

ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF an application by Hydro One Networks Inc. for an Order granting leave to construct new transmission lines and facilities for the Lower Mattagami Reinforcement Project.

EVIDENCE OF THE MÉTIS NATION OF ONTARIO AFFIDAVIT OF MELANIE PARADIS

I, **MELANIE PARADIS**, MAKE OATH AND SAY AS FOLLOWS:

1. My name is Melanie Paradis. I live in Guelph, Ontario. I am presently employed by the Métis Nation of Ontario (MNO) as the Director of its Lands, Resources and Consultation Branch.
2. In my capacity as the MNO's Director of Lands, Resources and Consultation, I have personal knowledge of the matters to which I hereinafter depose, except where stated to be on information and belief, and as to these last said matters, I verily believe them to be true.
3. In May 2008, the MNO President wrote to Ontario Power Generation ("OPG") outlining the concerns and interests of the Métis community in relation to the overall Lower Mattagami Hydroelectric Project. A copy of this letter is attached to this my affidavit as **Exhibit "A"**.
4. I have been informed by the MNO's Regional Consultation Committee for the James Bay/Abitibi Temiscamingue traditional territories (the "Committee") and verily believe to be true that OPG was unwilling to support the MNO's request to undertake a Métis traditional land use study in relation to the Lower Mattagami Hydroelectric Project or to enable the MNO to retain an independent environmental firm to conduct a peer review of OPG's environmental assessment.
5. While OPG was unwilling to agree the MNO's abovementioned requests, it did support the MNO in holding one Métis community meeting in Timmins. Based on this meeting, along with the questions, concerns and input from the Métis community, a report with recommendations was prepared by the MNO and provided to OPG. A copy of this report is attached to this my affidavit as **Exhibit "B"**.

6. OPG has refused to implement several of the mitigation and accommodation recommendations from the MNO's report. A chart summarizing the MNO's recommendations and OPG's response is attached to this my affidavit as **Exhibit "C"**. Presently, the MNO has not finalized an agreement or workplan with OPG to complete the few recommendations OPG is willing to implement with the Métis community. However, OPG has indicated its willingness to meet with the MNO in the last week in July. The MNO is optimistic that at that time agreement on a workplan or agreement will be achieved. The MNO is also hopeful that OPG will reconsider some of its refusals in relation to the mitigation and accommodation measures proposed by the MNO.
7. I have been informed the Committee and verily believe to be true that at no time in its ongoing discussions with OPG was the MNO made aware that OPG was undertaking consultations for the Crown in relation to the Lower Mattagami Hydroelectric Project or that an agreement or arrangement which delegated procedural aspects of the Crown's duty to consult and accommodate was in place between OPG and the Ontario Government.

Consultation on the Hydro One Project

8. I have been informed the Committee and verily believe to be true that at no time in its ongoing discussions with OPG was the Committee made aware that OPG was undertaking Hydro One's responsibilities in relation to engaging and consulting Aboriginal communities on the Lower Mattagami Reinforcement Project.
9. On June 30th, 2009, I, along with the Committee met with Hydro One representatives and were provided detailed information on the Lower Mattagami Reinforcement Project, which had not previously been provided to the MNO by OPG. As well, Hydro One representatives answered many of the questions posed by the Committee.
10. The Committee raised the following concerns and issues in relation to the Lower Mattagami Reinforcement Project: the effects of spraying and whether alternatives could be considered; the need for an ongoing relationship with Hydro One with respect to informing the Métis community on construction related issues; the need for a Métis traditional land use study and for Métis traditional knowledge to be considered in construction.
11. Hydro One representatives committed that they would follow up with the Committee on the concerns and issues raised. Presently, the MNO and Hydro One have not agreed to any mitigation measures to address Métis concerns, but the MNO is optimistic that a mutually agreeable arrangement or agreement can be reached prior to or as a condition of any authorization being granted by the Crown or a Crown decision-maker.

The Environmental Assessments

12. I have also been informed by the Committee and verily believe to be true that the regional rights-bearing Métis community that lives in, uses and relies on the James Bay/Abitibi Temiscamingue traditional territories remains concerned that the previously completed environmental assessment for the Lower Mattagami Hydroelectric Project did not adequately address Métis rights, interests and way of life because of the Ontario Government's previously held positions of denial vis-à-vis Métis rights and that prior to 2004, the Crown did not recognize it had a constitutional duty to consult and accommodate potentially affected Aboriginal communities in relation to Crown approvals of environment assessments.
13. I make this affidavit as evidence for the MNO in the application by Hydro One Networks Inc. for an order granting leave to construct new transmission lines and facilities for the Lower Mattagami Reinforcement Project.

SWORN BEFORE ME

in the city of Toronto,
in the Province of Ontario
on this 7th day of July, 2009.


A Commissioner in Ontario.

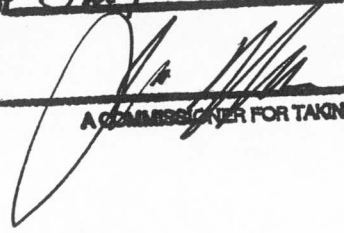
Melanie Paradis

May 30, 2008

Mr. Carlo Crozzoli
Vice President
Hydroelectric Generation
Ontario Power Generation
700 University Avenue
Toronto, Ontario M5G 1X6

Mr. R.W. (Bob) Yap
Director
Water Resources and Aboriginal Relations
Ontario Power Generation
14000 Niagara Parkway, RR #1
Niagara-on-the-Lake, Ontario L0S 1J0

This is Exhibit "A" referred to in the
affidavit of Melanie Paradis
sworn before me, this 7th
day of July, 20 09


A COMMISSIONER FOR TAKING AFFIDAVITS

Dear Mssrs. Crozzoli and Yap:

RE: LOWER MATTAGMI HYDROELECTRIC COMPLEX

I am writing further to our meeting of May 15th, 2008, at which the Métis Nation of Ontario (MNO) was provided an overview of hydro-electric projects Ontario Power Generation (OPG) has in the development and execution phases.

The MNO found the meeting helpful and informative. As indicated at the meeting, the Métis Nation looks forward to continuing to work with OPG to ensure Métis are being engaged and consulted with respect to planned, proposed and existing OPG projects that are within Métis traditional territories across Ontario. Further, the MNO looks forward to working with OPG on establishing a broader relationship that focuses on identifying mutually beneficial partnerships and opportunities in the areas of employment, training and procurement.

In this letter, I am specifically writing in relation to the Lower Mattagami Hydroelectric Complex Redevelopment (the "Project") and the upcoming Environmental Assessment (the "EA") on the Project, by the Canadian Environmental Assessment Agency (CEAA). Following our May 15th meeting, the MNO has been working with its Community Councils in the region, as well as, with the regionally elected Métis leadership and the regional Captain of the Hunt in order to coordinate a collective approach for the rights-bearing Métis community's participation in the EA. In addition, the MNO has contacted both CEAA and the Department of Fisheries and Oceans (DFO), indicating the Métis community's intention to participate in the EA process.

More specifically, we write to formally convey the following interests and concerns:

- In 2003, Métis rights were recognized and affirmed by the Supreme Court of Canada in *R. v. Powley*. Based on the *Powley* case, as well as, the principles later articulated by the Supreme Court of Canada in the *Haida Nation* and *Taku River* cases, the MNO entered into an agreement with the Ontario Ministry of Natural Resources, which accommodates Métis harvesting rights within identified Métis traditional harvesting areas based on credible claims. A copy of the map, which forms a part of this agreement with the Ontario Government, has been provided to OPG.
- The Project has the potential to impact Métis who harvest within two of those territories – James Bay and Abitibi/Temiscamigue. Due to the fact that the rights-bearing Métis community in this region have already been accommodated by the Crown, it is the MNO's position that adequate consultation requires more than just simply providing information on the Project to the rights-bearing community. It requires providing the Métis community an opportunity to ascertain and assess the potential impacts of the Project on Métis rights, harvesting practices and way of life in this territory.
- To date, neither DFO, CEAA, nor any other Crown actor, has contacted or provided information in relation to the Project to the Métis community. In our discussions with DFO, the department has acknowledged that it has not engaged or distributed information to the Métis community so far, but will now be providing the MNO an opportunity to provide its comments on the Comprehensive Study Scoping Document. As well, DFO has indicated that following a decision from the Minister of the Environment, the Métis community will be contacted and engaged.
- All Métis citizens apply to the MNO's centralized registry in Ottawa. The MNO represents all of these citizens, wherever they live in the province. The MNO then enters into charter agreements with MNO Community Councils to represent Métis citizens in a defined geographic area. MNO Community Councils do not define the rights-bearing community. There may be members or a rights-bearing Métis community that are not within the geographic scope of a Community Council, but that does not negate that those citizens have equal rights to Métis who may live within a MNO Community Council's jurisdiction. All affected Métis rights-holders must, at the very least, be provided an opportunity to have they view known and participate.
- The MNO has a substantial Métis population who live within the James Bay and Abitibi/Temiscamigue traditional territories. These territories, which essentially cover the MNO's Region 3, have over 1,000 registered Métis citizens (over 16 years). A significant percentage of these Métis citizens are active traditional resource users.
- Unlike First Nation citizens, who may live largely on identifiable reserve lands, Métis rights-holders live in settlements, towns and cities throughout these territories. Moreover, while those Métis may live in one location, they may harvest throughout the territories at issue (i.e. the James Bay and Abitibi/Temiscamigue territories as identified by the map provided to OPG by the MNO, which forms part of the MNO's harvesting agreement with the Ontario Ministry of Natural Resources).

