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Via email (boardsec@oeb.ca and registrar@oeb.ca) and delivery (two hard copies to the Board)

May 31, 2018

Kirsten Walli
Board Secretary
Ontario Energy Board
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Dear Ms. Walli

**RE: Board File No. EB-2017-0364
NextBridge Infrastructure motion to dismiss application
Response to undertaking JT 1.31 given by the intervenor Ministry of
the Environment and Climate Change**

By way of further response to undertaking JT 1.31, please find enclosed a copy of the MOU between Hydro One and the Ministry of Energy which MOECC undertook to provide, if not confidential. As of May 25, MOECC had not been able to obtain a copy of

the MOU. MOECC has now located a copy of the MOU and has confirmed that it is not confidential. Our apologies for the delay in providing the document.

Yours very truly,

A handwritten signature in black ink, appearing to read "Nicholas Adamson". The signature is fluid and cursive, with the first name "Nicholas" being more prominent and the last name "Adamson" written in a more compact, flowing style.

Nicholas Adamson

encl.

cc: Zora Crnojacki, Case Manager (via email to zora.crnojacki@oeb.ca)
Lawren Murray, OEB Counsel (via email to lawren.murray@oeb.ca)
All parties listed in Schedule B of Procedural Order No. 1, issued April 27, 2018
(via email)

MEMORANDUM OF UNDERSTANDING

between

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
AS REPRESENTED BY
THE MINISTER OF ENERGY (the "Minister")

and

HYDRO ONE NETWORKS INC. ("Hydro One")

(Each a "Party" and together, the "Parties")

WHEREAS the Minister of Energy and Hydro One wish to clarify their roles and responsibilities regarding consultation on Projects pursuant to the Duty, as defined;

NOW THEREFORE the Parties agree as follows:

1. DEFINITIONS

1.1. In this MOU, the following terms have the meanings set out below.

- (a) **"Aboriginal Community" or "Aboriginal Communities"** means a First Nation or Métis community identified by the Ministry for consultation pursuant to section 3 of this MOU;
- (b) **"Consultation Plan"** means Hydro One's plan, as may be amended from time to time, respecting the conduct of the procedural aspects of consultation that are delegated under this MOU;
- (c) **"Crown"** means Her Majesty the Queen in right of Ontario;
- (d) **"Duty"** means the constitutional duty to consult and, where required, accommodate that the Crown may owe to Aboriginal Communities with respect to a Project;
- (e) **"Hydro One"** means Hydro One and any successor or authorized designate of Hydro One;
- (f) **"Ministry"** means the Ministry of Energy or any successor thereof;
- (g) **"MOU"** means this memorandum of understanding;

- (h) “**Project**” means a project that the Parties have, from time to time, agreed in writing should be subject to this MOU at which time it will be included or deemed to be included in Schedule A; and
- (i) “**Section 35 Right**” means an established or credibly asserted Aboriginal or treaty right.

2. PURPOSE

2.1. The purposes of this MOU are to:

- (a) formalize the delegation by the Crown to Hydro One of certain procedural aspects of consultation on Projects;
- (b) specify the roles and responsibilities of the Crown and Hydro One with respect to consultation on Projects; and
- (c) provide mechanisms for effective communication and coordination between the Crown and Hydro One relating to consultation on Projects.

2.2. The Parties acknowledge that:

- (a) the Crown bears any Duty that may be owed in relation to a Project;
- (b) Hydro One is responsible for carrying out procedural aspects of consultation that are delegated to it by the Crown under this MOU;
- (c) the Ministry is responsible for carrying out the responsibilities described in section 3 on behalf of the Crown, unless another Crown representative has been given responsibility for that matter; and
- (d) this MOU shall be construed in accordance with the laws of the Province of Ontario and, where applicable, the laws of Canada and, for greater certainty, is subject to all applicable regulations and regulatory regimes.

