

EB-2022-0140

Ontario Energy Board

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B; and
in particular sections 92 and 97 thereof

AND IN THE MATTER OF an application by Hydro One Networks Inc. for leave to construct
an electricity transmission line between Chatham Switching Station and Lakeshore Transmission
Station

WRITTEN INTERROGATORIES

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CUSTOMER IMPACTS

Interrogatory # 2-HDI-1

Reference: Exhibit B-2-1, Attachment 1, “General Area Map”

Questions:

1. Has Hydro One considered re-routing its electricity transmission line so it is not situated on or within land subject to Haudenosaunee interests?
 - a. If so, please explain why re-routing the electricity transmission line as described above has not been pursued.
 - b. Please provide any materials relating to the consideration described above.

Interrogatory # 2-HDI-2

Reference: Exhibit B, Tab 1, Schedule 1

“Hydro One is committed to working with Indigenous Peoples in a spirit of cooperation and shared responsibility. We acknowledge that Indigenous Peoples have unique historic and cultural relationships with their land and a unique knowledge of the natural environment. Forging meaningful relationships with Indigenous Peoples based upon trust, confidence, and accountability is vital to achieving our corporate objectives. Hydro One has been engaging with communities since early in the development process and will continue that engagement throughout the life cycle of the Project. Additionally, Hydro One has, and will continue to throughout the life cycle of the Project, engaged in extensive economic participation negotiations with impacted Indigenous communities including employment, training, contracting and equity participation in the Project

Questions:

1. Hydro One does not mention “consultation” or “engagement” with Indigenous groups in its application materials. Is it Hydro One’s position that engagement with the Haudenosaunee Confederacy Chiefs Council and/or HDI is not necessary for the project?
 - a. If yes, please provide materials related to that position.
 - b. If no, describe how Hydro One will engage with the Haudenosaunee Confederacy Chiefs Council and/or HDI.
2. Has Hydro One been delegated any aspects of the Crown’s duty to engage or consult with Indigenous peoples as part of the project?
 - a. If yes, please provide all documents evidencing and relating to this delegation.
 - b. If yes, describe Hydro One’s efforts to date to discharge its delegated duty to engage and/or consult, to the extent such efforts are not disclosed in the subject application materials.
 - c. If yes, please provide any documents, including correspondence and agreements, relating to Hydro One’s discharge of its delegated duty to engage and/or consult.
 - d. If yes, has Hydro One consulted or engaged with the Haudenosaunee as part of its delegated duty to engage and/or consult?

- e. If yes, has Hydro One discharged its delegated duty to engage and/or consult the Haudenosaunee?
 - i. If Hydro One has not discharged its delegated duty, will Hydro One engage with the Haudenosaunee throughout the project as part of its delegated duty to engage and/or consult?
- f. If yes, has Hydro One engaged with or consulted other Indigenous peoples as part of its delegated duty to engage and/or consult?
 - i. If yes, has Hydro One provided any compensation or mitigation to such Indigenous peoples?
3. Has a Minister or Ministry provided Hydro One any information or guidance relating to the duty to engage or consult with Indigenous peoples?
 - a. Describe such information or guidance and provide any documents relating to same.
4. Has the Ontario government, including the Ministry of the Environment, Conservation and Parks, contacted Hydro One regarding the Crown’s duty to engage and/or consult?
 - a. If yes, please provide any correspondence and documents relating to same.
5. What is Hydro One’s understanding of “procedural aspects of consultation”?

LANDOWNER AGREEMENTS

Interrogatory # 4-HDI-1

Reference: Exhibit E, Tab 1, Schedule 1

“LAND MATTERS

[...]

2.0 DESCRIPTION OF LAND RIGHTS

The Project will require Hydro One to acquire land rights from 126 directly impacted property owners, consisting of 120 privately or municipally held properties and 6 railway crossings. The majority of properties will require Hydro One to acquire easement or fee simple corridor takings, at the property owner’s election. A small number of properties will have dwellings and or major farm buildings within the new Hydro One corridor. Hydro One will work with directly impacted property owners and attempt to negotiate amicable voluntary agreements, which may include full property buyouts, at the property owner’s election.