- The Crown has never undertaken a Métis traditional land use study and has never provided support to the MNO to undertake such a study in order to identify Métis land use, harvesting practices, sacred places, Métis cemeteries, etc. in the region. As such, the MNO is very concerned that Métis harvesting practices or use of land in the region has not been considered in the development of the Project to date.
- The MNO is concerned that OPG's communications efforts on the Project do not reach the Métis community. Many Métis citizens who attended recently held community consultations were not aware of the Project and its potential implications on the Métis community's rights, interests and way of life.
- Unlike First Nations, MNO Chartered Community Councils receive no core funding support from either the federal or provincial governments. Many Councils lack the capacity to formally assess and respond to materials sent to them by proponents. As well, many MNO Community Councils often forward material received to the MNO Head Office, however, the MNO also has limited capacity in this area to assess the materials, respond to them or engage with OPG in a sustainable manner. The MNO does not believe it is fair that this lack of capacity to respond would be interpreted that the Métis community is not interested in knowing about or concerned about the Project.
- The MNO does not have the budget lines or ability to continue to engage with OPG without capacity support. It is the MNO's position that the Crown has an obligation to ensure the potentially affected Aboriginal groups are able to participate in consultation processes. Currently, the MNO's only options to continue with its engagement with OPG on the Project are to go into a deficit or to end its participation. Neither of these options are acceptable to the MNO. The MNO believes that if OPG has been delegated procedural consultation obligations from the Crown, it should bear the responsibility to provide reasonable support for the Métis community to be engaged and assess the implications of the Project on the Métis community. Moreover, OPG is the party that will ultimately secure a financial benefit from the Project, not the MNO. Therefore, the MNO should not have to bear the expense of ensuring the Crown's constitutional duties are fulfilled to the Métis.

Based on the points outlined above, the MNO is interested in entering in a participation protocol with OPG to enable the regional rights-bearing Métis community to effectively participate in the EA process. Since rights-bearing Métis communities are regional in nature and scope, the MNO will be working in collaboration with its 4 Community Councils in the region – Timmins Métis Council, Temiskaming Métis Council, Northern Lights Métis Council (Cochrane) and the Chapleau Métis Council – to ensure all potentially affected Métis citizens are informed, engaged and consulted on the Project and to enable the rights-bearing Métis community to effectively participate in the EA process. While MNO and OPG work towards finalizing a participation protocol, the MNO has also requested an interim good faith payment of [REDACTED] to cover costs already incurred and to complete the following activities:

- Hosting a regional information open house for MNO citizens, where OPG would be invited to provide information on the Project as well as on other projects in the region,

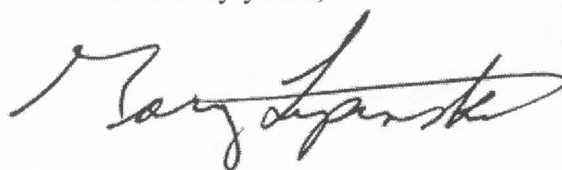
- Bringing together the Region 3 MNO Councilor and Captain of the Hunt, the Presidents of the 4 MNO Chartered Community Councils and MNO staff and advisors to develop and finalize a collaborative approach to participating in the Project's EA process,
- Including an insert in the Métis Voyager as well as direct mails out to Métis citizens living in the region which provides information on Project as well as opportunity to contact MNO with questions, concerns, etc., about the Project,
- Allocate a percentage of MNO staff person's time to act as point of contact on the Project for MNO citizens and OPG, and
- Retaining required consultants, translation services, legal advice, etc., to accomplish the items listed above.

In light of the issues and concerns raised above and the fact that the EA process continues to move forward, the MNO believes this request is reasonable. Further, as indicated in the Minister of Energy's December 2007 directive to the Ontario Power Authority (OPA), potentially affected First Nations and Métis communities are to be consulted with respect to this Project and others.

To date, we have found our preliminary discussions with OPG extremely positive and we look forward to continuing to build on that. We write this letter in that spirit. The MNO is very aware that Aboriginal groups have reciprocal responsibilities to ensure their concerns and issues are known to proponents. We are clearly setting those out in this letter. As well, since it is the Crown who is ultimately responsible for ensuring the duty is fulfilled, we have copied the Ontario Government on this letter to ensure it is aware of our issues, concerns and requests.

The MNO looks forward to hearing from OPG with respect to this request. While the MNO's Chief of Strategic Policy and Partnerships, Mr. Pierre Lefebvre, is on vacation until the end of June, please contact the MNO's legal counsel on this file at 416-945-7958, ext. 4, or via email at jason@jtmlaw.ca, if you have any questions or require additional information.

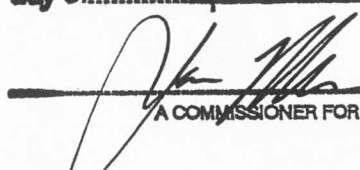
Sincerely yours,



Gary Lipinski
President

c.c. Honourable Gerry Phillips, Minister of Energy
Jan Carr, Chief Executive Officer, Ontario Power Authority
Marcel LaFrance, MNO Regional Councilors, Region 3
Andy Lefebvre, Captain of the Hunt, Region 3
Timmins Métis Council
Temiskaming Métis Council
Northern Lights Métis Council
Chapleau Métis Council

**Métis Recommendations for Lower Mattagami
Accommodation and Mitigation Measures and OPG Responses**

MNO Committee Recommendation	OPG Response
A. Ensure The Committee and MNO are kept informed of the Comprehensive Study EA process and schedule, and have the capacity to: (i) review and comment on the draft Comprehensive Study report for the OPG Project and; (ii) to ensure the mitigations of the 1990 Ontario Hydro and 1995 Coast Guard screening report are implemented and effective.	Refused by OPG <i>This is Exhibit "B" referred to in the affidavit of <u>Melenie Paradis</u> sworn before me, this <u>7th</u> day of <u>July</u> 20<u>09</u></i>  A COMMISSIONER FOR TAKING AFFIDAVITS
B. Arrange for the Committee to visit the construction and labour camp sites prior to clearing activities so that salvage of traditional plants can be accommodated, if required and practicable, and to consider any relevant Métis Way of Life information provided to OPG during the visit in site preparation and operation. For example, such information may include seasonal sensitivities for Métis harvest activities, if applicable.	OPG agrees to arrange for the Committee to tour the existing Lower Mattagami complex including access roads.
C. Arrange for the Committee to view locations where road upgrades may result in temporary access restrictions or have potential for adverse environmental effects and to discuss the mitigation that is planned by OPG to address those potential effects, including consideration of any relevant Métis Way of Life information.	OPG agrees to present to the Committee plans for road upgrades that may result in temporary access restrictions or have potential for adverse environmental effects and to discuss the mitigation that is planned by OPG to address those potential effects, including consideration of any relevant Métis interests.
D. Ensure restrictions to hunting and fishing are enforced for labourers on the OPG Project, as detailed in the 1990 Ontario Hydro environmental assessment and 1995 Coast Guard screening report.	Ensure restrictions to hunting and fishing are enforced for labourers on the Project, as detailed in the 1990 Ontario Hydro environmental assessment and 1995 Coast Guard screening report.

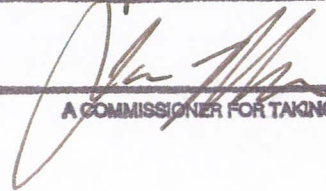
**Métis Recommendations for Lower Mattagami
Accommodation and Mitigation Measures and OPG Responses**

MNO Committee Recommendation	OPG Response
E. MNO and OPG will work together to create and execute a communications plan that utilizes the MNO's communications infrastructure (such as mail outs, MNO web site and <i>The Métis Voyageur</i>). Components of the plan will address both project operational activities and general project updates. This will include: ▪ A system to inform Métis harvesters of physical activities that have potential for disturbance to their activities or that may involve public safety issues ▪ Matters of a general nature about the project that are issued by OPG and/or its design/build contractor ▪ A system to communicate Métis citizen concerns over project activities, including the steps to resolve them	OPG agrees to work with the MNO to create a plan to utilize the MNO's communication infrastructure (such as mail outs, MNO web site and <i>The Métis Voyageur</i>) for dissemination of project information provided by the Lower Mattagami River Project's communication plan. Métis areas of interest include: • A system to inform potential Métis harvesters of physical activities that have potential for disturbance to their activities or that may involve public safety issues • Matters of a general nature about the project that are issued by OPG and/or its design/build contractor • A communication system to communicate Métis citizen concerns over project activities, including the steps for resolution • Notifications regarding temporary access restrictions on roads.
F. In collaboration with MNO and the Committee, OPG will prepare and hold an information program, including a meeting, to provide and explain information regarding employment and procurement opportunities anticipated through the Mattagami projects. The intent is to provide basic information about the qualifications, schedule and process that is required to pursue employment and contracting opportunities.	In collaboration with MNO and the Committee, OPG agrees to hold an information meeting to provide and explain information regarding employment and procurement opportunities anticipated through the Mattagami projects. The intent is to provide basic information about the qualifications, schedule and process that is required to pursue employment and contracting opportunities.

