

Indigenous Consultation Information Package  
For Electricity Storage Facilities

1. Steps and Timelines Associated with the Crown's Duty to Consult Process

Ministry of Energy

Energy Networks and Indigenous Policy Branch

Indigenous Energy Policy

77 Grenville Street, 6<sup>th</sup> Floor  
Toronto, ON M7A 67C

Ministère de l'Énergie

Direction Générale des Réseaux Énergétiques et des Politiques Autochtones

Politique Énergétique Autochtones

77 Rue Grenville, 6<sup>e</sup> Étage  
Toronto, ON M7A 67C

## RE: Steps and Timelines Associated with the Crown's Duty to Consult Process

The below table provides an overview of the steps involved in the Ministry of Energy (ENERGY)'s consideration of potential Indigenous consultation requirements associated with Electricity Storage Facilities participating in the Independent Electricity System Operator's First Long-Term Request for Proposals (LT1 RFP).

The target timelines included here set out best practice standards, which require all parties involved to work together to ensure that there are no delays to overall project timelines associated with the Crown's Duty to Consult (DTC) process.

Step	Description of Step	Target Timeline
<b>1. Request for Duty to Consult (DTC) Assessment</b>	Successful LT1 RFP proponents of Electricity Storage Facilities (as defined in the IESO Market Rules) contact ENERGY using the " <i>Request for Duty to Consult (DTC) Assessment</i> " template included in the Indigenous Consultation Information Package, requesting a preliminary assessment of whether there is a duty to consult in relation to the project.	As soon as possible following notification of selected proponents under IESO's LT1 RFP.
<b>2. DTC Assessment Letter</b>	ENERGY undertakes preliminary DTC assessment for each proponent that submitted a Request for a Duty to Consult Assessment, and sends a letter indicating: <ul style="list-style-type: none"> <li>- that the Crown may have a duty to consult with Indigenous communities in respect of the Project and delegating the procedural aspects of this duty to the Proponent (see "<i>Delegation Letter</i>" template); or</li> <li>- that it is the Crown's determination that the Duty to Consult is not triggered.</li> </ul>	Within 25 business days of receipt of Request for Duty to Consult Assessment

	If the Duty to Consult is determined to be triggered, ENERGY would also send notification letters to potentially impacted Indigenous Communities.	
<b>3. Indigenous Consultation Record</b>	Proponent submits Indigenous Consultation Record to ENERGY for review.	At least 90 days prior to the anticipated commencement of clearing, grading, or material alteration of the project site.
<b>4. DTC Sufficiency Letter or Further Direction</b>	If ENERGY is satisfied that the procedural aspects of consultation delegated to the Proponent are sufficiently undertaken, ENERGY issues a DTC Sufficiency Letter to the Proponent, or where appropriate, provides further direction to the Proponent to address any outstanding rights-based matters or remedy any consultation-related deficiencies.	Within 60 days of receipt of the Indigenous Consultation Record.
<b>5. Submission of DTC Sufficiency Letter to IESO</b>	Proponent submits a DTC Sufficiency Letter or a letter from the Ministry of ENERGY confirming that the Crown's Duty to Consult is not triggered to the IESO.	Prior to commencement of site clearing, grading, or material alteration of the project site.

2. Request for Duty to Consult (DTC) Assessment Template

**TEMPLATE: Request for Duty to Consult (DTC) Assessment**

Successful LT1 proponents of Electricity Storage Facilities (as defined in the IESO Market Rules) should contact Amy Gibson, Manager, Indigenous Energy Policy at the Ministry of Energy by email at: [amy.gibson@ontario.ca](mailto:amy.gibson@ontario.ca) requesting the Crown’s preliminary assessment of whether there is a duty to consult in relation to the project.

The request for DTC assessment must include the following information:

1. Name of Project
2. Description of the project and location, including GPS coordinates (please share shapefiles if available)
3. Information about the project site and adjacent lands (e.g., privately-owned land, Crown land, Indigenous Lands as defined in the LT1 RFP, etc.)
4. Description of the proposed works including details of any digging, site clearing (including tree cutting or clearing of other vegetation and other site preparation activities), disruption to natural features, and any potential impacts to water or water bodies required for the construction and installation of the facility

5. List of regulatory approvals and permits required or potentially required for the project
6. If available, a summary of any outreach or early engagement with Indigenous communities to date, including any rights related issues or interests shared
7. Any agreements that are contemplated or have been entered into with Indigenous communities, including those related to Indigenous participation in the project, if applicable

3. Delegation Letter Template for Electricity Storage Facilities



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DATE

VIA EMAIL

[Name]

[Title]

[Proponent]

[Address]

[Address]

**Re: IESO Long-Term Request for Proposals (LT1 RFP)– [Proponent/Project] –  
Delegation of Procedural Aspects of the Crown's Duty to Consult**

Dear [Name],

Thank you for notifying the Ministry of Energy (ENERGY) of [Proponent's] Long-Term (LT1) Contract from the Independent Electricity System Operator (IESO) for the [Project Name] (the Project), and for providing information about the proposed Project.

