



Métis Nation of Ontario
Office of the President

May 14, 2018

Hydro One Networks Inc.
483 Bay Street
South Tower – 6th Floor
Toronto, Ontario M5G 2P5

Attn: David F. Denison, Chairman of the Board of Directors, Hydro One Networks Inc.
Mayo Schmidt, President and CEO, Hydro One Networks Inc.

Dear Mr. Denison & Mr. Schmidt:

RE: Request for Meeting in Relation to Hydro One's Lake Superior Link Project

I am writing as the President of the Métis Nation of Ontario ("MNO"). I am requesting a meeting with Hydro One Networks Inc. ("Hydro One") on an urgent basis to discuss the corporation's troubling conduct and failings in relation to the proposed Lake Superior Link Project (the "LSL").

For over a decade now, the MNO has strived to build a positive working relationship with Hydro One. This has included cooperation on projects such as the Bruce to Milton Transmission Line ("B2M"), amongst others. Notably, flowing from B2M, the MNO entered into both a consultation as well as an accommodation agreement with Hydro One. With Hydro One's previous Indigenous Relations staff, such as Leanne Cameron, we believed there was a respectful relationship built in part on the understanding that Ontario Métis and our rights would not be treated as "less than" other Indigenous communities.

Given this history, the MNO is shocked and insulted by Hydro One's recent actions regarding the LSL. Hydro One has unilaterally pre-determined and dismissed the rights and interests of the two rights-bearing Métis communities represented by the MNO that will be impacted by the LSL: the Northern Lake Superior Métis community and the Sault Ste. Marie Métis community.¹ A map of these Métis communities in relation to the LSL is attached to this letter.

Not only has Hydro One disrespected and disregarded the need for deep consultation with these Métis communities, it has ignored explicit direction both from Ontario and the Ontario Energy Board (the "Board") regarding the importance of economic participation of **both** First Nations **and** the Métis in new transmission projects in the province. Hydro One has decided—without any advance discussions or recognition of our interests—to exclude the MNO from potential equity in the LSL. This demonstrates

¹ More information on these Métis communities can be found in the MNO Written Evidence, EB-2017-0364, LSL Motion ("MNO Evidence"). The MNO's evidence also outlines the rights, interests, and concerns of the Métis Communities which require deep consultation.

a complete disregard for the Crown’s longstanding commitments and direction in repeated Long-Term Energy Plans (“LTEPs”).²

Prior to detailing Hydro One’s disrespectful conduct and failings in relation to the LSL, the MNO wants to make clear that consultation and economic participation are distinct in relation to new transmission projects in Ontario. Ontario’s LTEPs set out the clear expectation that transmitters will fulfill consultation obligations **and** explore economic participation with **both** First Nation **and** Métis communities.³ This distinction was repeatedly recognized by the Board and incorporated into its Phase 2 Decision and Order on the East-West Tie (“EWT”), wherein the Board separately evaluated First Nations and Métis Consultation, and First Nations and Métis Participation, as two of its nine criteria used to evaluate competing bids to be designated as the transmitter for the EWT.⁴

In 2013, Hydro One and its partners’ attempt to be designated for the EWT failed in part because of its problematic approach to Métis consultation and its exclusion of meaningful opportunities for Métis economic participation. It is appalling that—five years later—Hydro One is now trying to revive this failed approach through the backdoor in a flawed, costly and eleventh-hour leave to construct application; an application which does not even include its original First Nation partners anymore. Let me be clear: the MNO will not allow Métis rights and interests, nor Métis participation in any new transmission line based on longstanding Crown commitments, to be sacrificed through Hydro One’s ill-conceived LSL.

If Hydro One’s LSL application is allowed to proceed further, we will likely end up in the courts. The costs of this misadventure will ultimately be borne by your shareholders and Ontario ratepayers.

The MNO has diligently participated in and relied on the Crown’s commitments and the Board’s decisions in relation to the EWT, for going on eight years. Through this process, we have achieved meaningful consultation as well as participation in relation to the EWT. This has been achieved because NextBridge (the designated transmitter for the EWT) has followed through on the commitments made in their designation bid, and has taken seriously the LTEP’s commitments and the Board’s previous decisions.

