



October 6, 2022

**VIA RESS**

Ontario Energy Board  
P.O. Box 2319,  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, ON M4P 1E4  
Attention: Registrar

Dear Ms. Marconi,

**Re: Hydro One Networks Inc. ("HONI")  
Leave to Construct Application – Chatham by Lakeshore  
Board File No.: EB-2022-0140**

We are counsel to Three Fires Group Inc. ("**Three Fires**") in the above-noted proceeding. Please find enclosed the written submissions of Three Fires, pursuant to Procedural Order No.4.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Vollmer".

DT Vollmer

- c. C. Molina, HONI
- M. Caceres, HONI
- GM Nettleton, McCarthy Tétrault
- Chief Duckworth and L. Sault, Caldwell First Nation
- P. Lee and D. Richardson, Three Fires
- All intervenors in EB-2022-0140

Encl.

**ONTARIO ENERGY BOARD**

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched. B, as amended;

**AND IN THE MATTER OF** an Application by Hydro One Networks Inc. pursuant to section 92 of the Act for an Order or Orders granting leave to construct transmission line facilities in the West of Chatham area.

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

**EB-2022-0140**

**WRITTEN SUBMISSIONS**

**OF**

**THREE FIRES GROUP INC.**

**October 6, 2022**

## I. INTRODUCTION

1. We are counsel to Three Fires Group Inc. (“**Three Fires**”) in the matter of Hydro One Networks Inc.’s (“**Hydro One’s**”) application to the Ontario Energy Board (the “**Board**” or the “**OEB**”) for leave to construct approximately 49 kilometers of 230 kV electricity transmission line facilities between Chatham Switching Station and Lakeshore Transformer Station (the “**Project**”) and approval of the forms of land use agreements offered or to be offered to affected landowners (collectively, the “**Application**”).
2. Three Fires is an Indigenous business corporation that jointly represents the interests of Chippewas of Kettle and Stony Point First Nation (“**CKSPFN**”) and Caldwell First Nation (“**Caldwell**” and, together, the “**Three Fires First Nations**”). It has full intervenor status in this proceeding. The Three Fires First Nations each have traditional territory, and associated Aboriginal rights and interests protected by the *Constitution Act, 1982*, that may be impacted by the outcomes of this proceeding.
3. Three Fires appreciates that, by Order in Council dated March 31, 2022, the Lieutenant Governor in Council declared the Project a priority transmission project pursuant to section 96.1(1) of the Act.<sup>1</sup> This means that the Board is required to accept that the construction of the Project is needed when forming its opinion under section 96 as to whether the construction of the Project is in the public interest,<sup>2</sup> which is in turn limited to consideration of the interests of consumers with respect to prices and the reliability and quality of electricity service.<sup>3</sup>
4. The Board noted in Procedural Order No. 1 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 Indigenous peoples in respect of the Project is led by the Ontario government as part of the environmental assessment process.<sup>4</sup>

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<sup>1</sup> Order in Council 876/2022 (March 31, 2022), available online at: <https://www.ontario.ca/orders-in-council/oc-8762022>.

<sup>2</sup> *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched. B, s. 96.1(2).

<sup>3</sup> *Ibid.*, s. 96(2).

<sup>4</sup> Procedural Order No. 1 (July 13, 2022), p. 4, available online at: <https://www.rds.oeb.ca/CMWebDrawer/Record/750953/File/document>.

5. Many key issues remain before the Board in spite of the narrower scope. These include the Board's assessment and consideration of Project costs (including of environmental assessment and Indigenous consultation activities), the Project's associated risks, the need for and the amount of capital contributions required for the Project, the rate impacts of the Project, its impacts on reliability, and route selection.

## II. OVERVIEW

6. Three Fires generally supports the expansion of Ontario's clean electricity system to parts of the province that are underserved by current infrastructure. Ontario's electricity sector is virtually decarbonized (approximately 94% emissions-free in 2020) and the emissions intensity of electricity produced in 2019 was just 26 g CO<sub>2</sub> per kWh.<sup>5</sup> Ontario's overall electricity sector emissions are, however, increasing and are anticipated to increase further absent the development of additional zero-emissions electricity generation, which will require enhanced transmission capacity, particularly in Southern Ontario. Electricity sector emissions are forecast to increase to 11.9 Mt CO<sub>2</sub>e by 2030 and more by 2040 due to reduced overall nuclear production and growing demand, resulting in increased production from gas-fired generation.<sup>6</sup>
7. Hydro One indicates that the Project will help to address a need for increased long-term transmission capacity to the Windsor-Essex area by winter of 2025-2026 to accommodate forecasted load.<sup>7</sup> It will also help to maintain existing transmission capability on the Ontario-Michigan intertie (one of four that interconnect Ontario and Michigan),<sup>8</sup> allowing for the export of extremely low-emissions Ontario electricity to a neighbouring jurisdiction with a comparatively higher electricity emissions rate.
8. Three Fires is generally supportive of the Project. Three Fires' submissions are broadly that:

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<sup>5</sup> Independent Electricity System Operator, "Decarbonization and Ontario's Electricity System" (October 7, 2021), pp. 4-5 available online at: <https://www.ieso.ca/-/media/Files/IESO/Document-Library/gas-phase-out/Decarbonization-and-Ontarios-Electricity-System.ashx>.