3. RESPONSIBILITIES OF THE CROWN

- 3.1. The Crown is responsible for determining whether the Duty arises in relation to a Project, and advising Hydro One of its determination.
- 3.2. Where the Crown determines that there is a Duty with respect to a Project and consultation is required, it is responsible for the following:

- (a) advising Hydro One in a timely manner of the Aboriginal Communities to be consulted and the depth of necessary consultation with each Aboriginal Community;
- (b) notifying the Aboriginal Communities that it has delegated procedural aspects of consultation on the Project to Hydro One;
- (c) undertaking any preliminary and ongoing assessment of the depth of consultation required with the Aboriginal Communities;
- (d) reviewing and advising Hydro One of the Crown's requirements in relation to the Consultation Plan;
- (e) receiving reports and information from Hydro One and overseeing consultation by Hydro One pursuant to the Consultation Plan;
- (f) as determined by the Ministry, coordinating Crown activities and sharing with other ministries and agencies the information received from Hydro One;
- (g) satisfying itself that the consultation process in relation to the Project is adequate, which may include contacting the Aboriginal Communities directly to discuss the adequacy of consultation;
- (h) determining whether accommodation of any adverse impacts of the Project on the Section 35 Rights of the Aboriginal Communities is appropriate and if so, to what extent;
- (i) advising Hydro One before the Crown takes positions or appears before judicial, quasi-judicial or regulatory tribunals or decision-makers, or before filing or making written submissions to any such judicial, quasi-judicial or regulatory tribunal or decision-maker, in relation to the fulfillment of the Duty with respect to a Project.

3.3 Notwithstanding sections 3.2 and 4.1, neither the Crown nor Hydro One shall be taken as having agreed, or conceded, that any matter set out therein is a mandatory aspect or requirement of the Duty, nor that any particular aspect of consultation is an aspect of consultation that cannot be carried out by Hydro One.

4. RESPONSIBILITIES OF HYDRO ONE

4.1. Hydro One is responsible for:

- (a) preparing and executing a Consultation Plan for the Project in accordance with section 6;
- (b) providing Aboriginal Communities with timely notice of the Project so that they can consider possible impacts on their Section 35 Rights;
- (c) providing Aboriginal Communities with information about the Project and the role that Hydro One will play in Crown consultation on the Project;
- (d) following up on the notice and provision of information in paragraphs (b) and (c) immediately above if Hydro One has not received a timely response or acknowledgement from an Aboriginal Community;
- (e) explaining to Aboriginal Communities the regulatory and approval processes that apply to the Project;
- (f) taking reasonable steps to foster positive relationships with Aboriginal Communities in relation to fulfilling any Duty in respect of the Project;
- (g) offering Aboriginal Communities assistance, including financial assistance where appropriate as determined by Hydro One for the purpose of participating in consultation on the Project;
- (h) meeting with, receiving and considering correspondence or other written materials from Aboriginal Communities in order to identify any concerns they may have regarding the potential impact of the Project on their Section 35 Rights;
- (i) where appropriate, discussing with an Aboriginal Community measures to address potential adverse impacts of the Project on its Section 35 Rights;
- (j) where appropriate, developing and proposing to the Crown appropriate accommodation measures;
- (k) maintaining records and providing information to the Crown in accordance with section 5;
- (l) filing documents, attending regulatory hearings, presenting records and other appropriate evidence of activities undertaken by the Crown and Hydro One to fulfill any Duty in relation to the Project, and making both written and oral submissions, as appropriate, to the regulatory entity regarding the fulfillment of the procedural aspects of any Duty; and
- (m) all ancillary activities associated with fulfilling the Consultation Plan for a Project.

- 4.2. Notwithstanding section 4.1 above, a ministry with an approval role for the Project, or any responsible official, agent, decision-maker or regulatory body of the Crown, may assume responsibility for carrying out the matters enumerated therein or participate to the extent deemed necessary by the responsible entity, and the Ministry will so advise Hydro One as soon as reasonably practicable which will relieve Hydro One of its delegated responsibility to that extent, including, for greater certainty, any responsibility for determining and providing appropriate financial assistance under paragraph 4.1(g).

5. RECORD KEEPING AND INFORMATION SHARING

- 5.1. Hydro One will keep records of all of its activities in relation to fulfilling the procedural aspects of consultation that are delegated to it under this MOU.
- 5.2. Hydro One will provide the Ministry with updates, summary reports or briefings on its consultation activities related to the Project as set out in the Consultation Plan.
- 5.3. Upon request from the Ministry, Hydro One will, within a reasonable time of the request, share its records compiled for the purposes of fulfilling its consultation responsibilities under this MOU, to demonstrate that Hydro One has satisfied its responsibilities agreed to in the Consultation Plan, subject to commercial confidentiality restrictions consistent with sub-section 5.7.
- 5.4. Hydro One will advise the Ministry in a timely manner of:
 - (a) any actual, potential or asserted adverse impact of the Project on established or asserted Section 35 Rights, whether Hydro One becomes aware of such impact or assertion through its consultation activities or otherwise; and
 - (b) any notice, statement or agreement by any Aboriginal Community that some or all of its Section 35 Rights concerns in connection with the Project have been resolved, or that the Duty has been fulfilled.
- 5.5. Hydro One will notify the Ministry before providing significant funding to an Aboriginal Community for major studies that relate to the Section 35 Rights of the Aboriginal community.
- 5.6. Hydro One will advise the Ministry before taking positions or appearing before judicial, quasi-judicial or regulatory tribunals or decision-makers, or before filing or making written submissions to any such judicial, quasi-judicial or regulatory tribunal or decision-maker, in relation to the fulfillment of the Duty with respect to a Project.