**Métis Recommendations for Lower Mattagami
Accommodation and Mitigation Measures and OPG Responses**

G. OPG to provide a summary of the results of their Stage 2 archaeological reports or a summary confirming there were no findings, especially with regard to heritage resources associated with the Hudson Bay Company.	OPG agrees to provide a summary of the results of their Stage 2 archaeological reports or a summary confirming there were no findings, especially with regard to heritage resources associated with the Hudson Bay Company (COMPLETE)
H. OPG should provide support for a James Bay "Métis Way of Life Framework" to further develop the List of Métis Species of Interest and/or Métis value sets for use by MNO as a screening tool for the OPG project implementation and for future projects. Such information will be treated as the intellectual property of the Metis Nation of Ontario and treated in strict confidence.	Refused by OPG
I. OPG and MNO shall commit to explore employment and training initiatives available under existing federal and provincial programs.	OPG agrees to work with the MNO to explore employment and training initiatives available under existing federal and provincial programs, but will make no financial commitment on part of OPG to support Métis employment training and training initiatives related to the Project.
J. OPG should provide assistance to develop a list of Métis individuals or businesses that can offer services to the design/build contractor.	OPG will not financially support this work, but MNO can provide OPG a list of Métis individuals or businesses that can offer services to the Project. As well, OPG is willing to make no guarantees on Métis employment or contracting opportunities.
K. Should DFO require that OPG complete a "no net loss" compensation project for loss of habitat that may occur as a result of the construction, the Committee should be consulted to discuss the participation of Metis in such project work, or through the use of relevant Way of Life information for consideration of creating habitat that supports species of interest to Métis.	Refused by OPG

This is Exhibit "C." referred to in the
affidavit of Melanie Paradis
sworn before me, this 7th
day of July 20 09


A COMMISSIONER FOR TAKING AFFIDAVITS

the Métis
Nation *of*
Ontario

Ontario Power Generation Mattagami Projects

Metis Perspectives and Recommendations

April 30, 2009

Table of Contents

Table of Contents	2
Executive Summary	3
The Métis Nation of Ontario	5
James Bay-Abitibi/Temiscamingue Traditional Harvest Territories	5
The Ontario Power Generation Project	7
The Community Meeting and Métis Citizen's Forum	8
Supplemental Considerations.....	15
Métis Interests and Perspectives on the OPG Project	16
Recommendations	19
Appendixes.....	22

Executive Summary

Ontario Power Generation and the Métis Nation of Ontario (“the MNO”) are working together to ensure the procedural requirements of the Crown’s Duty to Consult are being met for the Lower Mattagami River Project (“the OPG Project”). The Smoky Falls portion of the OPG Project is subject to a Comprehensive Study Environmental Assessment led by Department of Fisheries and Oceans Canada (DFO), who represent the Crown as a Responsible Authority under the Canadian Environmental Assessment Act. The CS must also consider cumulative impacts, and Smoky Falls is one of four redevelopments within the OPG Project.

Ontario Power Generation and Métis Nation of Ontario have also discussed another project, the Upper Mattagami River Project including Hound Chute Generating Station (on the Montreal River). Although that project was approved in 2007, is of current interest to Métis citizens in the project area.

The James Bay/Abitibi-Temiscamingue Protocol Committee (“the Committee”) was established as part of the MNO’s Nation-wide approach to the Crown’s Duty to Consult. The Committee is made up of the elected Region and Council leadership and Captain of the Hunt within the MNO’s Region 3 administrative area. The Committee represents the collective rights-bearing community of over 1,500 Métis citizens within the James Bay and Abitibi-Temiscamingue Traditional Territories. It is important that this broad regional character of Métis communities is understood.

The Committee has worked with the MNO Secretariat staff and OPG to understand these projects and determine the presence/absence of any issues of concern, but neither the Committee nor staff has access to technical or environmental experts. This report documents the results of the work done to date, provides context for, and describes Métis perspectives on the OPG Project, and makes recommendations for ongoing collaboration with OPG. It includes a description of the Community Meeting/Métis Citizens Forum held January 10, 2009 to discuss both OPG projects, reflects additional dialogue between OPG and a non-technical (i.e. non-expert) review of previous environmental reports.

The OPG Project involves land clearing, presence of a large workforce, expanding a transmission right-of-way, construction of new facilities, retirement of old ones, a significant short-term “burst” of economic activity in the project area and the operation and eventual decommissioning of hydro-electric facilities.

The issues of concern to Métis in relation to the OPG Project are for protection of the habitats and ecosystems important to species that support Métis rights, interests and way of life. Métis wish to understand the measures that will be taken in the OPG Project to protect the environment during its construction, operation and decommissioning. This is important for both the OPG Project, and for an appreciation of other similar projects. Quite naturally, Métis also strive to be a healthy, prosperous and progressive people. As a result, Métis also have an interest in the socio-economic mitigation measures for the OPG Project.

The Métis interests in these two areas are in harmony with those of the *Mushkegowuk* people, whose history and culture is closely tied with that of the Métis. The Métis share the *Mushkegowuk* value of reciprocity in their relations to the environment, each other and other peoples. Previous environmental assessments and approvals strove to address the interests of First Nations peoples who

may be impacted by the OPG Project. While the Métis recognize the need for, respect and support such measures, it is noted that those assessments and approvals did not address Métis rights, interests and way of life to use lands within the project area. Métis rights, interests and way of life are accorded equal status and protection in Canada's constitution, to those of First Nations and Inuit.

This is the first time Ontario Power Generation and the MNO as represented by the Committee have worked together for projects of this nature and in this manner. It is a collaborative approach that holds much promise for the future ongoing relationship between the parties. Results of this work have produced a number of recommendations that are practical in nature and intended to meet the objectives described above.



The Métis Nation of Ontario

The Métis Nation are a distinct Aboriginal people with a unique history, culture, language and territory that includes the waterways of Ontario, surrounds the Great Lakes and spans throughout what was known as the historic Northwest. The Métis people have been instrumental in shaping Canada and are recognized as one of three Aboriginal peoples in Canada's Constitution.

Established in 1993 by the will of Ontario Métis, the Métis Nation of Ontario (MNO) represents the collective aspirations, rights and interests of Métis people and communities throughout Ontario. The MNO has a democratic, province-wide governance structure which ensures Métis people are represented at the local, regional and provincial levels. The MNO strives to advance the collective rights, culture, health and prosperity of our Métis individuals, families and communities.

Métis in Ontario make application to the MNO for citizenship within the Métis Nation. The MNO maintains the only recognized provincial Registry for Métis in Ontario. Citizenship is granted to individuals who self-identify as Métis, provide documentation proving an ancestral connection to the Métis Nation and are accepted by the MNO.

Métis citizens are represented locally by charter community councils, regionally by a regional councilor and Captain of the Hunt and provincially by a Provisional Council. Senators exist within both community and provisional councils to provide elder guidance and knowledge in decision-making. For the purpose of responding to the Crown's Duty to Consult, Regional governance and charter community councils enter into an MNO consultation protocol. The OPG Project falls within MNO's Region 3. Regional leadership and charter community councils within Region 3 have formed the James Bay/Abitibi-Temiscamingue Protocol Committee ("the Committee") to deal with matters that involved the Crown's Duty to Consult.

James Bay-Abitibi/Temiscamingue Traditional Harvest Territories

Based on Métis rights assertions and the Crown's knowledge of Métis claims and negotiations, the harvesting rights of this regional rights-bearing Métis community as well as others throughout the province have been accommodated through a 2004 interim agreement between the MNO and the Ontario Ministry of Natural Resources (MNR). This interim agreement has been upheld to apply to all of the Métis traditional harvesting territories that have been identified on Map 1 by the Ontario Court of Justice in *R. v. Laurin*, 2007 ONCJ 265. This interim Métis harvesting agreement remains in place today.

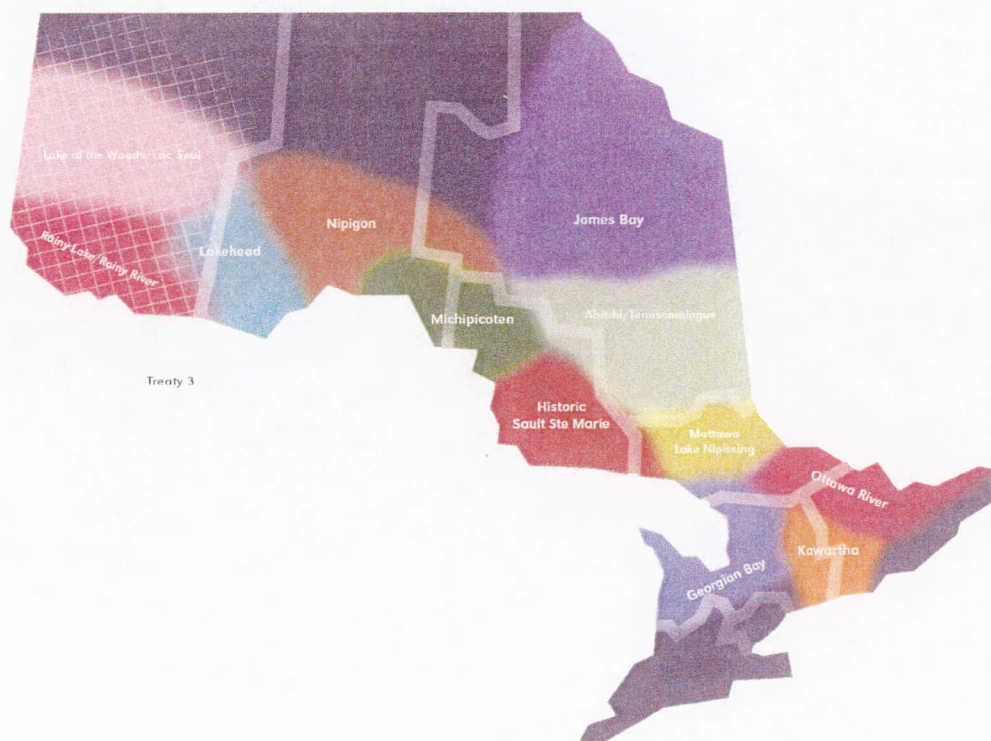
Métis rights are collective community-held rights, and Métis Way of Life resides with Métis communities that cannot be defined in narrow geographic terms. Métis communities are regional in scope. Historically, they derive from a highly mobile lifestyle based on seasonal rounds and even today, Métis people live, work and carry out their traditional practices in a highly decentralized way within their traditional territories.