We understand that as part of the Project, [Proponent] is proposing to develop [a ### MW Electricity Storage Facility in [Location – e.g. Municipality, District, County, Region] that will involve [include description of construction activities, for example: construction of concrete pads, footings, other structures, and [e.g., excavation for substation foundations and cabling]].

**Duty to Consult with Indigenous Communities**

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 those rights.

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 or receiving comments from Indigenous communities. 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 providing oversight of the consultation process and for ensuring the adequacy of consultation with communities to whom the duty to consult is owed.

Based on ENERGY’s review of the information provided by [Proponent] with respect to the Project, including the nature and location of the Project and anticipated environmental effects, and the Crown’s current understanding of established or credibly asserted s. 35 rights in the Project area, ENERGY has determined that the Crown may have a duty to consult with Indigenous communities in respect of the Project.

**Delegation of Procedural Aspects of the Crown’s Duty to Consult**

On behalf of the Crown, ENERGY is delegating the procedural aspects of any consultation owed in respect of the Project to [Proponent] through this letter.

Please see the appendix for detailed information on the roles and responsibilities of the Crown and the [Proponent]. You should seek guidance from the Crown at any time if you are unclear about your roles and responsibilities.

Based on the Crown’s assessment of established and credibly asserted Indigenous community rights and potential Project impacts, [Proponent] should consult with the following Indigenous communities:

Community	Contact Information <i>(Note: contact information is believed to be accurate, however, personnel may have changed)</i>
[Name]	[Address] [Contact Name(s) – e.g., individual(s) or department name & email address / phone number]
[Name]	[Address] [Contact Name(s) – e.g., individual(s) or department name & email address / phone number]
[Name]	[Address] [Contact Name(s) – e.g., individual(s) or department name & email address / phone number]

This consultation list is subject to change based on new information becoming available or changes to the scope of the Project. For example, Indigenous communities may make new rights assertions at any time, and project-related developments may require additional Indigenous 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, [Proponent] must notify ENERGY immediately so that updates to the consultation list can be made. We recommend 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 credibly asserted s. 35 rights.

### **Indigenous Consultation Record**

Please send your Indigenous Consultation Record, as described in the appendix, to [Name], [Title], Indigenous Energy Policy at the Ministry of Energy at [email@emailaddress.ca](mailto:email@emailaddress.ca) at least **90 days** prior to the date you anticipate commencing clearing, grading, or material alteration of the project site. This timeline is intended to provide ENERGY with sufficient time to review and understand any rights-based concerns raised and, where appropriate, for ENERGY to provide further direction to you on any additional consultation that should take place. Should you have any questions about the appropriate time to provide ENERGY with your Indigenous Consultation Record, please do not hesitate to contact ENERGY.

The consultation record will be used by ENERGY to assess the adequacy of rights-based consultation undertaken by [Proponent] with potentially affected Indigenous communities.

**[If applicable:]** ENERGY acknowledges its previous guidance and/or delegation to you in relation to the transmission connection facilities for the Project on [Date]. For clarity, [Proponent]'s consultation efforts should build upon any consultation efforts for the components of the project that are subject to the Class Environmental Assessment for Minor Transmission Facilities.]

Where the Crown's duty to consult may be triggered in relation to an Electricity Storage Facility subject to an IESO LT1 Contract, a proponent is prohibited from commencing or carrying out any clearing, grading or material alteration of the project site unless the proponent has provided to the IESO a copy of ENERGY's written confirmation of its satisfaction with any delegated procedural aspects of consultation undertaken by [Proponent] (DTC Sufficiency Letter).

### **Acknowledgement**

By accepting this letter, [Proponent] acknowledges this Crown delegation and the procedural consultation responsibilities enumerated in the appendix. If you have any questions about this request, you may contact [Name], [Title], Indigenous Energy Policy] at the Ministry of Energy ([email@emailaddress.ca](mailto:email@emailaddress.ca)).

