

APPENDIX 3-G

Project Delegation Letter

Ministry of Energy and Electrification

Ministère de l'Énergie et de l'Électricité

Energy Networks and Indigenous
Policy Branch

Direction Générale des Réseaux
Énergétiques et des Politiques Autochtones



Indigenous Energy Policy

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July 9, 2024

VIA EMAIL

Karola Tóth
Director, Environmental Services
Hydro One Networks Inc.
438 Bay Street, 8th Floor South Tower
Toronto, Ontario M5G 2P5

**Re: Letter of delegation for the Mississagi Transformer Station (TS) to Third Line
TS Transmission Project**

Dear Karola Tóth,

Thank you for your letter notifying the Ministry of Energy and Electrification (ENERGY) of Hydro One Networks Inc's (Hydro One) intention to commence a Class Environmental Assessment for Transmission Facilities (TF Class EA) for the proposed Mississagi Transformer Station (TS) to Third Line TS Transmission Project ("Project").

ENERGY understands from Hydro One that the Project will consist of a 75-kilometer double-circuit 230 kV transmission line from Mississagi TS in Algoma, Ontario to Third Line TS in Sault Ste. Marie, Ontario. The Project will include reconfiguring Mississagi TS to Third Line TS to accommodate the new line at each station.

ENERGY also understands that the Project is a greenfield project and that a route selection process will include the identification and study of viable route alternatives. Once the TF Class EA is successfully completed and permits and approvals are obtained, construction would commence to meet an anticipated in-service date of 2029.

Duty to Consult Delegation

The Government of Ontario (the Crown) has a constitutional Duty to Consult and, where appropriate, accommodate Indigenous communities when it has knowledge of established or credibly asserted Aboriginal or treaty rights protected under section 35 of Canada's *Constitution Act 1982* (s. 35 rights) and contemplates conduct that might

adversely affect those rights (Duty to Consult). This rights-based consultation with Indigenous communities is distinct from the requirement to consult with Indigenous communities as interested parties under the TF Class EA. Nevertheless, these two processes can be integrated. Consultation conducted under the TF Class EA may be a means by which the Crown can be satisfied, partially or fully, that any concerns from Indigenous communities about adverse impacts to their s. 35 rights have been heard and, where appropriate, accommodated.

Although the legal Duty to Consult remains with the Crown, the Crown may delegate the procedural aspects of consultation to project proponents. The procedural aspects of the Duty to Consult are those portions of consultation related to the process of consultation, such as sharing information, holding meetings and/or receiving comments. Project proponents are typically best positioned to speak to the specific planning, technical and environmental aspects of projects and, where appropriate, to consider possible ways to address or mitigate any concerns raised by Indigenous communities about potential impacts of the project. The Crown remains responsible for the substantive aspects of consultation such as providing oversight of the consultation process and ensuring the adequacy of consultation with communities to whom the Duty to Consult is owed.

ENERGY is the primary contact for the Crown's preliminary assessment of the Duty to Consult, while the Ministry of Environment, Conservation and Parks (MECP) retains overall responsibility for the Class EA process and the administration of the *Environmental Assessment Act* and its regulations. MECP is also the primary contact for questions regarding the consultation requirements of the TF Class EA. Accordingly, ENERGY may be involved early in the project planning process for facilities subject to the TF Class EA to determine whether there may be a Duty to Consult, and if so, to identify the communities to consult and to delegate to proponents the procedural aspects of consultation.

Based on ENERGY's review of the information provided by Hydro One with respect to the Project, including the nature and location of the Project and anticipated environmental effects, and the Crown's current understanding of asserted or established s. 35 rights in the Project area, ENERGY has determined that the Crown owes a Duty to Consult to Indigenous communities in respect of the Project. On behalf of the Crown, ENERGY is delegating, through this letter, the procedural aspects of any consultation owed in respect of the Project to Hydro One.

Please see the appendix for detailed information on the respective roles and responsibilities of the Crown and Hydro One regarding the TF Class EA. You should seek guidance from ENERGY if you are unclear about your roles and responsibilities under this process.

