ph. (705) 759-0914 / C&C Fax (705) 759-8213 www.batchewana.ca

Please feel free to contact me with any questions you may have in relation to this letter of support.

Yours very truly

Chief Dean Sayers

**Batchewana First Nation** 

CDS:sk

C.C.

W. Greer, ABN

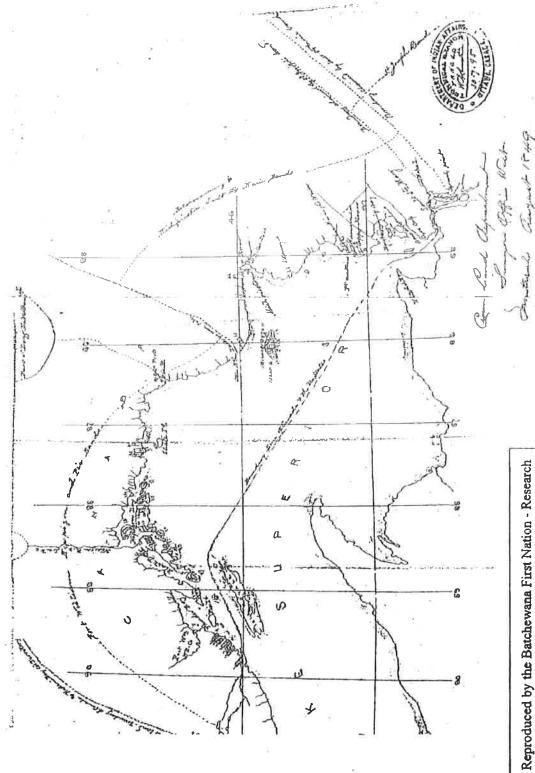
W. Henderson, Legal Counsel

**BFN Council** 

#### **EXHIBIT "B"**

THIS IS Exhibit "B" to the Affidavit of CHIEF DEAN SAYERS, sworn before me at the Rankin Reserve in the City of Sault Ste. Marie, Province of Ontario, this 7<sup>th</sup> day of May,2018.

A Commissioner, etc.



#### **EXHIBIT "C"**

THIS IS Exhibit "C" to the Affidavit of CHIEF DEAN SAYERS, sworn before me at the Rankin Reserve in the City of Sault Ste. Marie, Province of Ontario, this 7th day of May,2018.

A Commissioner, etc.

Lisa Acra Mane McComink, an introduced of Technolof Algoria, to Pershevana Frod Nation of Ojoways. Express August 7, 2019

New 230 kV East-West Tie Line Proposed Route Michopicoten White River **First Nation** PUKASKWA NATIONAL MARATHON TS PARK 100 8 NEW 230KV EAST-WEST TIE LINE PROPOSED ROUTE Lake Superior First NationSchre TRANSFORMER STATION (TS) EXISTING EAST-WEST TIE **FIRST NATION RESERVE** COMMUNITY HIGHWAY LAKEHEAD TS Thunder Bay

NEXTBRIDGE PROPOSED ROUTE SHOWING VIDAL-ANDERSON "BOUNDARY" (1849)

#### **EXHIBIT "D"**

THIS IS Exhibit "D" to the Affidavit of CHIEF DEAN SAYERS, sworn before me at the Rankin Reserve in the City of Sault Ste. Marie, Province of Ontario, this 7th day of May,2018.

A Commissioner, etc.

Lisa Anne Marie McCormick, a Light this oper left. District of Algoma, for Hatchewana First Nation of Orbways. Expres A. Just 7, 2019.



## From the Government of **BATCHEWANA FIRST NATION OF OJIBWAYS**

**RANKIN RESERVE 15D GOULAIS BAY RESERVE 15A OBADJIWAN RESERVE 15E** WHITEFISH ISLAND 15

Administration Office 236 Propleme Street Rankin Reserve 15D mns First Netion, Ontario, PSA 5K9

## BATCHEWANA FIRST NATION **NOTICE OF ASSERTIONS**

#### **Pursees**

By this Notice of Assertions the Batchewana Rinal Nation ("RENO, by its Chief and Council gives formal notice to other governments, to resource users and developers, to de neighbours and to the general public of the rights and markets 4 ascerts and will continue to assert in its original tra

BFN states to and reflect upon the Covenant Chain of mutual respect and agreements with the Crown, including the Two Row Wampurn Bell which was an early treaty that first Nations and colonial senties would each travel in vesions, side by side with each under their own laws, customs and ways. Like the Constitution of Canada, the Coverant Chain is 'as fiving tree" that continues to inform our ongoing relationship with other governments. In fact, the Covenant Chain reaches all citizens who, if they accept the banefit of our agreements with the Crown, must also accept the obligations of the Crown to 8FN.