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

Sincerely,

Amy Gibson, Manager  
Indigenous Energy Policy

Cc: [Independent Electricity System Operator Contact]

SAMPLE

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

### Roles and Responsibilities Delegated to the Proponent (Proponent Name)

The consultation process must maintain sufficient flexibility to respond to new information. Generally, your delegated roles and responsibilities include:

- providing notice(s) of and plain language information about the Project to the Indigenous communities identified in the letter above, with sufficient detail and at a stage(s) 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. Project information may include:
  - a detailed description of the nature and scope of the Project, textual or otherwise;
  - a description of the Project location;
  - maps or other visuals showing the Project location and any other affected area(s);
  - information about the Project lands (e.g., whether the Project is on privately-owned or Crown lands);
  - the potential effects of the Project, including any negative effects from an environmental standpoint (e.g., effects on ecologically sensitive areas, water bodies, wetlands, forests or the habitat of species at risk and habitat corridors), or on established or credibly asserted s. 35 rights. Information on the severity, geographic scope and likely duration of Projects impacts may also be relevant to share;
  - a description of Project milestones and projected timing for the same (e.g., details about other provincial or federal approvals that may be required for the Project to proceed);
  - identification of any mechanisms to avoid, minimize or mitigate potential adverse impacts; and
  - any additional information that might be helpful to the community;
- indicating to Indigenous communities your contact information and availability to discuss the Project and consultation process in face-to-face or digital meetings (depending on the community's preference);
- providing a written request to Indigenous communities for their feedback on:
  - any potential adverse impacts on the community's established or credibly asserted s. 35 rights;
  - any suggested measures for avoiding, minimizing or mitigating potential adverse impacts; and
  - how information provided as part of the consultation process will be collected, stored, used, and shared;
- identifying a requested timeline for response(s) from the Indigenous 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 credibly asserted rights;

- 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 any other regulatory approvals.
- bearing the reasonable costs associated with the procedural aspects of consultation (e.g., paying for meeting costs, making technical support available) and providing reasonable capacity funding to Indigenous communities to assist in their 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 established or credibly asserted s. 35 rights;
  - 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, 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 possible, addressed;
- 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 established or credibly asserted 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.

Consultation should occur throughout the duration of the Project, including project development and design, approvals, construction, operation and decommissioning. You should make all reasonable efforts to build positive relationships with all Indigenous communities potentially affected by the Project. You may wish to consider translating communications with communities into Indigenous languages, or other languages, where appropriate.

The Crown reserves the right to participate in the consultation process as it sees fit, including but not limited to providing further instructions to proponents that are delegated procedural aspects of consultation.

### Indigenous Consultation Record

You are responsible for maintaining an Indigenous Consultation Record, which the Crown considers in determining whether consultation with Indigenous communities and any necessary accommodation is sufficient.

Your Indigenous Consultation Record should include records of all of your consultation activities with Indigenous communities, which, at a minimum includes:

- a list of the identified Indigenous communities that were contacted;
- details of all attempts to notify or contact the community regarding the Project, all interactions with and feedback from the community, and all efforts to respond to community concerns, including:
  - copies of correspondence (e.g., letters and electronic communications) sent and received
  - any evidence that communications were distributed to, and received by, the Indigenous communities (e.g., courier slips);
  - written accounts, including dates and contact information, related to discussions with Indigenous communities (e.g., summaries or notes of phone calls or meetings, including where the meeting took place and who attended) and any related meeting documentation (e.g., meeting notices, agenda);
- responses and information provided by Indigenous communities, including in relation to:
  - established or credibly asserted s. 35 rights,
  - traditional lands, claims, or cultural heritage features; or
  - potential adverse impacts on such s. 35 rights, or sites of cultural significance (e.g., burial grounds, archaeological sites), and measures for avoiding, minimizing or mitigating those potential adverse impacts; and
- how comments or concerns were considered or addressed, including any changes made to the Project as a result of consultation, such as:
  - changing the Project scope or design;
  - changing the timing of proposed activities;
  - minimizing or altering the site footprint or location of the proposed activity; or
  - environmental monitoring.

As part of its supervisory 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*. The records 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 or as part of litigation or other dispute resolution proceedings.

The nature of the contents of your consultation record should be shared at the onset with Indigenous communities and their permission for you sharing this information with the Crown should be obtained.

