



September 11, 2024

VIA EMAIL

Dear IESO Indigenous Relations,

We appreciated the opportunity to meet with Indigenous Relations staff and to attend the webinars regarding current IESO initiatives. We would like to offer additional written comments based on the July 2024 drafts. These comments are prepared by staff in dialogue with Chief and Council. This feedback is offered without prejudice to any of the protected rights and interests of Chippewas of the Thames First Nation.

### ***Consultation Protocol***

COTTFN has developed the Wiindmaagewin Consultation Protocol to guide meaningful consultation with proponents. Government and industry proponents must first follow COTTFN's Protocol, in addition to any requirements mandated by the IESO. As part of that Protocol, we expect proponents to submit project notifications and updates to our online submission portal, NationsConnect.

### ***Rights Holders***

In various documents, the IESO refers to "Indigenous communities", which are defined in the LT2 contract (in the Ontario context) as First Nations and Metis communities. This language is not acceptable in the southwest region. As noted in communications from the Chiefs of Ontario, there are no valid historic Metis communities in this region.<sup>1</sup> We acknowledge that these IESO documents are Ontario-wide. However, the IESO should refer specifically to First Nations, rather than "Indigenous communities", whenever possible when referring to Rights Holders in the southwest region.

### ***Transmitter Selection Framework***

Much of the proposed Transmitter Selection Framework appears positive for First Nations' participation. We strongly support the proposed requirement for prospective transmitters to offer economic participation to Rights Holding First Nations.

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<sup>1</sup> E.g. [The Chiefs of Ontario reject the Métis Nation of Ontario's ongoing efforts to rewrite history - Chiefs of Ontario \(chiefs-of-ontario.org\)](https://chiefs-of-ontario.org)





As the IESO acknowledges, there must be clear pathways for participation that give First Nations options based on their capacity and goals. That participation may begin as a percentage of procurement guaranteed to local First Nations but could grow to First Nation-owned transmission companies in the southwest region. The IESO must provide adequate capacity funding for all these models of participation, either as First Nation-owned transmitters, equity partners, or suppliers. Impacted First Nations must be involved in the earliest stages and must benefit through the lifecycle of the asset, such as through revenue sharing. We agree that there should be a mechanism to ensure benefits flow to Rights Holders if participation agreements are not executed by the milestone date.

From our experience with Hydro One and its EPC contractors, there must be clear requirements on bidders to reduce the onus on First Nations to negotiate the best arrangements. Rights Holders cannot be expected to negotiate favourable arrangements with those bidders (e.g. commitments on sub-contracting, employment, training funding, revenue sharing) prior to receiving reasonable access to project timelines and financials. First Nations must also not be subjected to exclusivity clauses. The IESO should set clear expectations for all bidders on Indigenous engagement and economic involvement.

While proponents will be required to develop Indigenous Participation Plans, we are concerned if those plans are not shared with First Nations. We have had experiences where proponents and contractors did not share their IPPs due to confidentiality issues. First Nations must have access to those plans to be able to clarify and correct any misunderstandings.

The partial contracting model appears to offer the best option to build in strong requirements for First Nations participation, while allowing for OEB rate regulation and monitoring. It is essential to carefully manage any unforeseen construction or post-construction expenses in those contracts.

Finally, the IESO must design the process to minimize engagement burdens on First Nations dealing with multiple transmitters. First Nations will require capacity funding for that additional engagement process.

## ***LT2 Procurement***

### *Earlier consultation*

It is our understanding that proponents are not required to consult with impacted First Nations until their project has been selected and they are starting work that triggers the duty to consult. In the last procurement round, some proponents proactively reached out earlier, but others did not. It is difficult for Rights Holders to initiate discussions for economic partnership if we are not even aware of projects until the applications have been finalized and submitted. In one case, we learned about a project near COTTFN after it had already been submitted with an ownership





stake by another First Nation in the territory.<sup>2</sup> The proponent stated that it would not be possible to add COTTFN at that point. The IESO may view the Indigenous participation in that project as a success, but it only benefits one community and does not respect the other Nations in the shared Treaty territory. Meaningful consultation must happen at the development stage, before bidders submit their applications.

#### *First Nations-led process*

We note that the municipal consultation process has changed since the last procurement round. Municipalities now decide what kind of engagement will be required pre-submission. However, this choice is not extended to First Nations. Rights Holding First Nations should also have the right to decide what type and scope of engagement they require prior to bid submission. Similarly, projects require municipal support to proceed, but First Nations support is only required for special categories of Indigenous land (e.g. reserve lands), not the Treaty and Traditional Territory.

#### *Points allocation*

We remain concerned with the points allocation. We recognize that the procurement process awards additional points for partnering with *local* Indigenous communities. However, proponents are still able to forego those points and partner with Indigenous communities who do not hold rights in that region.

In addition, much of the southwest region is shared territory among Anishinaabe Nations (e.g. McKee Treaty, London Township Treaty, Sombra Treaty, Huron Tract Treaty). Once a proponent offers equity participation to one Treaty rights holder, there is no incentive for that proponent to offer economic participation to the other Treaty rights holders. In our experience, proponents want to avoid any additional logistical challenges and take the easiest route to obtain those local participation points.

It is inappropriate for the IESO to design a system that does not require or incentivize proponents to engage in those economic discussions equally with all Treaty Rights Holders. As mentioned, since proponents are not required to consult with First Nations until later in the process, First Nations may not even be aware of projects to initiate discussions. Not all Rights Holders may choose to participate, but they should have the first opportunity.

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<sup>2</sup> The only reason we learned about the project is because they were required to carry out municipal engagement, which was mentioned in City Council minutes. By comparison, the bidder did not have to notify First Nations at that time.



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### *Education*

In our experience with proponents, many have little understanding of Treaty rights in this region. Some think that one First Nation can speak on behalf of others, or they may partner with one without understanding that others possess Treaty rights in the same area. It would be helpful if the IESO offered educational webinars to potential bidders, in collaboration with Rights Holders, to better explain the historical and present context of the region regarding Treaties and Indigenous rights.

We appreciate the IESO's commitment to engagement, transparency, and dialogue. We see how the IESO is prioritizing Indigenous participation in program design. However, some additional improvements are needed, as noted above. We trust this feedback will be given serious consideration and incorporated into the final versions of the Transmitter Selection Framework and LT2 contracts.

Sincerely,

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