As explained above, the OPG Project is located within the MNO's Region 3 administrative boundary which encompasses both the James Bay and the Abitibi-Temiscamingue Traditional Harvest

Territories. Over 1,500 registered adult Métis citizens¹ who possess collectively-held aboriginal rights, live, harvest within or extensively use lands and waters within Region 3. Of those citizens, almost 1,200 are associated with the James Bay Traditional Harvest Territory where the OPG Project is located, and 22 of them presently hold MNO harvester cards². A harvester's card entitles a Métis citizen to harvest wildlife for food ceremonial and social purposes under the 2004 MNO-MNR interim harvesting agreement, however, this does not preclude harvesting to take place within the provincial licensing system. Additionally, all Métis citizens are entitled to harvest plants for food, social and ceremonial purposes. These activities constitute an Aboriginal right, that is woven into the fabric of Métis society and has broader implications through sharing the product of harvest and through cultural and spiritual practices. In short, the broader rights-bearing community's interests within the James Bay Traditional Territory must be considered in review of activities for the OPG Project.

In addition to harvest rights for food, ceremonial and social purposes, Métis citizens possess knowledge concerning the environment and places of spiritual and cultural importance within their traditional territories. This knowledge, the practices that flow from it and the resulting interrelationships among the Métis, the environment and their traditional lands is referred to as Aboriginal Traditional Knowledge in western science. The Métis prefer to call their knowledge and presence within the environment and traditional territories "Way of Life".

Map 1: Métis Regional Administrative Boundaries and Traditional Harvest Territories



¹ MNO only has capability to register citizens over age 16 at this time. A factor of 2.1 children per household is considered appropriate to estimate total citizens resulting in a figure of about 2,520 citizens in James Bay Traditional Territory.

² The total number of Harvester Cards is limited to only 1,250 under the 2004 Interim Agreement with the Province of Ontario. A total of 204 applications have been submitted for MNO harvester Cards in Region 3 alone since 2001.

The Ontario Power Generation Project

Ontario Power Generation (OPG) is proposing to redevelop the Lower Mattagami Hydroelectric Complex, located northeast of Kapuskasing, Ontario ("the OPG Project"). The four generating stations (Little Long, Smoky Falls, Harmon and Kipling) are located on the Mattagami River between 60 and 100 km north of Kapuskasing). The stations are accessible by road from Kapuskasing and Smooth Rock Falls. The Smoky Falls generating station was put in service in 1931, the Little Long station in 1963, the Harmon station in 1965 and the Kipling station in 1966. Little Long, Harmon and Kipling generating stations will be expanded with the addition of a turbine/generator and the Smoky Falls site will be redeveloped to accommodate a new generating station. With the redevelopment of the Lower Mattagami Hydroelectric Complex, OPG wishes to provide increased overall generating capacity as well as promote more efficient operation and use of water through the complex.



The OPG Project was first initiated in the 1980s and was the subject of a provincial Environmental Assessment (EA) at that time. A federal EA of the development proposal was also conducted under the Environmental Assessment and Review

Process Guidelines Order (EARPGO) and approved in 1995. However, the development proposal did not proceed and no federal government regulatory approval or authorization was ever sought for it.

In July, 2006, OPG provided to DFO an updated description of the development proposal. This proposal differed from the one originally reviewed under the EARPGO. More specifically, the components related to the Smoky Falls generating station were altered from those reviewed under the previous assessment. As a result, DFO has determined that it may exercise regulatory decision-making authorities in regard to some components of the development proposal in order for them to proceed. For this reason, DFO is required to ensure that a federal EA of these components is conducted prior to taking its decision. The Minister of Environment determined that a Comprehensive Study (CS) would be required under the Canadian Environmental Assessment Act (CEAA).

On May 20, 2008, legal counsel for the Métis Nation of Ontario (MNO) contacted DFO regarding the Scoping Document. DFO provided the Scoping Document to MNO on June 2, 2008 and received its comments on June 4th, 2008.

Métis Nation of Ontario commented that it wanted to ensure a CS was completed for the project which allows the Métis community to actively participate in the CS process. MNO stated that it is comfortable that the proposed scope of the CS is broad enough to ensure that Métis community interests will be able to be addressed by the CS, and was supportive of the Scoping Document.

The Community Meeting and Métis Citizen's Forum

The Community meeting and Métis Citizen's Forum was held on January 10, 2009 at the St-Dominique Church Hall in Timmins, Ontario. The Community meeting portion was attended by the following people:



OPG Staff:

- Paul Burroughs, Project Manager
- Mario Durepos, Public Affairs Officer
- Larry Onisto, Senior Environmental Specialist

MNO Staff:

- Bob Waldon, Director, Natural Resources, Environment & Community Relations Branch
- Andy Lefebvre, Coordinator, Natural Resources, Environment & Community Relations

James Bay/Abitibi-Temiscamingue Protocol Committee members in attendance:

- Marcel Lafrance, Mattachewan, Chair
- Urgel Courville, Cochrane
- Liliane Ethier, Temiscamingue Shores
- Marcel Burey, Timmins

MNO Citizens in attendance: 43

A. Planning

A meeting plan was created, assigning individuals (staff and volunteers) to specific tasks such as:

- Selecting and arranging for a suitable venue
- Arranging for adequate food and beverages
- Drafting and distributing invitations
- Calling invitees prior to the meeting to confirm participation.
- Developing an appropriate agenda and meeting format that is relevant for this project
- Insuring adequate meeting materials such as maps, questionnaires, presentation screen, flip charts etc.
- Collect and evaluate lists describing species of interest to Métis and questionnaires.
- Prepare for a possible harvest/traditional land-use screening exercise with area maps

B. Community Meeting

As tradition dictates, the meeting was opened with a prayer, offered by Senator Len Rondeau. Introductions and welcoming remarks were offered by the Committee Chair Marcel Lafrance. Bob Waldon gave the opening remarks including a brief description of the work accomplished by MNO to date on the Lower Mattagami River Project. Bob gave an overview of the meeting format and thanked OPG for their participation in, and financial support for the meeting which supplements funding obtained pursuant to CEAA.

OPG's Paul Burroughs gave a power point presentation detailing the proposed work on the Lower Mattagami River Project. The presentation explained the scope of the work proposed for the redevelopment of the hydro complex. Paul gave a brief description of the permitting process needed for the project. The presentation was interactive with a multitude of questions posed from the floor.

Larry Onisto, OPG Senior Environmental Specialist, gave a brief description of the Environmental Assessment and permitting process needed for the project. The presentation was also interactive with a multitude of questions posed from the floor.

Following the OPG presentation on the Lower Mattagami, Paul Burroughs gave a brief description of the work undertaken on the Upper portion of the Mattagami River. Specifically he described the work undertaken at Wawaitin, Sandy Falls, Lower Sturgeon and Hound Chute. Paul explained that these projects are run of river projects. Previously, the plants generated electricity at the old 25 hertz frequency and had to ship the electricity to Sudbury to convert it to the modern 60 hertz. The new facilities will eliminate the need to convert the electricity and will allow them to connect directly to the grid. The construction will not increase the permanent footprint of the existing sites but allow for greater efficiencies while using the same amount of water.

C. Presentation Questions and Answers

C.1 Lower Mattagami

1. Who will benefit from the new generation capacity? Will it be northern residents or the southern residents?

Answer, Paul Burroughs: Typically electricity flows from the North to the South during peak hours and from South to North during off peak periods. The electricity generated by the project will feed the electrical grid of the province.

2. Will OPG consider installing fish ladders to facilitate the movement of fish?

Answer: Paul Burroughs: No, the dams were built at existing, natural barriers for fish such as water falls and rapids. During the construction of the new powerhouse at Smoky Falls, the fish that remain trapped behind construction cofferdams will be physically moved to the existing waterway.

3. Will the plan interfere with fish migration specifically Sturgeon?

Answer: Paul Burroughs: No, these dams were built at existing natural barriers for fish such as water falls and rapids. The sturgeon did not migrate through these areas even before the dams were built.

4. Are there any geological concerns in the area that may affect the structural integrity of the dams?

Answer: Paul Burroughs: No, geological surveys have not identified areas of concern such as major ground faults. The Dams are also designed to strict dam safety requirements which account for seismic loads.

5. How is the water level maintained?

Answer: Paul Burroughs: The Ministry of Natural Resources Water Management Plan has provisions for maintaining minimum water levels. There is a requirement to maintain water levels within a margin of approximately 1 meter from Victoria Day weekend to Thanksgiving Day Weekend in the Little Long head Pond. Typically water levels are lowered in the head pond in the spring to accommodate the snow melt.

6. What effect will the project have on water levels?

Answer Paul Burroughs: The redeveloped complex will be required to operate within the Province's existing Water Management Plan (WMP) for the Mattagami River that sets the allowable operating water levels for the stations. During a typical day there will be no more water going through the stations. As an example, instead of operating 2 units for 9 hours of the day the stations will now be able to operate 3 units for 6 hours of the day.

It should be noted that the stations do not usually operate in one continuous block but are used throughout the day in smaller 1, 2, or 3 unit blocks to meet customer/system demands as required. When people wake up in the morning and turn on their lights and toasters you may have 1 or 2 units at each station generating running to "pick up the load" for an hour or so before other generation in the province is available. As people arrive home to cook dinner or have their air conditioners on the units may supply additional power to meet peak demand. In the spring (and occasionally the fall) the additional units use more of the excess water that is currently spilled around the stations (down Adam Creek) but the water levels are naturally at their highest point during these periods and this won't change.

