

MEMORANDUM OF UNDERSTANDING

between

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
AS REPRESENTED BY
THE MINISTER OF ENERGY
(THE "MINISTER")**

and

**HYDRO ONE NETWORKS INC.
("HONI")**

(TOGETHER, THE "PARTIES")

WHEREAS HONI is proposing to construct a transmission reinforcement project from the Bruce Nuclear Generating Station to Milton, Ontario, defined as the "Project" below;

AND WHEREAS planning for the Project is already underway;

AND WHEREAS the Project is subject to a variety of Crown decision-making and regulatory processes;

AND WHEREAS the Project and Crown decisions in relation thereto may trigger a constitutional duty to consult Aboriginal peoples, defined as the "S. 35 Duty" below;

AND WHEREAS the Crown and HONI recognize the consultation efforts that each has already undertaken in furtherance of any S. 35 Duty;

AND WHEREAS it is helpful to clarify the respective roles of the Crown and HONI in relation to fulfilling any S. 35 Duty;

NOW THEREFORE the Parties agree as follows:

Definitions

1. In this MOU,
 - a. "Crown" means Her Majesty the Queen in Right of Ontario;
 - b. "Minister" means the Minister of Energy, and includes any official acting under his authority;

- c. "MOU" means this memorandum of understanding;
- d. "Plan" is the plan to consult Aboriginal communities prepared pursuant to this MOU, dealing with the period from the date of this MOU forward;
- e. "Project" refers to HONI's Bruce to Milton Transmission Reinforcement Project;
- f. "S. 35 Duty" means any duty the Crown may have to consult and, where appropriate, accommodate Aboriginal peoples in relation to the Project flowing from Section 35 of the *Constitution Act, 1982*; and
- g. "Statutory Duty" means any obligation that HONI has to consult the public including Aboriginal peoples in relation to the Project, pursuant to provincial legislation.

Purpose

- 2. The purpose of this MOU is to set out the respective responsibilities of the Crown and HONI for carrying out the S. 35 Duty that may arise in relation to the Project and how both Parties will work together.

Responsibilities of the Crown and HONI

- 3. The Parties acknowledge that the Crown bears any S. 35 Duty that may be owed in relation to the Project.
- 4. The Parties acknowledge that HONI is responsible for carrying out the procedural aspects of any S. 35 Duty that may be owed in relation to the Project, that are delegated to it by the Crown.
- 5. Rosalyn Lawrence, Assistant Deputy Minister, Office of Consumer and Regulatory Affairs, has primary management responsibility on behalf of the Minister in relation to the matters addressed in this MOU; Hillary Thatcher, Senior Policy Advisor, Office of Consumer and Regulatory Affairs, has day-to-day responsibility on behalf of the Minister for the matters addressed in this MOU; and Peter Landmann, Counsel, Ministry of Energy Legal Branch, has day-to-day responsibility on behalf of the Minister for the legal aspects of the matters addressed in this MOU.
- 6. Peter Gregg, Vice-President, Corporate and Regulatory Affairs, has primary management responsibility on behalf of HONI in relation to the matters addressed in this MOU; Mike Sheehan, Vice-President, Facilities and Real Estate, has day to day responsibility for all HONI activities associated therewith; and Marcie Zajdeman,

Senior Legal Counsel, or her designate, has responsibility on behalf of HONI for the legal aspects of the matters addressed in this MOU.

Fulfillment of any S. 35 Duty in relation to the Project

7. The Parties acknowledge that any S. 35 Duty may be fulfilled by:
 - a. the Minister, Ministry of Energy officials and agents, other Crown ministers and their officials and agents, including boards, tribunals and other Crown regulatory bodies and decision-makers; and
 - b. HONI, as set out in this MOU.
8. The Parties acknowledge that any S. 35 Duty is to be fulfilled by the Crown and HONI in the course of complying with existing regulatory regimes to which the Project is subject, and that:
 - a. HONI, to the extent reasonably possible, will inform relevant decision-makers under such regimes of the steps taken both by itself and the Crown to comply with any S. 35 Duty;
 - b. to the extent they bear a S. 35 duty, the relevant Crown decision-makers will take the steps appropriate to satisfy themselves in relation to the S. 35 duty before granting any approvals, permits or authorizations under such regimes.