Preliminary Assessment

Based on the Crown's assessment of established and credibly asserted s. 35 rights and understanding of potential Project impacts at this time, Hydro One should consult with the following Indigenous communities:

Community	Level of Consultation	Contact Information <i>(Note: contact information is believed to be accurate, however, personnel may have changed)</i>
Atikameksheng Anishnawbek	Low	25 Reserve Road Naughton, ON P0M 2M0 (705) 692-3651 x218 community.consultation@wlfm.com
Batchewana First Nation	Medium	236 Frontenac Street Sault Ste. Marie, ON P6A 5K9 (705) 759-0914 dansayers@batchewana.ca
Garden River First Nation	Medium	7 Shingwauk Street Garden River, ON P6A 6Z8 (705) 946-6300 ext 233 cnolan@gardenriver.org
Michipicoten First Nation	Low	107 Hiawatha Drive Wawa, ON P0S 1K0 (705)-856-1993 ext.221 s.murphy@michipicoten.com
Mississauga First Nation	Medium	64 Park Road, P.O. Box 1299 Blind River, ON P0R 1B0 (705) 356-1621 x2236 keith@mississaugi.com
Sagamok Anishnawbek	Low	4007 Espaneil Street, P.O. Box 610 Algoma District, ON P0P 2L0 (705) 865-1134 keysis_samantha@sagamok.ca
Serpent River First Nation	Medium	195 Village Road East Cutler, ON P0P 1B0 (705) 844-2418 lands.resources@serpentrivern.com
Thessalon First Nation	Medium	40 Sugarbush Road Thessalon, ON P0R1L0 (705) 842-2323 knaponse@vianet.ca
Wahnapitae First Nation	Low	259 Taighwenini Trail Road Capreol, ON P0M 1H0 (705) 858-0610 Anthony.laforge@wahnapitaefn.com
		46 Bay of Islands Rd, P.O. Box A

Whitefish River First Nation	Low	Birch Island, ON P0P 1A0 (705) 285-4532 stephenm@whitefishriver.ca
Métis Nation of Ontario (MNO) Region 4	Medium	consultations@metisnation.org mitchc@metisnation.org
Bar River Métis	Medium	916 Bar River Rd., RR#4 Echo Bay, ON P0S 1C0 grfis@hotmail.com

Consultation at the low end of the consultation spectrum requires Hydro One to, at minimum, notify the communities about the Project; share information about the Project and provide an opportunity for the community to comment. Any issues raised by the community should be discussed and considered in light of the potential to impact rights, with mitigation or other forms of accommodation identified where appropriate. The information provided to communities and the time for its review, should be sufficient for communities to determine if the Project may impact their rights. Hydro One's notice of the Project to the community could include a request to confirm whether the communities believe the Project will impact their rights and accordingly whether they are interested in being consulted. Hydro One should be able to demonstrate how any concerns were considered and responded to, and, as appropriate, what impact they had on the Project decisions moving forward.

Consultation at the medium level of the consultation spectrum includes the requirements listed in the preceding paragraph, and should also include, at minimum, opportunities for the communities to share their views about potential impacts should the communities so choose; and offer capacity funding to support meaningful participation by the communities in the consultation process, as appropriate. More detailed information on the roles and responsibilities delegated to Hydro One is available in the appendix.

Should no response be received from the communities noted above, Hydro One should continue to provide high-level notifications in accordance with Project stage milestones which include changes to the scope of the Project, if any. Should information become available throughout the consultation process to suggest that Project impacts may warrant a deeper level of consultation, Hydro One must inform ENERGY so that updated guidance may be provided.

This consultation list is subject to change based on new information becoming available or changes to the scope of the Project. Indigenous communities may make new rights assertions at any time, and further Project-related developments can occur that may require additional communities to be notified and/or consulted. A community may also indicate they are not interested in being consulted in respect of the Project. If any of the above should occur, Hydro One must notify ENERGY immediately so that updates to the consultation list can be assessed. Additionally, we recommend that you contact ENERGY if you are unsure about how to deal with a concern raised by an

Indigenous community, particularly if the concern relates to a potential adverse impact on established or asserted s.35 rights.

Acknowledgement

Through receipt of this letter, Hydro One acknowledges this Crown delegation and the procedural consultation responsibilities in this letter and detailed in the appendix. If you have any questions, you may contact Shannon McCabe at Shannon.McCabe@ontario.ca.

I trust that this information provides clarity and direction regarding the respective roles of the Crown and Hydro One. If you have any questions about this letter or require any additional information, please contact me directly.