Changes to water levels downstream of the last station (Kipling) are mitigated by a requirement in the Provincial EA to pass a specific volume of water (100 cubic meters per second daily average flow) every day of the week to protect fish habitat on the river. OPG is also required to maintain minimum water levels equivalent to 1 unit of flow downstream of Kipling during sturgeon spawning periods in spring.

7. What is the market for the new power?

Answer: Paul Burroughs: The power will be fed to the Provincial grid for use by all consumers.

8. Why did OPG decide to refurbish the dams on the Lower Mattagami?

Answer: Paul Burroughs: For several reasons. First, to increase the generating capacity of the Province in order to compensate for the loss of generation when the province eventually phases out coal generation plants. Second reason is that, this type of generation is much more efficient for peak period generation. The coal plants take some time to bring on line as opposed to Hydro electric plants for which start up is immediate.

9. Is there any interest from the Province to ship water to the United States from these rivers?

Answer: Paul Burroughs: No. The Mattagami River flows to the north to the Arctic watershed.

10. How many fish go through the spillway and turbines?

Answer: Paul Burroughs: There is a certain amount of fish that go through the Adam creek spillway mostly during high water periods, usually in the spring. OPG conducts a fish relocation program when the water recedes. In other words, when we close the sluice gates, we physically check all the ponds on the Adam creek and relocate the stranded fish back into the head pond.

The actual intakes for the turbines are protected by trash racks. These trash racks prevent larger fish from entering the generating units. The Mattagami units are also slower, low pressure (head) units which reduce the impact on small fish that may travel through the system.

11. Will there be added capacity to the existing transmission lines?

Answer: Paul Burroughs: The current capacity of the transmission system is adequate but some short lines are required to connect the facilities to the existing system.

There will be approximately 4 km of new transmission lines built to connect the new Smoky Falls station to the existing transmission lines. This connection line will be built adjacent to the existing transmission corridor for the old Smoky Falls station. The work will consist of clearing the right of way, building foundations for new towers and building a disconnect yard where new lines will connect to the existing ones. The old line will be decommissioned and left in place until Hydro One decides what to do with it.

Hydro One will also add an additional line to their existing towers that run between Kipling and Harmon generating stations to connect the new unit being added at Kipling GS.

12. What effect will the increase traffic have on the environment?

Answer: Paul Burroughs: The Project will use the existing roads from Kapuskasing and Smooth Rock Falls to the Stations. We will need to ensure that the roads and stream crossings are safe for the anticipated increase in traffic and loadings. Some of the heavier equipment may be transported by rail to Fraserdale. It is my understanding that the bridge in Kapuskasing may not be able to handle some of the equipment (e.g. transformers). Ultimately these transportation issues will be the responsibility of the Design-build contractor.

13. Other than the actual generating stations and transmission lines, what other on the ground activities will be necessary to complete the project?

Answer: Paul Burroughs: Some of the activities associated with the projects are, road verification, the creation of lay down areas for material handling as well as the building of a construction camp that will house a significant portion of the maximum work force of about 600. The camp may not be fully utilized until the year 2012. The details of the camp and work forces requirement will be the determined by the Design-build contractor.

14. Have construction methods improved for environmentally friendliness?

Answer: Paul Burroughs: Incredibly so. The design/build contractor will have their own environmental staff that will work with OPG's environmental staff. All environmental responsibilities remain with OPG. OPG's number one priority is safety followed by the environment.

15. Do you have an idea of how much new land will be disturbed by the construction?

Answer: Paul Burroughs: The amount of disturbed land will be set out in the EA, but it will be in the area of 45 Hectares primarily contained to Smoky Falls Island.

16. Will the water levels be raised during construction?

Answer: Paul Burroughs: OPG is bound by the Water Management Plan for the Mattagami River and will operate the stations in accordance with the plan. No significant changes to current operations are anticipated during construction.

17. Do we have access to the Track Report for the Federal EA?

Answer: Larry Onisto: Yes, the MNO has a copy. I believe that Bob Waldon has a copy. [Note: Copy was sent to citizen who requested it.]

18. How much of an impact will the project have on the coal fired generation plants?

Answer: Larry Onisto: The Lower Mattagami complex will offset the equivalent of one large coal fired generation unit (~ 500MW). . This is the equivalent of one unit at the Nanticoke generation station, so as you can well imagine the impact of the Lower Mattagami will be very environmentally positive.

Nanticoke is located on Lake Erie and is the largest single generating station in the province and contains 8 unit coal fired generating units.

19. Where will the rocks that will be removed be stored?

Answer: Larry Onisto: The materials that will be removed will be stored on site. Some materials will be reused for construction. Approximately 700,000 cubic meters of rock will be removed.

20. Does OPG have antiterrorism measures in place?

Answer: Larry Onisto: I don't know that OPG have measures specific to terrorism but we do have emergency plans and dam safety measures at our hydro dams.

21. Are the existing power lines capable of handling the additional generation?

Answer: Larry Onisto: Yes, Hydro One is in the process of reinforcing the North East portion of the grid.

22. Is there a plan to decommission the Smoky Falls powerhouse?

Answer: Paul Burroughs: No, after the construction of new Smoky Falls, the old site will be made safe by putting concrete in the intakes and the tailrace gates and the building will be used for storage for other sites. OPG will be donating pictures, historical information and artifacts to the local museum. .

C.2 Upper Mattagami

1. Why is the Sandy Falls project only generating 5 Megawatts as opposed to 8 or 10 like the other dams?

Answer: Paul Burroughs: The limiting factor is the height of the water. The higher the water is the more energy it can provide. The Sandy Falls dam is simply not as high as the other two dams.

2. What is the story on the Mattagami Lake Dam, what undertaking is planned for this site?

Answer: Paul Burroughs and Mario Durepos: Mattagami Lake Dam is a control dam, with plans to add an 8 megawatt turbine. The project is a partnership between the Mattagami First Nation and OPG.

3. There are rumours that OPG and MNR have some disagreements over the project.

Answer: Paul Burroughs: I know discussions have been ongoing but I am not sure of the final resolution. OPG will be contacting the Métis to provide an update of the Mattagami Lake Dam Development prior to finalizing the EA.

4. Is the work on these projects being done by OPG workers or sub-contractors?

Answer: Paul Burroughs: The work is being conducted by a design/build contractor using construction trades.

5. What are the opportunities for jobs and job training at these projects?

Answer: Paul Burroughs: These jobs will be union jobs. There are employment strategies that will help create a skilled work force, such as the lower Moose River basin aboriginal employment strategy.

6. How do we access these union jobs, when most positions are filled by out of town workers?

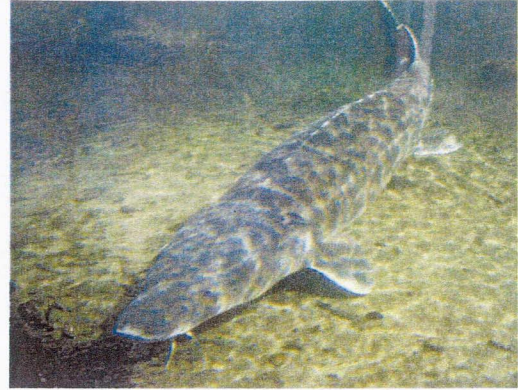
Answer: Paul Burroughs: It may be possible to hold a job information session in conjunction with the design / build contractor at a future date to provide more details.

NOTE: After the meetings a question was raised in regard to the life expectancy of concrete used for any of the Mattagami Complex (Lower and Upper) dams. Since some of the dams date from the 1930's, Métis citizens would like to know the life expectancy of the concrete structures and what OPG does to maintain the dam.

D. Métis Citizens Forum and Issues

The community meeting was considered to be a success. It was well-organized, the number of attendees was good, given the winter scheduling and decentralized Métis community and, the question and answer session was informative. Of the 43 attendees, only 1 was a Métis harvester associated with the James Bay Traditional Harvest Territory.

The Community Meeting and Métis Citizens Forum was meant to provide a reasonable “screening” level exercise for identifying potential impacts to Métis rights, interests and way of life. It is not a replacement for a comprehensive traditional land use study, but the process was intended to flag any issues that may justify such further inquiry. The ability of such an exercise to provide assurances of no adverse impacts is, naturally, limited by the relevant knowledge or those in attendance and their willingness to share it. This fact is also reflected in the July 2008 Track report by Fisheries and Oceans Canada, which identified the need for further study to identify Aboriginal use of lands that may be impacted by the OPG Project.³



The Committee is able to report that none of the attendees raised site-specific objections about the OPG Project, but as evidenced in the questions and answers many were keenly interested in its potential environmental and socio-economic impacts.

The Committee met after the forum to compare notes from their conversations with citizens and to review the questions raised during the OPG presentation, with the following issues being identified for follow-up with OPG.

1. The need to work with the design/build contractor to ensure that, camp location, new transmission lines, and staging areas are created in a manner that will not affect the Metis rights, interests and traditional way of life. The primary focus is to avoid interference with access to areas for, of with species of interest to Métis harvest and for screening to ensure no disruption to places of cultural or spiritual importance. In short, open communication and cooperative planning is requested.
2. Strong Métis interest and a request that MNO, OPG and OPG's design/build contractor work together to explore opportunities in relation to employment and contracting (goods and services) for Metis citizens in Region 3 in relation to this or other projects.
3. To ensure that the right of way clearing for transmission lines is conducted in accordance with accepted environmental practices, especially with regard to use of herbicides for vegetation control during operations.
4. To ensure that the fish population and habitat is protected at all stages of construction.
5. That the newly created wet lands are adequate to replace the wet lands that will be removed.