<sup>6</sup> Independent Electricity System Operator, Annual Planning Outlook (December 2021), p. 74, available online at: <https://www.ieso.ca/-/media/Files/IESO/Document-Library/planning-forecasts/apo/Dec2021/2021-Annual-Planning-Outlook.ashx>.

<sup>7</sup> Exhibit B, Tab 3, Schedule 1, (June 8, 2022), p. 1-2.

<sup>8</sup> Ibid., p. 1 and Attachment 2 (IESO, "Need for Bulk Transmission Reinforcement in the Windsor-Essex Region" (June 13, 2019), p. 19.

- i. Hydro One can lower Indigenous engagement consultation costs through efficient and effective approaches;
- ii. the Board should encourage Hydro One's continued economic participation negotiations with impacted Indigenous communities; and
- iii. the Board should impose the two additional conditions of approval set out in paragraphs 16 and 18 if it grants leave to construct the Project.

### **III. SUBMISSIONS**

#### **A. Three Fires encourages Hydro One to conduct Indigenous engagement consultation efficiently and effectively to lower overall costs to all ratepayers**

9. The Board indicated in Procedural Order No. 2 that the reasonableness of Hydro One's estimates of the cost of the Project is an issue in this proceeding and the OEB accepts that costs related to Indigenous engagement may have an impact on the total Project costs.<sup>9</sup> Three Fires encourages Hydro One to use approaches to Indigenous engagement that lower overall costs to all ratepayers and use time and resources for engagement and consultation efficiently and effectively.
10. Hydro One's costs related to Indigenous consultation activities with respect to the Project are significant.<sup>10</sup> Hydro One notes that the costs directly related to Indigenous consultation initiatives take into account both Project-specific factors, such as the number and extent of communities affected and nature of impacts, and more general factors, such as prior project experiences, planned engagements, and external resourcing requirements.<sup>11</sup> Hydro One is moreover required to devote considerable resources to analysis and consideration of Indigenous rights and territorial claims to supports its approach to the Project and manage costs associated with Indigenous consultation.<sup>12</sup>

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<sup>9</sup> Procedural Order No. 2 (August 23, 2022), p. 2, available online at: <https://www.rds.oeb.ca/CMWebDrawer/Record/754668/File/document>.

<sup>10</sup> Exhibit I, Tab 3, Schedule 5, p. 3-4.

<sup>11</sup> *Ibid.*

<sup>12</sup> Exhibit I, Tab 4, Schedule 8, p. 1; Exhibit I, Tab 3, Schedule 5, p. 3-4.

11. Hydro One notes that it has been engaging with communities since early in the development process and that it will continue to engage impacted Indigenous communities throughout the life cycle of the Project.<sup>13</sup> Hydro One's Indigenous Relations Policy provides that Hydro One has the goal of achieving "the agreement and support, articulated in [the United Nations Declaration on the Rights of Indigenous Peoples] as 'Free Prior and Informed Consent', of Indigenous peoples" and recognizes the "obligations industry has in Reconciliation with Indigenous people, to address meaningful and measurable change in cultural understanding and economic outcomes."
12. Three Fires has been delegated responsibility to represent the interests of the Three Fires First Nations on matters relating to Hydro One and the Project. It is therefore well-positioned to assist Hydro One to lower its costs of Indigenous engagement and consultation by acting as a one-window Indigenous consultation coordinating entity for the Project on all relevant issues. Three Fires encourages Hydro One to conduct Indigenous engagement consultation in a manner that is both efficient and effective in order to lower overall costs to all ratepayers. Three Fires notes that neither of the Three Fires First Nations have executed capacity funding agreements with Hydro One.

**B. The Board should encourage Hydro One's continued economic participation negotiations with impacted Indigenous communities**

13. Hydro One notes that it has engaged, and will continue to engage throughout the life cycle of the Project, in extensive economic participation negotiations with impacted Indigenous communities, including with respect to employment, training, contracting, and equity participation in the Project.<sup>14</sup> The transmission line facilities that make up the Project once built will ultimately be owned by a future Hydro One partnership expected to have First Nation ownership.
14. Hydro One indicated that it is not able to provide commercial details on its partnership with First Nations on the Project as negotiations are ongoing, but that it will provide such

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<sup>13</sup> Exhibit B, Tab 1, Schedule 1, p. 2.

