

Indigenous Consultation Information Package
Long-Term 2 Request for Proposals (LT2 RFPs)

SECTION 1.
Indigenous Engagement & Consultation Resources
(All Project Types)

A. OVERVIEW – THE DUTY TO CONSULT:

Proponents should be aware that they may be required to undertake the procedural aspects of consultation with rights-holding First Nation and Métis communities to support the Government of Ontario's (the Crown's) duty to consult obligations. 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* and contemplates conduct that might adversely impact those rights.

Although the duty to consult remains with the Crown, the proponent has a critical role to play in ensuring the duty to consult is met. The Crown may delegate the procedural aspects of consultation to project proponents. The procedural aspects of consultation are those portions related to the consultation process, such as sharing information, holding meetings, or receiving and addressing 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 Indigenous communities raise about the project's potential impacts. Without the proponent's participation, vital opportunities for dialogue and mitigation may be missed. Consultation may also take significantly longer. The Crown remains responsible for overseeing the consultation process and ensuring the adequacy of consultation with communities to whom the duty to consult is owed, irrespective of project timelines.

Proposed LT2 projects may require permits, approvals or authorizations that may have Indigenous consultation and engagement requirements. For example, projects may require a land use permit for a meteorological tower (Ministry of Natural Resources), Renewable Energy Approval (Ministry of the Environment, Conservation and Parks (MECP)), Class Environmental Assessment for Transmission Facilities (MECP), and/or archaeological studies (Ministry of Citizenship and Multiculturalism), among others. Proponents should contact the appropriate regulatory/permitting ministries as early as possible in the project planning process to clarify requirements and timelines, including those related to Indigenous consultation and engagement. Electricity Storage Facilities that are successful under the LT2 RFPs may have Indigenous consultation requirements outside of existing approvals frameworks. Please refer to the LT2 (c) contract posted on the IESO's website and Section 2 of this document for additional details.

Please also note that ministries may work together in the development of preliminary consultation assessments, which includes assessing whether the duty to consult is triggered and, if so, identifying which Indigenous communities must be consulted. Consultation lists produced by these assessments are subject to change based on new information becoming available or changes to the scope of the project. In addition, consultation lists may differ for different permits and authorizations, depending on the nature and scope of the proposed authorization and the potential for impacts to Aboriginal and treaty rights.

The term **consultation** in this document refers to communications, activities and interactions undertaken with an Indigenous community pursuant to the Crown's legal obligation to consult when the Crown contemplates conduct that might adversely impact established or credibly asserted Aboriginal or treaty rights. This is the type of consultation required pursuant to the honour of the Crown and s. 35 of the *Constitution Act, 1982*, and is distinct from engaging or consulting with Indigenous communities for policy, statutory or other reasons. Consultation will involve, at a minimum, information sharing with the potentially affected Indigenous communities and seeks to resolve potential adverse impacts to credibly asserted or established Aboriginal or treaty rights.

The term **engagement** in this document refers to communications, activities, and interactions with an Indigenous community which are undertaken on a non-rights basis regarding activity that is likely to not impact credibly asserted or established Aboriginal or treaty rights, but for which the activity is of concern or interest to an Indigenous community. Engagement aims to build respectful relationships with Indigenous communities by exchanging information in the absence of legal consultation obligations. The purpose of engagement is to build trust and create meaningful relationships. This includes information sharing regarding regulations, policy, legislation and procedures.

Please note that, in early outreach with Indigenous communities, proponents should be clear that the outreach is engagement in nature, that a Crown consultation process has not been initiated, and that if or when rights-based consultation is initiated, further and clear notice will be provided by the Crown and proponent.

B. RESOURCES: Indigenous Engagement and Consultation

The resources linked below may assist proponents participating in the LT2 RFPs 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 Ontario's *Environmental Assessment Act*, Canada's *Impact Assessment Act*, or other authorizations, 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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i) CONSULTATION & ENGAGEMENT 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 and treaty rights and a tool to learn about the province's constitutional obligations to consult and accommodate, where appropriate, 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.

[2.2.2-COO-Engagement-Checklist.pdf](#) (Chiefs of Ontario) – Guidance for consultation and engagement with First Nations in Ontario. Developed by the Chiefs of Ontario.

[2.2.3-COO-Minimum-Standards-and-Principles-for-Engagement.pdf](#) (Chiefs of Ontario)– Guidance about principles to follow when consulting and engaging with First Nations in Ontario. Developed by Chiefs of Ontario.

Note: Proponents may also wish to inform themselves of any community-specific consultation protocols publicized by Indigenous communities, as this may help inform best practices for how to consult with each community effectively and respectfully.

ii) MAPS (STATIC & INTERACTIVE)

Treaty Maps

[Aboriginal and Treaty Rights Information System - Disclaimer \(aadnc-aandc.gc.ca\)](#) – 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 public resource developed by the Federal Government and may differ from the guidance provided by the provincial government on a project-specific basis.***

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

[treaties_map_english.pdf \(ontario.ca\)](#) – A static map of the First Nations and Treaties in Ontario.

