



Métis Nation of Ontario
Lands, Resources and Consultations

2024 04 19

Nancy Marconi
Registrar
Ontario Energy Board

Dear Ms. Marconi,

Re: EB-2024-0079 and EB-2022-0011

Please accept these comments prepared on behalf of the Métis Nation of Ontario (MNO) in relation to the February 7, 2024 letter from the OEB: “EB-2024-0079: Invitation to comment on proposed revisions to the Indigenous consultation provisions of the Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Projects and Facilities in Ontario” and “EB-2022-0011: Request for responses to questions related to participation by Indigenous groups in OEB hearings”.

EB-2024-0079: Invitation to comment on proposed revisions to the Indigenous consultation provisions of the Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Projects and Facilities in Ontario

One significant change proposed by the OEB includes that OEB will now have responsibility for reviewing the record of consultation and determining whether the Duty to Consult has been adequately discharged. The Ministry of Energy will no longer be involved in the duty to consult process for hydrocarbon projects in Ontario nor will they provide a letter indicating their views on the adequacy of Indigenous consultation. We recognize that the proposed changes currently only apply to hydrocarbon projects regulated under the OEB; however, it would be helpful to understand if they may precipitate changes to the other project types under the OEB’s purview like transmission lines.

Based on the MNO’s experience in participating in OEB hearings, the OEB’s process for gathering input from Indigenous communities tends to be more logistically onerous (for example, requirements to upload information to the RESS web portal rather than emailing a single point of contact) than for other regulatory authorities in Ontario like the Ministry of Environment, Conservation and Parks. It is unclear what process the OEB will follow for assessing adequacy of the Duty to Consult for hydrocarbon projects; however, we would encourage you to reduce complications in the communications process with Indigenous communities where possible.

We encourage the OEB and the Ministry of Energy to make it clear to the Proponent that they are expected to fund potentially impacted Indigenous communities to enable

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participation in the consultation process. This clarity for all parties helps to expedite early conversations between the Proponent and Indigenous communities.

Page 2 of the February 7, 2024 letter from the OEB notes that the Ministry of Energy has proposed amendments to the OEB Act: “If the OEB Act amendments are passed, the government may then propose regulations to exempt projects costing between \$2 million and \$10 million from the leave to construct process if the Duty to Consult is met.”

It is unclear what the Duty to Consult process would look like in these instances. Often, the Duty to Consult is so embedded in a leave to construct process that the removal of the leave to construct process may inadvertently result in the removal of the consultation process. How will the OEB ensure Proponents will still adequately consult and, if necessary, fund consultations on these projects outside of a leave to construct application?

MNO responses to questions from the OEB regarding Indigenous input into OEB hearings:

1. Have you ever participated in an OEB hearing? If so, what did the hearing(s) pertain to and why did you participate?

Yes, the MNO is currently participating in the OEB hearing for the Waasigan Transmission Line project. The MNO previously participated in the hearings for the East-West Tie project.

2. Broadly speaking, can you identify the elements of the OEB’s hearing process that worked well?

Requiring the Proponent to respond to all outstanding concerns before moving onto the next phase of the process.

3. What are elements of the OEB’s hearing process that you think could use improvement, and why?

The hearing process and particularly the use of the RESS web portal is logistically onerous with no clear guidelines available online. The online information available to direct Indigenous communities around comment submission, for example, is helpful but it may be easy for a community to inadvertently miss a step (for example, emailing the submission to all intervenors). This creates an undue burden on the Indigenous community staff to learn a complex system.

The other element of the OEB’s hearing process that could use improvement is around the rate reimbursement for legal advisors or consultants. The fixed rate of reimbursement may mean that an Indigenous community’s costs for participating are not

fully reimbursed. The financial burden for Indigenous communities to share their thoughts on a project should not lie on the shoulders of the community. Further, this burden may mean that interested communities are unable to participate in the hearing process.

4. Is there other information that would help you to decide whether to participate in a hearing?

Clear instructions from the outset on what the hearing is about, what kinds of queries will be accepted by the OEB from approved Intervenor, and a clear timeline of the process. The timelines are generally too short for any meaningful Indigenous participation to be included.

5. Are there changes that you would suggest to better facilitate participation by Indigenous groups in OEB hearings?

In relation to the comments in Question 3 around communications, we recommend having a dedicated staff person at the OEB that can be a single point of contact for Indigenous communities so their questions are responded to in a timely manner.

6. Would it assist you if there was an identified person or group within the OEB that you could contact regarding a specific hearing or the hearing process more broadly? If so, why?

Yes, please see above for reasoning.

Thank you for the opportunity to comment on the proposed revisions to the Indigenous Consultation provisions and answer questions related to participation in OEB hearings.

Sincerely,

MNO Lands, Resources and Consultations Branch

- c. Batul Rahimtoola, OEB
Jennifer St. Germain, Chief Strategy Officer, Métis Nation of Ontario