

**Michipicoten First Nation (“MFN”) Interrogatories  
Hydro One Networks Inc. (“HONI”)  
2023-2027 Custom Incentive Rate-setting Application  
October 26, 2021**

**MFN Interrogatory 1**

**Reference:** Exhibit E, Tab 9, Schedule 4

*“Through agreements or permits granted by Indigenous Services Canada (“ISC”), Hydro One has approval for its transmission and distribution facilities (that is, lines and transformer and distribution stations), to cross and/or occupy First Nation Reserves. Some of these permits and agreements require Hydro One to pay annual rental fees. Payments are administered by ISC with the exception of First Nation Bands under the First Nation Land Management Act, in which case Hydro One compensates the First Nation directly.*

*The transfer orders by which Hydro One acquired Ontario Hydro’s electricity transmission and distribution and energy services businesses as of April 1, 1999 did not transfer title to some assets located on lands held for First Nations under the Indian Act. The transfer of title to these assets did not occur because authorizations originally granted by the federal Minister of Indigenous Services Canada for the construction and operation of these assets could not be transferred without the consent of the Minister and the relevant First Nations or, in several cases, because the authorizations had either expired or had never been properly issued. The transmission portion comprises of transmission lines, primarily, held by the Ontario Electricity Financial Corporation. Under the terms of the transfer orders, Hydro One is required to manage these assets until it has obtained all consents necessary to complete the transfer of title to them. Hydro One is seeking to obtain from the relevant First Nations, the consents necessary to complete the transfer of title to these assets. The First Nations rights payments for the 2023 test year are budgeted to be 2.8 M.”*

**Questions:**

- a) Please specifically identify how many permits are covered in the 2.8 M budget.
- b) What are the specific components of payment covered in the 2.8 M budget and does this amount apply only to section 28(2) Permits and related PILs?
- c) Other than for PILs, capacity funding and payments related to a specific project, does HONI make any payments to First Nations in Side Agreements that ISC is not a party to? If so, please provide a table setting out an itemized accounting of the amounts, the subject matter of the payments, how they are categorized and where they are accounted for in your evidence.
- d) The above-noted evidence says that HONI is seeking to obtain from relevant First Nations the consents necessary for the release, relinquishment (of OEFC) and new permit (for HONI) process it began in 1999. What happens if it does not obtain such requisite consents?
- e) Has ISC ever written a letter to HONI advising that it must secure a Section 28(2) Permit in its own name, or that it would have no option but to issue a Ministerial Order to evict and remove HONI from a given Reserve?
- f) Has HONI ever been served with an application in federal court for a declaration that, *inter alia*, a Permit issued under s. 28(2) of the *Indian Act* to Ontario Hydro had expired, and directing the Minister to cancel the Permit accordingly and/or that HONI and/or OEFC were in a state of trespass? If so, please provide the details.
- g) The above-noted evidence says that ISC Permits are for crossing and occupying Reserves. Does HONI have any section 28(2) Permits that address off-Reserve assets or rights? If so, please provide the details and an explanation of why such topics are the proper subject-matter of a Section 28(2) Permit.

## MFN Interrogatory 2

**Reference:** Exhibit G, Tab 1, Schedule 2.

### *“RIGHTS PAYMENTS VARIANCE ACCOUNT (ACCOUNT 2405) – MODIFICATION*

*Hydro One Transmission proposes to continue this account subject to the modification described below. As explained in Exhibit G-01-01, this account is used to capture the difference between forecast rights payments and the actual costs incurred by Hydro One Transmission for rights payments. Rights payments are generally paid when Hydro One’s line facilities cross and/or occupy properties owned by other parties, such as First Nations or railway companies. This account has been approved for continuance since 2011. The account ensures that ratepayers receive the benefit of any shortfall in actual rights payments made, and enables Hydro One to recover rights payments made in excess of the forecast used to establish the Transmission revenue requirement. In addition to continuing to use the account to record such variances over the 2023-2027 period, Hydro One Transmission requests approval to modify the terms of the account to provide greater clarity on the nature and scope of rights payments that may be captured.*

*When the account was initially established in EB-2010-0002, it was established on the basis of Hydro One’s description of its rights payments as being inclusive of (i) payments of fees under agreements or permits with railway companies and government entities for rights to cross and/or occupy their properties, (ii) payments of annual rental fees under permits and agreements from or with the Department of Indian and Northern Affairs Canada, through which Hydro One had approvals for its lines and stations to cross and/or occupy First Nation Reserves, and (iii) amounts it has to pay to obtain all required consents necessary to complete the transfer title to Hydro One for lands relating to approximately 82 km of transmission lines, in respect of which Hydro One incurs continuing*

*payments and is engaged in ongoing negotiations with various First Nation bands.*

*Hydro One continues to incur costs for rights payments that clearly fall within the first two categories described above. With respect to the third category of rights payments described above, Hydro One has found through its continued efforts to obtain the consents that the form and characterization of payments ultimately required in connection with securing such consents can be varied. For example, Hydro One has had discussions with First Nations in the context of entering into “Long Term Relationship Agreements” under which there may be payments made as part of relationship commitments to address ongoing utility activities within traditional territories, as well as payments for releases for historical utility activities carried out within traditional territories. While such payments may not be expressly for the use of lands, the context is such that the payments must be made as a prerequisite to securing the consents that are required to complete the transfer of title to Hydro One for the relevant lands, or as an essential component in reaching an overall settlement of issues which enables Hydro One to secure the consents required to complete the transfer of title to Hydro One for the relevant lands. As such, Hydro One requests approval for the Rights Payments Variance Account to be used to capture amounts in relation to payments that Hydro One is required to make under Long Term Relationship Agreements or similar, regardless of how those payments are characterized or their form, so long as the payments are necessary for Hydro One to obtain the consents required to complete the transfer of title to Hydro One for the relevant lands. Refer to Exhibit E-09-04 for an overview of Rights Payments.”*

**Questions:**

- a) Please provide a detailed breakdown of the historic and forecasted costs that would fall into each of the three categories described above.
- b) As of the date of this IR, does HONI have any fully executed agreement with any First Nation that explicitly refers to “Long

Term Relationship Agreement” as being the subject matter of the agreement?

- c) In the case of MFN, did HONI have any discussions about a “Long Term Relationship Agreement” or “Continuing Relationship Agreement” before July 22, 2020? If so, please provide the dates and details of those discussions.
- d) With regard to the third category and your evidence that payments for utility activities across traditional territories may be a prerequisite to securing consents for use and occupation permits, is this HONI’s prerequisite? Is it Indigenous Service Canada’s (“ISC”) prerequisite and if so, how was this communicated with HONI? Is it any First Nation’s prerequisite and if so, how was this communicated to HONI? Has any First Nation ever communicated to you that not only are such payments not considered prerequisites to use and occupation permits, they are completely distinct and separate matters?
- e) Has HONI ever received a letter from ISC stating that full payments for rights crossings should be in Section 28(2) Permits? If so, please provide the details behind such a communication and what HONI’s response was.