5.7. Hydro One will share with the Ministry the provisions of any agreements between Hydro One and Aboriginal Communities that:

- (a) indicate that the Aboriginal Communities will not oppose the project on the basis of Section 35 Rights;
- (b) are directed at accommodating possible adverse effects of the Project on Section 35 Rights; or
- (c) Hydro One is aware could otherwise potentially affect the obligations of the Crown to the Aboriginal Communities;

but Hydro One is not otherwise required to share details of its commercial or other arrangements.

5.8. In any agreements with Aboriginal Communities relating to the Project, Hydro One will ensure that it can disclose those clauses regarding consultation or accommodation of a Section 35 Right as required to meet its obligations under this MOU.

5.9. Hydro One shall seek to include a clause in any agreement with Aboriginal Communities that falls within section 5.7 requiring the said Aboriginal Communities to advise the Ministry directly, in writing, of any resolution of matters concerning their Section 35 Rights or of any agreement that the Duty has been fulfilled in relation to the Project.

5.10. The Ministry will share information received from Hydro One under this MOU with other Ontario ministries and regulatory agencies, where necessary. Commercially sensitive Hydro One information will be protected in accordance with applicable laws.

5.11. The Ministry, in a timely manner and within the applicable regulatory timeframes, will share with Hydro One records of Crown activities in relation to fulfilling any Duty, as required to ensure that Hydro One can fulfill its obligations pursuant to this MOU.

6. CONSULTATION PLAN

6.1. Hydro One will prepare a Consultation Plan for each Project and present it to the Ministry for its review within a reasonable time of the Ministry's request.

6.2. The Consultation Plan shall set out the manner in which Hydro One proposes to carry out its responsibilities under this MOU, including the identification of significant steps and a timetable for their completion.

6.3. For greater certainty, the Parties acknowledge that where there is a statutory process requiring Crown decisions pertaining to the Project, the requirements for satisfying any Duty in the context of such process are within the jurisdiction of the ministry, board, agency or decision-maker having responsibility to administer that statute, and therefore:

- (a) the content of the Consultation Plan is subject to the procedures and decisions of the responsible ministry, board, agency or decision-maker;
- (b) it is for the responsible ministry, board, agency or decision-maker to satisfy itself in relation to fulfilment of the Crown's Duty within the context of its approval, permit or authorization powers; and
- (c) to avoid duplication, the Consultation Plan may, where feasible, fulfill both the requirements of section 6 and any similar Crown requirements such as the preparation of terms of reference for an environmental assessment.

7. COORDINATION

7.1. The responsibilities outlined in this MOU shall be carried out, to the extent possible, in a coordinated manner so as to avoid duplication of effort by Aboriginal Communities, Hydro One, the Ministry, and provincial ministries, boards and agencies.

7.2. Both the Minister and Hydro One shall undertake their respective responsibilities in a timely manner, respecting regulatory timeframes as may be applicable.

8. GENERAL

8.1 This MOU and Schedule "A" may be amended in writing at any time by agreement of the Parties.

8.2 This MOU may be terminated at any time by the Minister by providing notice in writing, or upon the agreement of the Parties.

Dated this _____ day of _____, 2016.

HYDRO ONE NETWORK INC.

Per: _____

Hydro One Networks Inc.
President and CEO

**HER MAJESTY THE QUEEN IN
RIGHT OF ONTARIO, as represented by
the Minister of Energy**

Per: _____
Bob Chiarelli
Minister of Energy

SCHEDULE "A"

PROJECTS

1. The Northwest Bulk Transmission Line Project is a new 230 kV line between the Thunder Bay and Dryden areas, as defined in Hydro One Networks' Electricity Transmission License and referred to on pages 48-52 of Ontario's 2013 Long Term Energy Plan.