³ Fisheries and Oceans Canada, “Environmental Assessment Track Report for Lower Mattagami Hydroelectric Complex Redevelopment”, July 8, 2008, Table 2 - Potential Effects on the Socio-Economic Environment, Caused by Changes to the Bio-Physical Environment, p. 13.

6. That an ongoing relationship and communication is maintained with OPG and the design/build contractor in order to ensure the flow of information between project proponents and the MNO.
7. To ensure that adequate monitoring of water levels is stringently adhered to in order to ensure that shoreline birds and fish populations are protected.
8. That OPG help support a regional Métis Way of Life Framework (traditional ecological knowledge) exercise.
9. That OPG ensure the decommissioning of the existing transmission line be completed in a manner that will protect people and wildlife.

Supplemental Considerations

Since writing the first draft of this report, a meeting to clarify information and discuss potential solutions was held with OPG on March 26, 2009. The following additional questions were addressed by OPG:

- (i) The clearing and maintenance techniques for the proposed transmission and distribution rights-of-way, with particular reference to the type, use and impacts of herbicides for vegetation control.

Appendix III is a copy of OPG's e-mailed response with information supplied by Hydro One, the transmission line operator. The Committee is concerned over use of pesticides for vegetation control and its implications for wildlife and plants that may be affected, and subsequently harvested.

- (ii) What will happen to the old transmission lines? If they remain in place, how does the operator ensure public safety and no hazard to wildlife?

Please see Appendix III. At this time it is not known if the lines will be removed or what the minimal maintenance is that Hydro One will employ to ensure they pose no hazard to the public or wildlife.

- (iii) What is the status and project description of the Mattagami Lake Dam project?

The Committee has met with OPG and their project partner the Mattagami Lake First Nation to engage with regard to this project.

- (iv) What studies have been undertaken to ensure the structural integrity of the existing dams?

Appendix III includes OPG's response to this issue. It is their position that the integrity of the dams will be assured through ongoing maintenance and inspection programs. Neither the Committee nor MNO have technical capacity to evaluate the nature of the dam maintenance program, but note this is the responsibility of the operator and government regulatory authorities.

Additional environmental information has also been reviewed by the Committee. This includes the 1990 Ontario Hydro environmental assessment⁴ for this project, the 1994 Federal/Provincial Terms and Conditions for approval of the project, the 1995 Coast Guard Screening report of the project⁵ and the Moose Cree Resource Protection web site⁶.

The potential environmental and socio-economic effects discussed in the two reports, are very relevant to the Aboriginal rights, interests and way of life of the Métis who live and use the lands and waters of the James Bay Traditional Harvest Territory of the Métis Nation of Ontario, within which this project is located. Both reports identify potential effects to terrestrial and aquatic species that are harvested by Métis.

The environmental and socio-economic mitigations proposed in the Ontario Hydro and Coast Guard reports and the prescriptions required by the 1994 Terms and Conditions of approval all seem very appropriate to mitigating the potential effects. Ensuring their effectiveness is a key concern of all parties: the proponent, regulators, the public, other stakeholders and especially for Aboriginal peoples including Métis.

While recognizing that the 1994 Terms and Conditions were developed at a time prior to case law that confirmed Aboriginal harvest rights of the Métis, and ten years prior to the Métis Nation of Ontario - Ministry of Natural Resources Interim Harvesting Agreement, the absence of reference to Métis in the Terms and Conditions is an issue of concern. At the same time, the Committee recognizes the importance of the 1994 Terms and Conditions for protection of the environment and for addressing socio-economic impacts for the affected First Nations and therefore supports them.

The Committee also wishes to commend the work undertaken by Moose Cree Resource Protection on this project, and their contribution to the Comprehensive Study process. Métis interests concerning the environment and socio-economic impacts are in harmony with those of our First Nation brothers and sisters, and as such, the Committee supports their initiative.

Métis Interests and Perspectives on the OPG Project

This report uses the term "interests" in a specific way. Interests are what matter most to people. They are fundamental to our being and comprise such things as our core values, our hopes, our fears and our approach to each other, the environment and the interrelationships between them.

Too often "interests" are obscured by "positions". Positions are a statement of intent or desired outcome, expressed by a single party or organization because it serves their needs or desires. Positions usually involve solutions that may work for one party but not for others who may be affected by them. Interests, on the other hand, are what lie beneath positions. It is both important and appropriate that we focus on Métis interests in the context of the OPG Project to understand and address the Métis perspectives on it.

⁴ Ontario Hydro, "Hydroelectric Generating Stations Extension Mattagami River Environmental Assessment", October 1990

⁵ Coast Guard, "Screening Report Pursuant to the Environmental Assessment and Review Process Guidelines Order (EARPGO) and the Navigable Waters Protection Act (NWPA) Approval: Ontario Hydro Hydroelectric Generating Station Extensions - Mattagami River", 1995

⁶ <http://www.moosecreeresourceprotection.org/opg.html>

A fundamental interest for Métis is to ensure that their collective community held Aboriginal rights are not adversely affected by projects within their traditional harvest territories. Métis peoples have a close connection to the natural environment. Their use and relationship to it largely defines who they are and their systems of social and cultural norms. Métis use of the natural environment for food, ceremonial and social purposes and the social and cultural systems that flow from those uses are a foundation of the Métis Aboriginal rights. One Métis interest is therefore to know that potential environmental impacts of projects such as the Lower Mattagami will not have an adverse impact on the natural environment.

The 1995 Coast Guard Environmental Screening report identifies a number of species that exist within the study area of the OPG Project, as follows:

Approximately 39 species of mammals inhabit the study area including moose, black bear, red fox, wolf, otter, mink, weasel, muskrat, beaver and marten. Many of these are trapped or hunted for commercial or recreational purposes.

The Mattagami River forms part of the Mississippi and Atlantic bird flyway. Over 124 species of birds have been recorded in or near the study area associated with the Mattagami River Hydroelectric Extensions Project. It appears, however, that the study area provides less than optimal breeding habitats with exceptions, including a Great Blue Heron rookery on an island in the Mattagami River, between Harmon and Smokey Falls stations. Bald eagles have also been observed in the study area although no nests have been located.

Fisheries in the area are typical of many northern rivers in this part of Ontario. Species include walleye, pike, lake sturgeon, suckers and forage species. Lake sturgeon are of particular importance since many populations throughout Ontario have been extirpated through habitat destruction and overfishing.⁷

All of the species identified above are of interest to Métis in relation to their Aboriginal rights to harvest and/or from an ecological point of view. Aboriginal peoples, including the Metis, use or have rights to use the general area where the OPG Project is to take place. This includes areas affected by access routes, the labour camp area and new transmission line route. This was recognized in the 1990 Ontario Hydro environmental assessment report, which states:

Despite the lack of specific data [on the Lower Mattagami area], the [1982-83 Ministry of Natural Resources, "Resource Use By Native and Non-Native Hunters of the Ontario Hudson Bay Lowland,"] study would generally support the thesis that participation in the resource harvesting economy by Aboriginal people in the Basin continues to be strong. Clearly, they harvest waterfowl, birds, moose, caribou, fish and furbearers down and around the Moose, Mattagami, Abitibi, French and

⁷ Coast Guard., 1995, p. 2.

Cheepash Rivers at least to the MNR Moosonee District boundary south of Moose River Crossing.⁸

Additionally, the Ontario Hydro environmental assessment report documents the existence of heritage sites in the study area that were associated with the Hudson's Bay Company⁹; an organization whose very existence was primarily dependant on the Métis for transport of goods.

The Ontario Hydro environmental assessment also deals with socio-economic impacts. One impact is the challenge of local Aboriginal populations to access construction and operations jobs for the project due to qualification requirements and union hiring practices¹⁰. Another Métis interest is the desire for economic well-being and progress. Métis share this interest with First Nations and other persons. The Ontario Hydro environmental assessment report proposed a suite of mitigations directly related to this interest for Aboriginal peoples.

The development does provide an opportunity for Aboriginal people to gain job training, employment and possibly construction contracts. Special assistance will be taken to ensure that full advantage can be taken of these opportunities. It is the intent of Ontario Hydro to develop these and other measures in co-operation with Aboriginal groups. The measures that Ontario Hydro proposes to undertake include:

- Ontario Hydro will provide staff to assist in the identification of job and training opportunities
- negotiation with Construction Unions to provide maximum job opportunities for all local peoples (including both Aboriginal and non-aboriginal)
- co-operation with Federal and Provincial Government agencies with regards to the timely establishment of job training programs
- provision of apprenticeship opportunities for local peoples (both Aboriginal and non-Aboriginal)
- sizing of sub-contracts to facilitate First Nation and other local contractor involvement
- provision of training programs to sensitize construction staff to the critical concerns faced by Aboriginal peoples in relation to projects of this kind.¹¹

⁸ Ontario Hydro, 1990, p. 5-50.

⁹ *Ibid*, p. 3-37. The references are to New Post, Flying Post and a former Hudson's Bay storehouse and portage site on the Mattagami River between the Smokey Falls and Harmon stations.

¹⁰ *Ibid*, p. 6-25.

¹¹ *Ibid*, p. 6.49

Métis are Aboriginal peoples and the Committee recommends such measures be applicable to all Aboriginal peoples in the project area. Contracting and procurement requirements, such as insurance limits, certifications or safety programs may not be well known to smaller Métis firms. Specific efforts are needed to ensure such contracting and procurement requirements are communicated to Métis, to avoid inadvertent or unintended barriers. Conducting these actions well in advance of employment, contracting and procurement opportunities and delivery through Métis-specific channels will promote their effectiveness.

A final area dealt with in the 1990 Ontario Hydro environmental assessment was ongoing communication and issue resolution during construction and commissioning activities. The report outlines a commitment to develop a Community Impact Monitoring Program with a well defined structure and process to identify and resolve concerns¹² as well as an Aboriginal impact management agreement¹³. The Committee supports both measures for any project of this magnitude.