We will not allow Hydro One’s LSL application—that disrespects and excludes Métis on its face—to proceed. While Hydro One may be able to try to play “fast and loose” with the spirit and intent of Ontario’s legislation and policies, the

² Province of Ontario, *Achieving Balance: Ontario’s Long-Term Energy Plan 2013* at 73, (“2013 LTEP”). <https://www.ontario.ca/document/2013-long-term-energy-plan>. Province of Ontario, *Ontario’s Long-Term Energy Plan 2017: Delivering Fairness and Choice* at 134, https://files.ontario.ca/books/ltep2017_0.pdf (“2017 LTEP”).

³ 2013 LTEP at 73.

⁴ Ontario Energy Board, Phase 2 Decision and Order in EB-2011-0140, August 7, 2013 at 14–15. https://www.oeb.ca/oeb/Documents/EB-2011-0140/Dec_Order_Phase2_East-WestTie_20130807.pdf (“Phase 2 Decision”).

Crown—which has constitutional duties and obligations owing to the Métis—cannot. The honour of the Crown demands that these commitments be upheld. Hydro One’s LSL application and conduct undermines and makes a mockery of these same commitments.

The remainder of this letter details just some of the ways in which Hydro One’s LSL approach and application are flawed. Clearly, the consultants and advisors driving this misadventure to date are not acting in the best interests of the corporation, Ontario ratepayers or reconciliation.

1. Hydro One has Pre-Judged and Disrespected Métis Rights, Interests and Claims in its Approach to Consultation

The MNO received its first correspondence from Hydro One about the LSL on April 30, 2018. This letter stated that Hydro One wanted to begin consultation with the MNO “immediately.”⁵

Unbeknownst to the MNO, Hydro One had already determined—prior to sending the April 30 letter—that the rights, interests and claims of Métis communities were inferior to those of six First Nations.⁶ This is evidenced by a letter from Hydro One Vice President of Indigenous Relations Derek Chum to Kate Kempton, counsel to the six First Nations, dated two weeks before any contact was made with the MNO:

At the same time, we will also be engaging with the First Nations and Métis communities that are less directly affected including the Métis Nation of Ontario. Although the frequency of meetings will be less than with the BLP communities, their input is valuable and informative.⁷ **[emphasis added]**

This statement is inaccurate, ill-informed, and offensive. It demonstrates that Hydro One is not committed to meaningful consultation with the Métis and that it likely cannot effectively discharge its consultation obligations with respect to the LSL for three reasons:

- a. **Hydro One made a determination about the level of consultation and impacts without any direction from the Crown—or even one discussion with the MNO—about Métis rights, interests, and claims in the area.**⁸ Meaningful and

⁵ MNO Evidence, Appendix P.

⁶ These First Nations include: Pays Plat First Nation, Fort William First Nation, Red Rock Indian Band, Pic Mobert First Nation, Michipicoten First Nation and Biigtigong Nishnaabeg First Nation.

⁷ Written Evidence of Hydro One, EB-2017-0364, LSL Motion, Attachment 12, at 2 (“Hydro One Evidence”).

⁸ The MNO would note that in November of 2017, Hydro One requested that Ontario delegate procedural aspects of consultation to it and further requested that Ontario provide a list of First Nations and Métis communities with Ontario’s strength of claim analysis. Ontario provided such a list after Hydro One has filed its Leave to Construct Application on February 15, 2018. This list from Ontario includes three MNO Community Councils and the MNO itself. This list is not triaged in any way. Ontario has not directed Hydro One to conduct differing levels of consultation with the Métis versus First Nations.

honourable consultation must be informed by discussions, facts and evidence, not by playing one Indigenous group against another (*i.e.*, diminishing the rights and interests of one group in order to potentially curry favour with another). Through these actions, Hydro One has demonstrated that Hydro One is not able to discharge procedural aspects of the Crown’s consultation obligations owing to the Métis in relation to the LSL.