Sincerely,



Amy Gibson, Manager
Indigenous Energy Policy

C: Sean Tutak, Senior Manager, Indigenous Relations, Hydro One
John Chadwick, Senior Manager, Environmental Services, Hydro One
Jessica Maga, Manager, Government Relations, Hydro One
Samir Adkar, Director, Energy Networks and Indigenous Policy, Ministry of Energy and Electrification
Nick Colella, Manager, Environmental Assessment Services, Ministry of Environment, Conservation and Parks

APPENDIX: ROLES AND RESPONSIBILITIES OF THE PROPONENT AND THE CROWN RELATED TO CONSULTATION WITH INDIGENOUS COMMUNITIES

Roles and Responsibilities Delegated to the Proponent (Hydro One)

Please refer to the letter above for specific guidance on the Project. On behalf of the Crown, please be advised that your responsibilities as Proponent for this Project also include:

- providing notice and information about the Project to Indigenous communities, with sufficient detail and at a stage in the process that allows the communities to prepare their views on the Project and, if appropriate, for changes to be made to the Project. This can include:
 - o accurate, complete and plain language information including a detailed description of the nature and scope of the Project and translations into Aboriginal languages where appropriate, such as:
 - maps of the Project location and any other affected area(s);
 - information about the potential negative effects of the Project on the environment, including their severity, geographic scope and likely duration. This can include, but is not limited to, effects on ecologically sensitive areas, water bodies, wetlands, forests, species at risk and/or the habitat of species at risk;
 - a description of other provincial or federal approvals that may be required in relation to the Project;
 - whether the Project is on privately owned or Crown controlled land;
 - any information the Proponent may have on the potential effects of the Project, including particularly any likely adverse impacts on their s. 35 rights;
 - o a written request asking the Indigenous community to provide in writing or through a face-to-face meeting:
 - any information available to the community that should be considered by the Proponent when preparing the Project documentation;
 - any information the community may have about any potential adverse impacts on their Aboriginal or treaty rights;
 - any suggested measures for avoiding, minimizing or mitigating potential adverse impacts on their s. 35 rights;
 - o information about how information provided by the Indigenous community as part of the Consultation process will be collected, stored or used by the Proponent, and shared with the community for their approval;
 - o identification of any mechanisms that will be applied to avoid, minimize or mitigate potential adverse impacts on their s. 35 rights
 - o identification of a requested timeline for response from the community and the anticipated timeline for meeting Project milestones following each notification;

- o an indication of the Proponent's availability to discuss the process and provide further information about the Project;
- o the Proponent's contact information; and
- o any additional information that might be helpful to the community;
- following up, as necessary, with Indigenous communities to ensure they received Project notices and information and are aware of the opportunity to comment, raise questions or concerns and identify potential adverse impacts on their established or asserted s. 35 rights;
- gathering information about how the Project may adversely affect s.35 rights including land use and traditional knowledge;
- bearing the reasonable costs associated with the procedural aspects of Consultation (paying for meeting costs, making technical support available, etc.) and considering reasonable requests by communities for capacity funding to support a community's participation in the Consultation process;
- considering and responding to comments and concerns raised by Indigenous communities and answering questions about the Project and its potential impacts on s. 35 rights;
- as appropriate, discussing and implementing changes to the Project in response to concerns raised by Indigenous communities. This could include modifying the Project to avoid or minimize an impact on a s. 35 right (e.g., altering the season when construction will occur to avoid interference with mating or migratory patterns of wildlife); and
- informing Indigenous communities about how their concerns were taken into consideration and whether the Project proposal was altered in response. It is considered a best practice to directly provide the Indigenous community with a copy of the Consultation record as part of this step for verification.

If you are unclear about the nature of a concern raised by an Indigenous community, you should seek clarification and further details from the community, provide opportunities to listen to community concerns and discuss options for mitigation, and clarify any issues that fall outside the scope of the Consultation process. These steps should be taken to ensure that the Consultation process is meaningful and that concerns are heard and, where appropriate, addressed.

You can also seek guidance from the Crown at any time. It is recommended that you contact the Crown if you are unsure about how to deal with a concern raised by an Indigenous community, particularly if the concern relates to a potential adverse impact on established or asserted s.35 rights.

Should information become available throughout the Consultation process to suggest that Project impacts will be significant enough to warrant a deeper level of Consultation, you must inform the Crown so that updated guidance can be provided.

Should information be provided that may impact the list of communities identified for Consultation by the Crown, you must notify ENERGY immediately.

The Consultation process must maintain sufficient flexibility to respond to new information, and we request that you make all reasonable efforts to build positive relationships with all Indigenous communities potentially affected by the Project. If a community is unresponsive to efforts to notify and consult, you should nonetheless make attempts to update the community on the progress of the Project, the environmental assessment (if applicable) and other regulatory approvals.