Recommendations

A number of recommendations were developed from this meeting, and are summarized in the enclosed report. Further discussions with Ontario Power Generation resulted in agreement over many of the recommendations, but not all. The areas of agreement were for measures to mitigate potential impacts to Métis rights, interests and way of life that were notionally apparent to our Committee and to OPG, but other issues lacked the specific type of land use data requested by OPG to go further.

The Committee does acknowledge that no significant issues or concern or objections were raised by citizens in attendance at the January 10, 2009 Community Meeting/Métis Discussion Forum, however, information gaps about Métis Way of Life may exist, namely:

- At the present time, a comprehensive and academically rigorous Métis Way of Life study, including traditional land use mapping, does not exist for the study area where the OPG Project is located.
- The 1990 environmental assessment of the OPG Project by Ontario Hydro, does not contain any data about Métis Way of Life. Section 5.2.3 titled "The Aboriginal Communities" makes no reference to Métis communities, despite six Métis and Non-Status Indian associations being listed as having been contacted in Table 8-3¹⁴.
- The 1994 Federal Environmental Assessment Terms and Conditions of approval similarly make no reference to Métis.
- The 1995 Coast Guard screening report makes no reference to Métis.

In short, it does not appear that any environmental assessment work completed to date specifically addresses Métis rights, interests and way of life.

¹² *Ibid*, section 6.2.3, p. 6-49.

¹³ *Ibid*, p. 6-49.

¹⁴ Ontario Hydro, "Hydroelectric Generating Stations Extension Mattagami River Environmental Assessment", October 1990, p. 8-4.

Yet, as explained above, it is known that Aboriginal peoples, including the Metis, use the general area where the OPG Project is to take place. As a result, the Committee makes the following recommendations as a management system approach to Métis rights, interests and way of life for the OPG Project. These recommendations are primarily aimed at fostering ongoing communication between our Committee (on behalf of Métis citizens) and OPG. This could result in avoidance of unforeseen impacts and greater collaboration towards a positive learning experience for both Métis and OPG.

While the DFO CS is focused on the Smoky Falls portion of the OPG Projects, the construction and operation of the OPG Projects should be viewed in their entirety, and to the extent there is potential for cumulative effects.

- A. Ensure The Committee and MNO are kept informed of the Comprehensive Study EA process and schedule, and have the capacity to: (i) review and comment on the draft Comprehensive Study report for the OPG Project and; (ii) to ensure the mitigations of the 1990 Ontario Hydro and 1995 Coast Guard screening report are implemented and effective.
- B. Arrange for the Committee to visit the construction and labour camp sites prior to clearing activities so that plant salvage can be accommodated, if required and practicable and to consider any relevant Métis Way of Life information in site preparation and operation.
- C. Arrange for the Committee to view locations where road upgrades may result in temporary access restrictions or have potential for adverse environmental effects and to discuss the mitigation that is planned by OPG to address those potential effects, including consideration of any relevant Métis Way of Life information.
- D. Ensure restrictions to hunting and fishing are enforced for labourers on the OPG Project, as detailed in the 1990 Ontario Hydro environmental assessment and 1995 Coast Guard screening report.
- E. MNO and OPG will work together to create and execute a communications plan that utilizes the MNO's communications infrastructure (such as mail outs, MNO web site and The Métis Voyageur). Components of the plan will address both project operational activities and general project updates. This will include:
 - A system to inform Métis harvesters of physical activities that have potential for disturbance to their activities or that may involve public safety issues
 - Matters of a general nature about the project that are issued by OPG and/or its design/build contractor
 - A system to communicate Métis citizen concerns over project activities, including the steps to resolve them
- F. In collaboration with MNO and the Committee, OPG will prepare and hold an information program, including a meeting, to provide and explain information regarding employment and

procurement opportunities anticipated through the Mattagami projects. The intent is to provide basic information about the qualifications, schedule and process that is required to pursue employment and contracting opportunities.

- G. OPG to provide a summary of the results of their Stage 2 archaeological reports or a summary confirming there were no findings, especially with regard to heritage resources associated with the Hudson Bay Company.
- H. OPG support for a James Bay Métis Way of Life Framework to further develop the List of Métis Species of Interest and/or Métis value sets for use by MNO as a screening tool for the OPG project implementation and for future projects. Such information will be treated as the intellectual property of the Metis Nation of Ontario and treated in strict confidence.
- I. OPG and MNO shall commit to explore employment and training initiatives available under existing federal and provincial programs
- J. OPG should provide assistance to develop a list of Métis individuals or businesses that can offer services to the design/build contractor.
- E. Should DFO require that OPG complete a “no net loss” compensation project for loss of habitat that may occur as a result of the construction, the Committee should be consulted to discuss the participation of Metis in such project work, or through the use of relevant Way of Life information for consideration of creating habitat that supports species of interest to Metis.

Appendixes

Appendix I



500 Old St. Patrick Street
Ottawa, Ontario K1N 9G4
T: 613-798-1488
TF: 800-263-4889
F: 613-722-4225
E: mno@metisnation.org
W: www.metisnation.org

December 19, 2008

To: Métis Citizens in the James Bay / Abitibi Temiscamingue Traditional Territory

Subject: Proposed Lower Mattagami Hydroelectric Complex Redevelopment

Ontario Power Generation (OPG) is proposing to redevelop the Lower Mattagami Hydroelectric Complex, located approximately 70 km northeast of Kapuskasing (see OPG information, enclosed). Three generating stations will be expanded with the addition of a turbine/generator and one site will be redeveloped to accommodate a new generating station.

The project will require a federal environmental assessment before any construction begins. The assessment will look at possible changes to the land, water, air, plants and animals, including birds, and fish. The assessment will also look at how changes to the environment may affect people. This includes how land is used for traditional purposes by Métis people.

The project is located within the area known as the James Bay and Abitibi/Temiscamingue traditional territories of the Metis Nation of Ontario ("MNO"). The Métis Nation has Aboriginal rights in the lands, waters and natural resources within the area where the project is located. Therefore, the Crown is required to meaningfully consult with the potentially affected rights-bearing Métis community. As you know, Councils in this territory and MNO have formed a Regional Consultation Committee to work together on projects of this nature.

MNO and OPG have discussed how Métis input can be gathered about this project and OPG understands that MNO will not be able to comment on the project without talking to the citizens in the affected area. Input from Métis citizens is very important to understand the possible effect of this project on Métis rights, interests and way of life. OPG has agreed to answer questions about another project in the area, which has received approval and has begun at the Upper Mattagami Power Complex.

MNO is inviting Métis citizens to an information session where OPG will present an overview of the project including what specific activities will take place, the permitting process and the timing of these activities. There will be an opportunity for Métis citizens to voice their opinions and concerns in a private forum following the OPG presentation.

When: Saturday January 10, 2009

**Where: St. Dominique Church Hall
720 Park Ave.
Timmins, On.**

Time: 1:00 p.m.

On behalf of our James Bay and Abitibi/Temiscamingue Regional Consultation Committee, I hope that you will be able to attend this meeting. If you are unable to attend, please contact Andy Lefebvre at 705-264-3939 or one of the Committee members below, or myself to make your views known. If you cannot attend, you may want to send your comments to:

Andy Lefebvre
C/o Metis Nation of Ontario
347 Spruce St. S.
Timmins, On.
P4N 2N2

Or by e-mail to: andyl@metisnation.org

Thank you for your help and I look forward to seeing you at the meeting.

Yours very truly,

Marcel Lafrance
James Bay and Abitibi/Temiscamingue Regional Consultation Committee Chair

Committee

Members;

Urgel Courville, Cochrane: 705-272-3883 e-mail: comunaire@puc.net
Nathalie Durocher, Timmins: 705-264-3939 e-mail: nat.durocher@gmail.com
Liliane Ethier, Temiskaming Shores: 705-672-3790 e-mail: lethier@ntl.sympatico.ca
Marcel Lafrance, Matachewan: 705-565-2342 e-mail: lafrance.m@hotmail.com
Andy Lefebvre, Timmins: 705-264-3939 e-mail: andyl@metisnation.org

Appendix II

**OPG – MNO Meeting
Lower Mattagami Hydroelectric Complex Redevelopment**

**January 10, 2009
St. Dominique Church Hall
720 Park Ave.
Timmins, On.
1:00 p.m.**

Agenda

1. Introduction and opening prayer
2. Overview remarks
3. OPG presentation Lower Mattagami Project
4. OPG Permitting and Environmental Assessment requirements
5. OPG Overview of Upper Mattagami Project
6. MNO involvement, Natural Resources, Environment and Community
Relations Branch Overview
7. Questions and Answer period
8. Métis Citizens Forum
 - a. Discussion
 - b. Questionnaires
 - c. Mapping review

Appendix III

From: BURROUGHS Paul -HYDRO
> Sent: Friday, April 17, 2009 3:21 PM
> To: (bobw@metisnation.org)
> Cc: ONISTO Larry -HYDRO
> Subject: LMRP - Region 3 Community Meeting and Métis Citizens Forum
>
> > <<LMRP - Summary of Archaeological and Heritage Resources.pdf>>
>
> Hi Bob,
>
> Please find enclosed responses to your questions from the Region 3 Community Meeting and Métis Citizens Forum Consultation Report and our review meeting of March 26. I have also attached a summary of heritage studies as requested. Responses to questions a. and b. below were provided by Hydro One.