Responsibilities of HONI and the Crown

9. Subject to section 10, HONI will be responsible for the following procedural aspects of the S. 35 duty:
 - a. preparing and executing a consultation plan that sets out how HONI will fulfill its responsibilities under this MOU during the period from the date of this MOU forward;
 - b. filing documents, attending regulatory hearings and making both written and oral submissions, as appropriate, regarding the fulfillment of any S. 35 Duty by the Crown and by HONI;
 - c. attempting to build positive relationships with Aboriginal communities in the area of the Project;
 - d. giving notice to Aboriginal communities regarding the Project;
 - e. informing Aboriginal communities about the Project;

- f. explaining to Aboriginal communities the regulatory and approval processes that apply to the Project;
 - g. offering Aboriginal communities assistance, including financial assistance, as appropriate, to participate in the regulatory and approval processes for the Project;
 - h. meeting with and receiving and considering correspondence from Aboriginal communities to determine whether they have concerns regarding the potential impact of the Project on their Aboriginal or Treaty rights, asserted rights or associated interests, or any other concerns or issues regarding the Project;
 - i. where appropriate, discussing with Aboriginal communities potential accommodation, including mitigation, of potential impacts on their Aboriginal or Treaty rights, asserted rights or associated interests regarding the Project, in consultation with the Crown;
 - j. where appropriate, developing and proposing appropriate accommodation measures, in consultation with the Crown, for decisions-makers and regulatory agencies to consider;
 - k. recording in detail all activities undertaken in relation to fulfilling any S. 35 Duty in relation to the Project, and
 - l. all ancillary activities associated with fulfilling the responsibilities of HONI under this MOU.
10. Notwithstanding paragraph 9 above, a ministry with an approval role for the Project, or any responsible official, agent, decision-maker or regulatory body of the Crown, may participate in the matters enumerated therein as may be required.
11. The Crown will be responsible for the following aspects of any S. 35 Duty in relation to the Project:
- a. the determination of the Aboriginal communities to be consulted in relation to the Project;
 - b. the preliminary and ongoing assessment of the depth of consultation required with the Aboriginal communities identified;
 - c. satisfying itself that the consultation process in relation to the Project has been adequate;

- d. the determination of appropriate accommodation of the established rights and asserted rights of Aboriginal communities in relation to the Project, where accommodation may be required.
12. Notwithstanding sections 9 and 11, neither the Crown nor HONI shall be taken as having agreed, or conceded, that any matter set out therein is, under the Constitution of Canada, a mandatory aspect or requirement of the S. 35 Duty, nor that a particular aspect of consultation is an aspect of the S. 35 Duty that cannot be carried out by Hydro One.
13. Notwithstanding section 11:
- a. HONI shall, upon request, lend assistance to the Minister by:
 - i. providing documentation or other available information, or undertaking research on any subject related to the Project, and providing such documentation, information or research to the Minister; and
 - ii. making submissions and presenting records and other appropriate evidence of activities undertaken by the Crown and HONI to fulfill any S. 35 Duty of the Crown in relation to the Project.
 - b. HONI may, upon request, lend assistance to the Minister in the fulfillment of the S. 35 Duty by obtaining Aboriginal law advice directly related to the Project and sharing the said legal advice with the Minister, however HONI and the Minister do not waive solicitor-client privilege, but may share such legal advice in recognition of the possibility of being named as joint respondents or defendants in legal proceedings in connection to the Project.

Record Keeping and Information Sharing

14. HONI will keep detailed records of all its activities in relation to fulfilling any S. 35 Duty in relation to the Project, and share the said records with the Minister upon request.
15. HONI also agrees to share its plans, reports or other documentation compiled in respect of any S. 35 Duty relating to the Project, upon request.
16. HONI will advise the Minister in a timely manner of any potential adverse impact of the Project on existing or asserted Aboriginal or Treaty rights of which it becomes aware.
17. HONI will provide the Minister with timely notice of any mailings to, or meetings with, the representatives of any Aboriginal community that might deal with any matter relevant to the fulfillment of any S. 35 Duty.