If sub-contractors are retained by the Proponent to support the procedural aspects of Consultation undertaken by the Proponent, Indigenous communities should be made aware of the sub-contractor's role and the Proponent should inform the Crown if any issues concerning established or asserted s. 35 rights arise.

If you reach a business arrangement with an Indigenous community that may affect or relate to the Crown's Duty to Consult, we ask that that Crown be advised of those aspects of such an arrangement that may relate to or affect the Crown's Consultation obligations, and that the community itself be apprised of the Proponent's intent to so-appraise the Crown. Whether or not any such business arrangements may be reached with any community, the Crown expects the Proponent shall fulfill all of its delegated procedural Consultation responsibilities to the satisfaction of the Crown.

If the Crown considers that there are outstanding issues related to consultation, the Crown may directly undertake additional consultation with Indigenous communities, which could result in delays to the Project. The Crown reserves the right to provide further instructions or add communities throughout the consultation process.

Roles and responsibilities assumed directly by the Crown

The role of the Crown in fulfilling any Duty to Consult in relation to this Project includes:

- identifying for the Proponent, and updating as appropriate, the Indigenous communities to consult for the purposes of fulfillment of the Crown's Duty to Consult;
- carrying out, from time to time, any necessary assessment of the depth of consultation or, where appropriate, accommodation, required for the Project to proceed;
- supervising the aspects of the consultation process delegated to the Proponent;
- determining in the course of Project approvals whether the consultation of Indigenous communities was sufficient;
- determining in the course of Project approvals whether accommodation of Indigenous communities, if required, is appropriate and sufficient.

Consultation Record

It is important to ensure that all consultation activities undertaken with Indigenous Communities are fully documented and the Proponent shall prepare a consultation record. This includes all attempts of the Proponent (or any sub-contractors or consultants retained by the Proponent to support the procedural aspects of consultation undertaken by the Proponent) to notify or consult the community, all interactions with and feedback from the community, and all efforts to respond to community concerns. The Crown and Crown regulators require a complete consultation record in order to assess whether Aboriginal consultation has been adequately discharged. The consultation record should include, but not be limited to, the following:

- a list of the identified Indigenous communities that were contacted;
- records that demonstrate that notices and Project information were distributed by the proponent to the Indigenous Communities and were received (via courier slips, follow up phone calls, etc.). Where a community has been non-responsive to multiple efforts to contact the community, a record of such multiple attempts and the responses or lack thereof;
- a written summary of consultations with Indigenous communities and appended documentation such as copies of notices, any meeting summaries or notes including dates, where and when the meeting took place and who attended, and any other correspondence (e.g., letters and electronic communications sent and received, dates and records of all phone calls);
- records from sub-contractors, if any, that are retained by the Proponent to support the procedural aspects of consultation undertaken by the Proponent, information about their role and how Indigenous communities were made aware of the sub-contractor's role, as well as any issues that may have arisen concerning established or asserted s. 35 rights.
- responses and information provided by Indigenous Communities during the Consultation process. This includes information on Aboriginal or treaty rights, traditional lands, claims, or cultural heritage features and information on potential adverse impacts by the Project on such Aboriginal or treaty rights and measures for avoiding, minimizing or mitigating potential adverse impacts to those rights; and
- a summary of the rights/concerns, and potential adverse impacts of the Project on Aboriginal or treaty rights or to sites of cultural significance (e.g., burial grounds, archaeological sites), identified by Indigenous communities; how comments or concerns were considered or addressed by the Proponent ; and any changes to the Project as a result of consultation, such as:
 - o changing the Project scope or design;
 - o changing the timing of proposed activities;
 - o minimizing or altering the site footprint or location of the proposed activity;
 - o avoiding impacts to the Aboriginal interest;

- o environmental monitoring; and
- o other mitigation strategies.

As part of its oversight role, the Crown may, at any time during the consultation and approvals stage of the Project, request records from the Proponent relating to consultations with Indigenous communities. Any records provided to the Crown will be subject to the *Freedom of Information and Protection of Privacy Act*, however, may be exempted from disclosure under section 15.1 (Relations with Aboriginal communities) of the Act. Additionally, please note that the information provided to the Crown may also be subject to disclosure where required under any other applicable laws.

It is considered a best practice to share the consultation record with the Indigenous community to ensure it is a robust and accurate record of the consultation process.