<sup>14</sup> Exhibit B, Tab 1, Schedule 1, p. 2.

commercial details to the Board through any and all transmission licence and asset transfer applications.<sup>15</sup>

15. Three Fires requests that the Board encourage Hydro One's continued economic participation negotiations with impacted Indigenous communities. Three Fires submits that, as part of its review and decision-making process, the Board should consider the appropriate process by which Hydro One should be required to provide commercial details on its partnership with First Nations on the Project. Three Fires has a continued and ongoing interest in these matters and the manner in which they are communicated to the Board through Hydro One's transmission licence and asset transfer applications in relation to the Project.

**C. The Board should impose additional conditions of approval if it grants leave to construct the Project**

16. The Board's Standard Conditions of Approval for Electricity Leave to Construct Applications are appended as Attachment 1 to the Issues List in Schedule A to Procedural Order No. 1. Three Fires proposes two additions to the set of applicable conditions, if the Board decides to grant leave to construct the Project.
17. First, the Board noted in Procedural Order No. 1 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 Indigenous peoples in respect of the Project is led by the Ontario government as part of the environmental assessment process.<sup>16</sup> Three Fires therefore requests that Condition #3 be revised as follows (underlined text): "[The Applicant] shall advise the OEB of any proposed material change in the project, defined as costs exceeding \$250,000, including but not limited to changes in: the proposed route, construction schedule, routing construction schedule, necessary environmental assessment approvals (including any additional matters triggering duty to consult and accommodate Indigenous peoples), and all other Crown approvals, permits, licences, certificates and rights required to construct the project."

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<sup>15</sup> *Ibid.*

<sup>16</sup> Procedural Order No. 1 (July 13, 2022), p. 4, available online at: <https://www.rds.oeb.ca/CMWebDrawer/Record/750953/File/document>.

18. This addition would clarify Hydro One's obligation to keep the Board advised of matters that impact Aboriginal or treaty rights or otherwise affect the traditional territory of Indigenous communities that arise after the closing of the record in this proceeding. It would also establish a clear threshold for the definition of a "proposed *material* change" (emphasis added).
19. Second, Hydro One indicates that it anticipates that the cost associated with the transmission line facilities will reside in the OEB-approved Affiliate Transmission Partnership regulatory account and not form part of Hydro One's rate base.<sup>17</sup> Three Fires requests that the Board make it a condition of its approval of the Project that: "Hydro One shall record and track the costs associated with the Project in the Affiliate Transmission Partnership account, in accordance with the Board's Decision and Order in EB-2021-0169."<sup>18</sup>
20. Hydro One's proposal to record and track the costs of the Project in the Affiliate Transmission Partnership account is core to the Application given that the transmission line facilities that make up the Project once built will ultimately be owned by a future Hydro One partnership expected to have First Nation ownership (see paragraphs 13 to 15). Three Fires requests that the Board make the proposed accounting treatment a condition of approval if the Board grants leave to construct the Project.

#### **IV. RELIEF REQUESTED**

21. Therefore, Three Fires respectfully submits that:
  - i. Hydro One can lower Indigenous engagement consultation costs through efficient and effective approaches;
  - ii. the Board should encourage Hydro One's continued economic participation negotiations with impacted Indigenous communities; and

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<sup>17</sup> Exhibit B, Tab 1, Schedule 1, p. 2.

<sup>18</sup> EB-2021-0169, Decision and Order (October 7, 2021), available online at: <https://www.rds.oeb.ca/CMWebDrawer/Record/727757/File/document>.

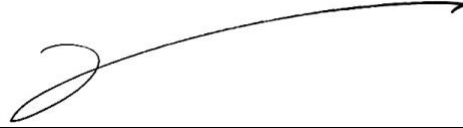


- iii. the Board should impose the two additional conditions of approval set out in paragraphs 16 and 18 if it grants leave to construct the Project.

## **V. COSTS**

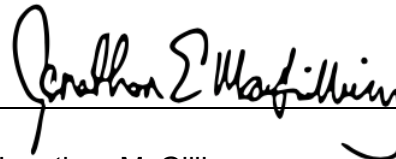
22. Finally, Three Fires respectfully submits that it has participated responsibly in this proceeding with a view to maximizing its assistance to the Board, and therefore requests that the Board order reimbursement of its reasonably incurred costs.

ALL OF WHICH IS RESPECTFULLY  
SUBMITTED THIS  
6<sup>th</sup> day of October, 2022



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Lisa (Elisabeth) DeMarco  
Resilient LLP  
Counsel for Three Fires



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Jonathan McGillivray  
Resilient LLP  
Counsel for Three Fires