[...]

3.0 DESCRIPTION OF NEW LAND RIGHTS REQUIRED

Hydro One will document all required new land rights to construct, operate and maintain the line in a number of agreements. On affected properties, the following land rights agreements are or may be required:

- Early Access Agreement;
- Option to Purchase a Limited Interest – Easement;
- Compensation and Incentive Agreement – Easement;
- Option to Purchase – Fee Simple;

- Compensation and Incentive Agreement – Fee Simple;
- Rail Crossing Agreement (provided by rail company at a later date);
- Encroachment Permit (provided by Ministry of Transportation at a later date);
- Agreement for Temporary Rights;
- Off Corridor Access;
- Crop Land Out of Production Agreement; and
- Damage Claim Agreement/Waiver.

4.0 EARLY ACCESS TO LAND

Hydro One requires early access to the corridor to perform various activities/studies associated with the Project which include specific environmental studies, engineering and design studies, and property specific land valuations/studies.”

[...]

5.0 LAND ACQUISITION PROCESS

Hydro One is seeking voluntary property rights agreements with affected property owners based on its Project specific Land Acquisition Compensation Principles.

[...]

Hydro One’s property agents have been meeting with affected property owners since 29 March 2021.”

Questions:

1. With respect to Hydro One’s acquisition of “land rights from 126 directly impacted property owners”, did Hydro One consider the impact of the project on Haudenosaunee treaty rights in the subject area?
 - a. Has Hydro One considered Haudenosaunee treaty rights in any capacity as part of the project?
 - b. Does Hydro One believe the project will impact treaty rights of the Haudenosaunee?
 - c. Is Hydro One aware that the Haudenosaunee have treaty rights pursuant to the Nanfan Treaty of 1701 that cover the lands contemplated by the project?
 - i. If yes, has Hydro One sought the free, prior and informed consent of the Haudenosaunee or the HCCC to carry out the project?
2. With respect to the “land rights agreements” listed, has Hydro One considered any of these for Indigenous peoples?
 - a. Has Hydro One offered any of these to Indigenous peoples?
 - b. Has Hydro One offered any of these to the Haudenosaunee, whether through HCCC or HDI?
3. Is Hydro One conducting any archaeological assessments or studies as part of the project?
 - a. If so, please any materials relating to such archaeological assessments.
4. Please provide Hydro One’s “Land Acquisition Compensation Principles”.
5. How was the compensation calculated for landowners? Please provide the formula(e).
6. What compensation was provided to landowners impacted by the proposed project?

7. What are the final financial terms of agreements between Hydro One and landowners directly impacted by the project?

CONDITIONS OF APPROVAL

Interrogatory # 5-HDI-1

Reference: Procedural Order No. 1 in EB-2022-0140, dated July 13, 2022

“The OEB also notes that the Project is subject to an Environmental Assessment conducted by the Ministry of the Environment, Conservation and Parks, and that the duty to consult for the Project is led by the Ontario government as part of the Environmental Assessment process.”

Questions:

1. Has Hydro One been contacted by the Ontario government, whether the Ministry of the Environment, Conservation and Parks or otherwise, regarding the duty to consult?
 - a. If yes, please provide any correspondence and materials relating to same.
2. Is Hydro One aware of any efforts of the Ontario government, whether through the Ministry of the Environment, Conservation and Parks or otherwise, to discharge its duty to consult?
 - a. If yes, please describe such efforts and provide any materials relating to same.
3. Is Hydro One willing to accept as a condition for approval, in general terms, that Hydro One must engage with the Haudenosaunee, whether through HCCC and/or HDI, in respect of the project?
4. Will Hydro One engage with the HCCC and/or HDI in respect of the project?

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 27th day of July, 2022.

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