Like other Optivery in the upper Great Lakes, the Batchestane First Nation has exercised its responsibility to use, possess and protect the vesters, lands and resources from time immemorial. The Creator placed our people at Bayesinting intercriptor, and to a respect to the vester of the country with all Creator our attems have bett us when the Creator told the create to choice a harmstand, the create to the inhumbers there were there was an abundance of the The address say that our original scrittory extended from the area should Besentings and up the coast of Lake Superior as far as what is not published. National Park, including alends in the lake, and to the mosts and morthwest begand the hospit of land, in 1984 its entropy each or two government agents, Vidal and Anderson, were sent to enquire into the traditional territories of the verticue First Nations. BFN continues to hold and to assert rights and interesses in its original territory just as 8 did prior to any treety with the Cream.

#### Treati

In 1850, Crown Commissioner Ribbinson regolated two treates at Sauli Site. Maris, now known as the Ribbinson Huron and Ribbinson Superior Treates. The original sumitory of BFN exceeds into both treatly snees and BFN has rights in both treatly snees. Our rights beyond the freight of tend were not eddressed at that time since that snee was then obstined by the Hudson's Bay Company and was not part of the Province of Canada.

The Batchevenins First Nation became a signatory to the Robinson Huron Steaty under its Chief Neteralgoching. In return for the opening of extensive lands to the Province, the trainty promised BFN continues are under use and continues and done to the national and the continues and the contin

The survey of the Batchesians Bay Raserve was hardly complete elver government agents began to acquire the reserve lands from BFN. Finally, star years of pressure, a complete errangement was put in place by R.T. Pennetistiner, Superintendent General of Index Affects, Involving BFN and two other First Nettons. This would have BFN with only the small reserve at Whiteliab latend, the Batchesians Reserve to be add for the benefit of BFN and lots of 40 acres to be general to BFN members at Genden River. Those grains were never made because Pennetistine did not negotiate with Genden River to provide for them. And white the original reserve lands were mosely sold, the least of diminished are was never resolved and, as is common with asked of Anishhabe lands, there are problems with the prices and accounting that need to be resolved. BFN does not assert 1859 rights against Genden River, but does seek redness from Carvada and Oreants.

Canada's failure to have due regard for the interests of BFN in 1859, or even to the legality of its promises to BFN, left our membership without any land base except for interests comprising the arreal flahing station in the regular Their treaty reserve was being sold, they had no land terruin its derivan Piver and no other reserve lands to call their own. Over time, tands were purchased at Goulais Bay and at the Parkin location, using the First Nation own funds. Governments did not recognize or protect BFN eatlierments at Batchewins Bay, at Ageive. Piver or later at Gros Cap. In 1982, Whitefah island isself was restored through negotiation and settlement with Canada later? It was belt to BFN for reserve a century.

BFN exerts its right to an increased inventory of reserve land based on the outstanding mealy entitiement from 1849 and 1850 and the falled promises of land tenure media in 1859

3FN mantains and asserts its rights to resource, resource-sharing and resource management of the BFN tech skiller and bisephere resource management, mines and minerals, waters and watersheds, wind and the environment

In addition to substantive optics to manage and conserve, SFN asserts its right to be engaged about development, exploitation or proposals that will impact these resources, the environment or the rights and interest. The object of those consultations would be the "free, prior and informed consent" of SFN as provided for in the United Haltons Disclaration on the Rights of Indigenous Peoples, which is consistent with the custom.

BFN prictice familities in a good neighbour to other First Nations and to other communities. While unytelding in its assertion of its rights to resources and to shared resources, BFN and its members do not seek out controllation and do seek to avoid it wherever possible. BFN is always prepared to proceed on the basis of mutual respect to seek mutual understanding and to consider the free, prior and informed consent referred to above.

This notice of assertions will scaled interested parties, and those who should be interested, in undestanding BFN's position historically and in the modern political, ecologic economic and legal labric. We welcom further information. We also look forward to building on the many positive relationships we have enjoyed over the years.

Many of the assertione named here have not been submitted to any court or other negoseting process to date, although other governments are well aware of them BFN anticipates working with other governments on processes of reconciliation and reserves all rights and remedias for vindosition of BFN's assertions. Everyone now has formed intrios of these assertions and of the opportunity to become better informed about them. All concerned any put on notice to work with BFN in future where activities, projects, policies and developments may have an impact on BFN rights and interests.

Outstanding 1850 Thesity land artitisment and other Tresty Issues
Rights to resources, harvesting and development of resources, resource management and conservation (pre- and post- Tresty)
Tresty annuties
Invalidity and is liure of 1859 Pennstecher amangment (protection of interests, security of land tenure, shortfall of compensation due to outstanding treaty (and entitlement)
Feliure to protect and preserve BRN preserve and constraintly lands for future generations
leasues of compensation, land seles and accounting after 1859
Unable surrandings lands

Continuing BFN rights and interests in our Original territory Engagement, Accommodation and Consent

This short list is not exhaustive and not overly detailed. If gives shape to BFN's executions and to this notice. After publication of this notice, all concenned have, at officers will be a duty to engage with BFN and to accommodate BFN injoints and internate or to secure BFN consent. BFN will take such shape as it do

Chief and Council, and the Belichevane First Nation, look forward to your cooperation.