C. Provision of information to Métis that was not available at the Community Meeting, as follows:

>
> a. Please explain the clearing and maintenance techniques for the proposed transmission and distribution rights-of-way, with particular reference to the type, use and impacts of herbicides for vegetation control.
>
> The transmission right of way (ROW) between Harmon Jct and Kipling GS has been established for more than 40 years. Consequently, the ROW has been cleared and is now under maintenance. It should also be noted that the road between Harmon and Kipling GS runs quite close to the transmission ROW and allows for easy access without the need for further clearing except in very minor manner for the passage of equipment.
>
> The following is taken from Hydro One's Environmental Guidelines for the Construction and Maintenance of Transmission Facilities. This is a public document which provides a comprehensive presentation regarding Hydro One's construction and maintenance practices.
>
> ROW Selective Clearing Hydro One from Environmental Guidelines:
>
> Once the boundaries of the project have been staked, selective clearing is undertaken to permit access for construction and to establish the safe operating distance of the conductors from adjacent vegetation. Depending on the type, density and tree species present, the clearing required through a wooded area could be substantial (virtually clear cut) or minimal. The long-term goal is to create and maintain a vegetative cover that will not grow into unsafe distances to the overhead conductors.
>
> Slow growing vegetation may be left for screening the ROW, and protecting significant environmentally and visually sensitive areas. Under special circumstances, at the sole discretion of Hydro One (or at the direction of government agencies in authority), limited pruning of non-compatible vegetation may be carried out to maintain site integrity and to provide regulated conductor clearances. This is a short-term measure, and non-compatible vegetation is usually removed after sufficient compatible vegetation has grown in.
>

cept where clear-cutting is necessary for temporary warehousing, access routes, structure assembly areas, structure sites or extensions. In existing fields, all compatible vegetation on the ROW is left uncut unless it is sufficiently dense that it impedes construction and maintenance crews. In such circumstances, removal and/or thinning is necessary.

Non-compatible vegetation is vegetation whose natural characteristics or locations potentially create an unacceptable risk to the safety or reliability of the transmission line. It includes all fast growing vegetation such as willow, soft maple, elm and poplar unless growing in locations where at maturity the trees will not come within specified clearances of conductors, or unless required for environmental purposes in the absence of compatible vegetation. Vegetation designated as non-compatible is removed.

Tree felling and removal is normally completed by approved contractors, although in some locations such as tree screens at road crossings, or where tall trees are near live electrical conductors, the work may be done by Hydro One's Forestry Services staff. Trees are fully felled, skidded and piled in tree lengths adjacent to access roads. In wetlands or other sensitive areas, trees may be cut up and removed by hand or left in contact with the ground provided that no environmental effects occur as a result.

Brush and non-marketable wood may be disposed in one of three ways, chipping, burning or in special circumstances lopping and scattering. The most common way of disposing of the brush is by chipping and the chips are spread on the ROW. Brush burning, common in the past, is rarely carried out although in some situations, municipalities may permit/allow limited burning. Where permissions are obtained from local authorities such as the MNR, the municipality and local fire department, brush may be burned. Burning is done in accordance with the guidelines for open burning.

Stumps are cut as close to the ground as practical and where all necessary approvals and permissions are obtained, Hydro One may use herbicides to control regrowth from stumps. Only approved herbicides are applied by appropriately licensed personnel.

Each affected landowner has the option of retaining ownership of the timber or accepting a fair market value for it from Hydro One. Salvable timber is either retained by the owner/tenant, or ownership is transferred to the contractor through the tendering process. Timber retained by the owner/tenant is generally removed within 30 days of completion of construction.

Equipment

The equipment normally used for tree removal is:

- Chain saws,
- Feller machines
- Rubber-tired skidders,
- Rubber-tired loaders or small bulldozers with brush grapples,
- Logging trucks with self-loading cranes or other smaller trucks for wood removal,

> *> Hydraulic buckets mounted on skidders or two or four wheel drive highway class trucks, and

> *> Mechanical brush chippers.

>

> ROW Maintenance from Hydro One Environmental Guidelines:

>

> With respect to the Hydro One transmission corridor from Harmon Jct. to Kipling GS it is treated in the same manner as the majority of the lines in Northern Ontario.>

> Every 6-8 years there is a brush control maintenance program is undertaken. The activities can consist of brush cutting or an application of herbicide. The herbicide used is usually Garlon 4 but Tordon is also used in the north. The herbicide is mixed with either mineral oil or water and is selectively applied in a low volume basal or stem foliar application to only incompatible vegetation by the herbicide applicator. The herbicide kills the vegetation it is applied to and prevents it from regenerating. All provincial legislation is followed (such as minimum set backs from water) to ensure that only the targeted vegetation is effected.

> The impact is considered to solely impact the targeted vegetation and have no other affects on other adjacent vegetation or other aspects of the environment.

>

> Vegetation Management from Hydro One Environmental Guidelines:

>

> Most Hydro One ROWs support a natural ground cover of grasses, herbs, shrubs, ferns and small trees. Hydro One> '> s brush control programs are designed to control the regeneration and re-establishment of trees amongst the compatible ground cover. By selectively removing the young trees, encouragement is given to the establishment of low maintenance, low-growing plant communities compatible with the transmission lines. Incompatible vegetation is deemed as any plant species that at maturity will encroach upon the required line clearance with the line at maximum sag or vegetation that impedes access to or inspection of the towers.

>

> All work is planned and completed in accordance with applicable community, environmental, health and safety legislation, regulations and policies. Vegetation conditions on a ROW are assessed on a cyclic basis of every 5 to 7 years to determine the maintenance needs. These assessments are done by Hydro One Forestry technicians, who also assess the condition, stability and health of trees along the ROW edge. Removal of non-compatible vegetation from the ROW is planned and completed, as well as the removal of any trees assessed as a potential falling or clearance hazard. On an interim basis patrols are conducted by Forestry staff to check and correct safety or hazardous conditions involving vegetation, encroachments, vandalism, etc.

>

> Establishing and maintaining a compatible and diverse ground cover on the ROW is managed in a variety of ways. The most common treatment methods are as follows:

>

> * Hydro One may use a low volume herbicide treatment to control non-compatible vegetation. When used selectively and judiciously, herbicides enable the ROW manager to take advantage of the natural control potential that is inherent in permanent communities of compatible ROW vegetation. The selective use of herbicides will, over time, promote low growing vegetation that will remain relatively stable

and result in reduced density and costs over subsequent management cycles.

> * In remote areas, where vegetation is dense with non-compatible species and access is difficult, foliar herbicide treatment may be prescribed.

> * While the control of vegetation by manual cutting is highly labour intensive, it can be done selectively. On the other hand, control by mechanical cutting is just the reverse, i.e., low in labour input, but usually non-selective. Both cutting methods can lead to the production of hardwood sucker growth which has a very high growth rate potential. Consequently, such cutting operations often include a follow-up stump and stubble low volume herbicide treatment.

> * Where trees are not removed because of local agreements or the site is sensitive, the trees may be pruned or topped depending on their location in relation to the transmission line. As the individual situation allows, sound arboriculture pruning techniques are used to provide the required clearances while minimizing any adverse effect on tree health and stability.>

>

>

> b. What will happen to the old transmission lines? If they remain in place, how does the operator ensure public safety and no hazard to wildlife?

>

> Currently, the 115kV line is still in service and will continue to be for the next few years. Once the new 230kV connection from Smoky Falls is in service, it is possible that the 115kV line will no longer be required. When Hydro One declares that it no longer requires a line the following process is initiated:

>

> * The IESO is contacted and asked to approve de-energizing the line,

> * The line then is transferred to an Idle Line List which is administered by Hydro One's Line Sustainment,

> * Minimum maintenance is carried out on the line to maintain safety, and

> * Every 5 years the status of the line is reviewed to determine if maintenance should be continued or that line be removed.

>

> If the removal of the line is required, a decommissioning plan would be developed. This generally entails the removal of a tower (and associated equipment) which means it is either cut flush with the ground or approximately 30cm below ground surface depending upon the geotechnical conditions. All material is removed from the ROW

>

> c. What is the status and project description of the Mattagami Lake Dam project?

>

> Discussions regarding the project are ongoing between the Region 3 Consultation Committee, the Métis Nation of Ontario, and OPG.

>

> d. What studies have been undertaken to ensure the structural integrity of the existing dams?

>

> Ontario Power Generation's ("OPG") dams are designed, constructed, operated and maintained in a safe manner which will comply with all Regulatory requirements. In the absence of Regulatory requirements, the

dams are prudently managed, taking into consideration best practices as recommended in the Canadian Dam Safety Guidelines published by the Canadian Dam Association and other appropriate International practices.

>

> In 1986 Ontario Hydro (now OPG) established a Dam Safety Program. The program ensures continued safe and reliable dam operation for all our customers and communities. The program ensures that comprehensive inspections, assessments, monitoring, and safety upgrades are carried out periodically across the company's network of dams. OPG's Dam Safety Program conforms to Canadian dam safety standards and is regularly reviewed by external experts. OPG's standards meet or better guidelines established by the Canadian Dam Association (CDA), first developed in 1995.

>

> Under the Dam Safety Program, dams are inspected regularly by professional engineers. In addition, many of the dams in the system (including the Lower Mattagami) are also continually monitored using sophisticated instrumentation to detect any structural change, seepage, or any condition that could affect their integrity. Data is then reviewed, assessed, and evaluated along with information gathered through physical inspections.

>

> OPG also carries out periodic plant condition assessments to evaluate the various components of the generating stations to ensure the continued viability and safe operation of the station.

>

>

>

> Paul J. Burroughs

> Project Manager - Lower Mattagami River Project ONTARIO POWER

> GENERATION

> (416) 592-6817 work

> (416) 528-1737 cell

> (416) 592-3489 fax

> paul.j.burroughs@opg.com

> AOL IM: PaulBurOPG