- b. **Hydro One has pre-judged consultation outcomes.** Simply put, how can Hydro One make statements about effects on Indigenous peoples when the consultation process on the LSL has not even begun? Clearly, Hydro One is not committed to assessing LSL’s effects on Métis rights and interests with an open mind, since it has already pre-determined a certain outcome. This is the antithesis of consultation. The MNO cannot imagine that this conduct is in keeping with the Memorandum of Understanding Hydro One signed with Ontario on consultation in relation to the LSL—however, this agreement has not been shared with the MNO to date. The fact that the MNO has been kept in the dark about the consultation process is itself inconsistent with the Supreme Court of Canada’s recent statements that “[g]uidance about the form of the consultation process should be provided so that Indigenous peoples know how consultation will be carried out to allow for their effective participation.”⁹
- c. **By disrespecting and dismissing the Métis communities that live, use, and rely on the territory through which the LSL will pass, Hydro One has effectively “poisoned the well” for consultation on the LSL.** Positive relationships, which are required to discharge delegated consultation obligations, cannot be built on pre-judged, biased and prejudiced foundations. As the Supreme Court of Canada has recognized, consultation is about an “ethic of ongoing relationships.”¹⁰ Why would our communities engage in a pre-determined consultation process with a proponent that has a closed mind? How can they trust Hydro One to even listen when it has already determined consultation outcomes?

Taken together, in the MNO’s opinion, these factors demonstrate that Hydro One is not up to or sincerely committed to meaningful Métis consultation on the LSL.

(2) **Hydro One Has Excluded Métis from Meaningful Economic Participation**

Consultation and economic participation are not synonymous. Economic participation does not replace consultation and accommodation, or vice versa. As was stated in the Board’s Phase 2 Decision and Order for the EWT:

⁹ *Clyde River (Hamlet) v Petroleum Geo-Services Inc.*, 2017 SCC 40 at para 23.

¹⁰ *Rio Tinto Alcan Inc. v Carrier Sekani Tribal Council*, 2010 SCC 43 at para 38.

There is a distinction between this criterion (First Nations and Métis Participation) and the criterion addressed later in this decision (First Nations and Métis Consultation). The

former arises from Ontario socio-economic policy and the latter is related to a constitutional obligation. Ontario's Long Term Energy Plan states:

Where new transmission lines are proposed, Ontario is committed to meeting its duty to consult First Nations and Métis communities in respect of their aboriginal and treaty rights and accommodate where those rights have the potential to be adversely impacted. **Ontario also recognizes that Aboriginal communities have an interest in economic benefits from future transmission projects crossing through their traditional territories and that the nature of this interest may vary between communities.**¹¹ [emphasis added]

Contrary to what Hydro One appears to think, Ontario's economic participation commitments are not—in and of themselves—“accommodation.”¹² Accommodation flows from the constitutional duty to consult and may require, for instance, a change to a project, licensing conditions, joint monitoring, compensation or even denial of a sought approval. On the other hand, Ontario's LTEPs make clear that transmitters must consult (and necessarily accommodate if the situation requires it) **as well as** explore economic participation with proximate First Nations **and** Métis communities where there is an interest.¹³

Given the MNO's almost eight years of active participation regarding the EWT,¹⁴ Hydro One is well aware that the MNO has an interest in economic participation in any transmission line in this area. If Hydro One had bothered to speak with the MNO, read previous Board decisions in relation to the EWT or thought back to some of the factors that contributed to its failure to be designated to build the EWT in the first place,¹⁵ this would have been clear.

Despite this, Hydro One made the decision to—once again—only contemplate equity participation for six First Nations. This decision was made before Hydro One had made any contact with the MNO (and this contact was to discuss consultation, not economic

¹¹ Phase 2 Decision at 14-15.

¹² Hydro One Evidence, Attachment 12 at 2. BLP asked Hydro One for details on its approach to accommodation (specifically referring to economic participation), and Hydro One's response clearly accepts the premise that economic participation is accommodation.

¹³ 2013 LTEP at 73; 2017 LTEP at 134.

¹⁴ The MNO has been involved in the EWT process since 2012, when it made submissions to ensure that First Nations and Métis Participation was included as a designation criterion for the EWT.