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

### **Roles and responsibilities of the Crown**

The roles and responsibilities of the Crown include:

- identifying, and updating as appropriate, the list of Indigenous communities to consult;
- notifying Indigenous communities that they have been identified for consultation and that the procedural aspects of consultation have been delegated to the Proponent;
- carrying out, from time to time, any necessary assessment of the extent of consultation or, where appropriate, accommodation, required;
- supervising the aspects of the consultation process delegated to the Proponent; and
- determining the sufficiency of consultation and, where appropriate, accommodation of Indigenous communities.

If the Crown considers that there are outstanding issues related to consultation, the Crown may direct the Proponent to address any outstanding rights-based matters or remedy any consultation-related deficiencies, or undertake additional consultation with Indigenous communities, which could result in delays to the Project.



4. Indigenous Engagement & Consultation Resources

## RESOURCES: Indigenous Engagement and Consultation

The resources linked below may assist proponents participating in the LT1 RFP in undertaking respectful and effective engagement of and consultation with Indigenous communities.

The resources are not intended to instruct a proponent about an individual project, nor constitute legal advice on section 35 rights or the duty to consult, nor is it intended to replace direct communication, partnerships, or collaboration with Indigenous communities. For any projects subject to the Environmental Assessment Act, proponents should follow any Indigenous consultation requirements specific to their respective approvals.

Some of the resources provided in this document are sourced from parties outside of the Government of Ontario and may not be accurate. The Crown makes no representations, warranties, or guarantees, express or implied, that the resources included are accurate. The Crown accepts no responsibility or liability for inaccuracies, errors or omissions in the resources and any loss, damage, or costs incurred as a result of using or relying on the resources in any way.

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## CONSULTATION GUIDANCE and BEST PRACTICES

[Best Practices for Indigenous Engagement](#) (UNESCO) - This document provides a series of recommendations for best practices when beginning discussions with Indigenous Peoples.  
*\*Disclaimer: This link automatically downloads the pdf linked. To access this resource without clicking this link, please refer to [Resources \(ccunesco.ca\)](#) and scroll down to the publication entitled Best Practices for Indigenous Engagement, published on August 09, 2019.*

[Draft guidelines for ministries on consultation with Aboriginal peoples related to Aboriginal rights and treaty rights | ontario.ca](#) - Information that is consistent with the Ontario Crown's respect for Aboriginal rights and treaty rights and a tool to learn about the province's constitutional obligations to consult Aboriginal peoples.

[Environmental assessments: consulting Indigenous communities | ontario.ca](#) - Information on consulting Indigenous communities during the environmental assessment process. It is a helpful tool to understand the consultation process and identifying Indigenous communities that may have an interest in, or potentially be affected by a project.

## MAPS (STATIC & INTERACTIVE)

[Aboriginal and Treaty Rights Information System - Disclaimer \(aadnc-aandc.gc.ca\)](https://aadnc-aandc.gc.ca) – Aboriginal and Treaty Rights Information System is a Web-based information system intended to map out the location of Aboriginal communities and provide information pertaining to their potential or established Aboriginal or treaty rights. *\*Note this is a resource developed by the Federal Government and may differ from the guidance provided by the provincial government.*

[Map of Ontario treaties and reserves | Ontario.ca](https://ontario.ca) – An interactive map to determine where a treaty is and learn about it.

[MNO Regions - Métis Nation of Ontario \(metisnation.org\)](https://metisnation.org) - A map of MNO's nine regions and over 30 office locations across Ontario.

[Native-Land.ca | Our home on native land](https://native-land.ca) – A resource to learn more about Indigenous territories, languages, lands and ways of life.

[Traditional Harvesting Territories Map - Métis Nation of Ontario \(metisnation.org\)](https://metisnation.org) – Métis Nation of Ontario Traditional Harvesting Territories Map

[treaties\\_map\\_english.pdf \(ontario.ca\)](https://ontario.ca) – A static map of the First Nations and Treaties in Ontario.

## DIRECTORIES

[Map - Chiefs of Ontario \(chiefs-of-ontario.org\)](https://chiefs-of-ontario.org) – The Chiefs of Ontario supports First Nations in Ontario. This website provides a map and directory for 133 First Nations in Ontario.

[Métis Nation of Ontario | Governance | Community Councils \(metisnation.org\)](https://metisnation.org) – A list of MNO Community Council Contacts and information about each Community Council.