18. HONI will provide the Minister with timely notice before taking positions or making appearances before judicial, quasi-judicial or regulatory tribunals or boards, or meeting with officials with capacity to make regulatory decisions, or before filing or making written submissions to any such tribunal, board, agency or official, in relation to matters relevant to the fulfillment of any S. 35 Duty.
19. HONI will provide the Minister with summary reports or briefings on all of its activities in relation to fulfilling any S. 35 Duty and Statutory Duty, as may be requested by the Minister.
20. HONI will, for the Minister's information, provide the Minister updates and materials falling into the categories referred in sections 14 to 19, insofar as they relate to fulfilling any Statutory Duty.
21. Sections 14 to 20 do not apply in respect of a private business arrangement between HONI and an Aboriginal community, unless the arrangement is directed at mitigating or compensating for any impacts of the Project on Aboriginal or Treaty rights or asserted rights.
22. The Minister will share information received from HONI with other Ontario ministries and regulatory agencies, as appropriate.
23. The Minister will share with HONI records of Crown activities in relation to fulfilling any S. 35 Duty in relation to the Project, as required to ensure that HONI can fulfill its obligations pursuant to this MOU.

Consultation Plan

24. HONI will prepare the Plan and present it to the Minister within 30 days of the execution of this MOU.
25. The Plan shall set out in detail the manner in which HONI proposes to carry out its responsibilities under this MOU, including particularly under section 9, from the date of this MOU forward, such Plan to include the identification of all significant steps and a timetable for their completion, including, for example, a description of:
 - a. the steps remaining to complete the consultations undertaken to satisfy any S. 35 Duty that arises in the application under s. 92 of the *Ontario Energy Board Act*;
 - b. the steps for carrying out the consultations required to satisfy any S. 35 Duty that arises in the Environmental Assessment required under the *Environmental Assessment Act*;

- c. the steps for carrying out the consultations required to satisfy any S. 35 Duty that arises in the permitting process under the *Public Lands Act*.
26. For greater certainty the list of regulatory steps in section 25 is not exhaustive of all the permits, approvals and authorizations that may trigger the S. 35 Duty to consult.
 27. The Parties acknowledge that the requirements for satisfying any S. 35 Duty in the context of a statutory process applicable to the Project are within the jurisdiction of the ministry, board, agency or decision-maker having responsibility to administer that statute, and therefore:
 - a. it is for the responsible ministry, board, agency or decision-maker to satisfy itself in relation to the Crown's S. 35 duty within the context of its approval, permit or authorization powers; and
 - b. the content of the Plan shall reflect, and is subordinate to, the procedures and decisions of the responsible ministry, board, agency or decision-maker.

Coordination

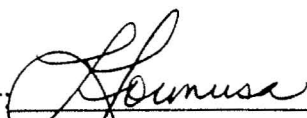
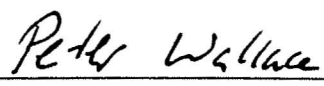
28. The responsibilities outlined in this MOU shall be carried out, to the extent possible, in a coordinated manner so as to avoid duplication of effort by Aboriginal communities, HONI, the Minister, and provincial ministries, boards and agencies.
29. With respect to internal government coordination among Ontario ministries, boards and agencies fulfilling the S. 35 Duty and the Statutory duty, the Parties acknowledge the intent of the Minister to use existing interministerial committees and also to establish additional mechanisms, as necessary, to ensure coordination of Project approvals within government.
30. HONI agrees to provide information and, where requested, attend meetings of the committees or other mechanisms referred to in section 29.

General

31. This MOU may be amended in writing at any time by agreement of the Parties.
32. This MOU may be terminated at any time by the Minister, or upon the agreement of the Parties.
33. This MOU shall terminate upon the later of:

- a. the completion of all regulatory approvals, permits and other authorizations and the exhaustion of any appeals or judicial proceedings in relation to the Project; or

- d. the completion of construction and entry into service of the Project.

<p>Hydro One Networks Inc.</p> <p>Per:  _____ Laura Formosa President & Chief Executive Officer</p> <p><i>march 13, 2008</i></p>	<p>HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, as represented by the Minister of Energy</p> <p>Per:  _____ Peter Wallace Deputy Minister</p>
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