¹⁵ In its failed designation bid for the EWT, the Board commented Hydro One's proposal for First Nations and Métis participation included “more limited opportunity for other affected First Nations and Métis communities to participate in the various aspects of the project and no opportunity for equity participation.” Phase 2 Decision at 39.

participation). Mr. Chum's April 12, 2018 letter (recall that Hydro One did not contact the MNO until April 30, 2018) to Ms. Kempton states that:

Should the OEB award Hydro One leave to construct the Lake Superior Link Project, we are committed to offering BLP an opportunity to own 34% in a limited partnership ...¹⁶ [emphasis added]

Hydro One's evidence demonstrates that it has no intention of opening further equity for the Métis:

In Hydro One's s. 92 application for the LSL, Hydro One references achieving agreements with Indigenous communities within 45 days from receipt of OEB approval of its Application. **This 45-day timeframe is in relation to finalizing any terms and conditions that may be agreed upon between Hydro One and the First Nations partners in Bamkushwada Limited Partnership (BLP) to establish mutually agreeable terms with regards to a limited partnership that will own the Lake Superior Link assets.¹⁷ [emphasis added]**

It is obvious that Hydro One has not learned from its previous failed EWT designation application. First Nations and Métis participation was a filing requirement for the EWT.¹⁸ All Hydro One has addressed in its LSL application is potential First Nation participation. Instead of remedying its past failings, Hydro One has decided to compound its previous insult to the Métis by effectively seeking to resurrect its unsuccessful EWT bid, and in doing so, perpetuating its exclusionary and discriminatory attitude towards the Métis. This attitude ignores Hydro One's obligations as a proponent with delegated consultation obligations, as well as the current state of the law and policy in Ontario. It appears that the "new" Hydro One is even worse the old one when it comes to respectfully dealing with the MNO and the Métis.

As discussed above, for the Board to grant, or for Ontario to allow, Hydro One's LSL application to move forward based on its same failed model from the EWT designation process would be unconscionable. It would also be a breach of the honour of the Crown based on the commitments made to the Métis in repeated LTEPs, the MNO's reliance on those commitments, and the fact that the MNO has an economic participation arrangement with NextBridge. Hydro One's current approach makes a mockery of these commitments by Ontario as well as the designation process for the EWT through its disregard for the Board's determinations in that process. **The MNO will ensure the Crown's honour is upheld, through the courts if necessary.**

The MNO is requesting an urgent meeting with Hydro One on these issues. Given Hydro One's apparent indifference towards its relationship with the Métis and its exclusionary

¹⁶ Hydro One Evidence at 12.

¹⁷ Hydro One Evidence at 41.

¹⁸ Ontario Energy Board, Phase 1 Decision and Order in EB-2011-0140, July 12, 2012 at 4.
[file:///C:/Users/mstrachan/Downloads/Dec_Order_Phase1_EWT_20120712%20\(1\).PDF](file:///C:/Users/mstrachan/Downloads/Dec_Order_Phase1_EWT_20120712%20(1).PDF)

strategy in relation to the LSL to date, we expect this request to be ignored. Until these fundamental issues are resolved, our Community Councils and regional leadership will not be meeting or responding to further meeting requests in relation to the LSL. While we recognize that we have reciprocal obligations in relation to consultation, the MNO will not engage with a proponent that has so flagrantly disregarded its delegated obligations from the Crown.

We look forward to hearing from you in relation to the MNO's request.

Yours very truly,



Margaret Froh
President

c.c. MNO Lakehead/Nipigon/Michipicoten Regional Consultation Committee,
including the Thunder Bay Métis Council, the Greenstone Métis Council, and the
Superior Northshore Métis Council
MNO Historic Sault Ste. Marie Regional Consultation Committee, including the
Historic Sault Ste. Marie Métis Council and the North Channel Métis Council
Roberta Jamieson, Board of Director, Hydro One Networks Inc.
Honourable Glenn Thibeault, Minister of Energy
Jason Madden and Colin Salter, Pape Salter Teillet LLP



Legend

East-West Transmission Line

Métis Consultation Protocol Areas

Lakehead/Nipigon/Michipicoten

Sault Ste Marie Region

Métis Traditional Harvesting Territories

Abitibi/Temiscamingue

Historic Sault Ste. Marie

James Bay

Lake of the Woods/Lac Seul

Lakehead

Michipicoten

Nipigon

Rainy Lake/Rainy River

Locations Identified As Part of Sault Ste. Marie
Métis Community in R. v. Powley

MNO Community Councils

Administrative Boundaries

Office or Mailing Address Location

Treaty Territories

Robinson Huron Treaty

Robinson Superior Treaty

First Nations Identified for Consultation

First Nation

**Métis Communities and Proposed East-West Tie
Transmission Project
(Territories and Administrative Geography)**



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