Territory and Harvesting Maps

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

[MNO Regions - Métis Nation of Ontario \(metisnation.org\)](#) – A map of MNO's nine regions and over 30 office locations across Ontario. Note: MNO regions serve an administrative purpose and do not coincide with the boundaries of where rights are asserted.

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

iii) **DIRECTORIES AND CONTACTS for INDIGENOUS COMMUNITIES & ORGANIZATIONS**

These directories are not exhaustive and do not include contacts for all First Nation and Métis communities and organizations in Ontario. Please ensure that you connect with the appropriate authorizing ministry to determine which First Nation and Métis communities to contact in respect of applicable regulatory approvals or permits.

[Map - Chiefs of Ontario \(chiefs-of-ontario.org\)](#) – 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 \(metisnation.org\)](#) – A list of **Métis Nation of Ontario (MNO)** Community Council Contacts and information for each Community Council. Note: Community Councils are established via a chartered community council agreement with the MNO based on where MNO citizens are currently living and do not necessarily coincide with the boundaries of where rights are being asserted.

[Contact – AIAI](#) – Contact information for **Association of Iroquois and Allied Indians (AIAI)**, representing 8 First Nations in Ontario.

[UNION OF ONTARIO INDIANS – STAFF DIRECTORY](#) – Staff contacts for **Anishinabek Nation** (Union of Ontario Indians), representing 39 First Nations across Ontario.

[Staff Directory - Grand Council Treaty #3](#) – Staff contacts for **Grand Council Treaty #3**, representing 28 First Nations in Ontario.

[Contact - Nishnawbe Aski Nation](#) – Contact information for **Nishnawbe Aski Nation**, representing 49 First Nations in northern Ontario.

[IFN Communities - Independent First Nations](#) – Contact information for the **Independent First Nations**, 12 First Nations that are not affiliated with a provincial-territorial organization.

iv) **REGION-SPECIFIC GUIDANCE and INFORMATION**

There are several agreements, commitments, policies and claims that proponents of proposed LT2 projects should be aware of and consider when engaging and consulting with Indigenous communities in certain regions of the province. Communities, and/or the political or provincial territorial organizations that support them, may also have unique consultation and engagement protocols that should be understood and factored into engagement and consultation planning and communications. Please note this list is not intended to be exhaustive, but to raise awareness.

Renewable Energy on Crown Land

For renewable energy developments on Crown land, please refer to the Ministry of Natural Resources' [Renewable Energy on Crown Land Policy](#). This policy is specific to waterpower, onshore wind power and solar power project development. The policy and maps can be viewed here: <https://www.ontario.ca/page/renewable-energy-crown-land-policy>.

Algonquins of Ontario (AOO)

Canada, Ontario and the Algonquins of Ontario (AOO) are working together to resolve a land claim through a negotiated Final Agreement that will take the form of a modern-day treaty. The Algonquin Land Claim covers approximately 36,000 square kilometers of the Ottawa River watershed and its natural resources. There are 10 Algonquin communities represented by the AOO: Antoine, Algonquins of Pikwàkanagàn First Nation, Bonnechere, Greater Golden Lake, Kijicho Manito Madaouskarini (Bancroft), Mattawa/North Bay, Ottawa, Shabot Obaadjiwan (Sharbot Lake), Snimikobi (Ardoch), Whitney and Area. For information about the land claim and map, please visit: <https://www.ontario.ca/page/algonquin-land-claim> and for information about treaty negotiation agreements, including the 2009 Framework Agreement, please visit: <https://www.tanakiwin.com/resources/treaty-negotiation-documents/>. For proposed projects in the AOO settlement area boundary, proponents should engage the AOO Consultation Office at algonquins@tanakiwin.com as well as the Algonquins of Pikwàkanagàn Consultation Office at chiefcouncil@pikwakanagan.ca, in addition to other Indigenous communities that may be impacted by a proposed project.

Saugeen Ojibway Nation

The Saugeen Ojibway Nation (SON) is collectively the Chippewas of Saugeen First Nation and the Chippewas of Nawash Unceded First Nation. The Province of Ontario and the SON have an existing agreement that establishes processes to facilitate consultation, and where appropriate, accommodation with SON in respect of the planning, development and approval of certain new energy projects proposed for development within SON's traditional territory known to SON as Saukiing Anishnaabekiing Territory. The area covered by the agreement

includes the Bruce area and peninsula and extends as far south as Goderich and east of Collingwood. The agreement also extends to off-shore waters surrounding the Bruce Peninsula. Special considerations apply to the peninsula north of Highway 21, along with a buffer zone around and adjacent to the communal lands of Saugeen First Nation. You can view a map of SON's traditional territory here: <https://saugeenojibwaynation.ca/resources>.

A key principle of this agreement is early notification and timely engagement with SON of proposed energy projects. Proponents considering projects in this area should contact SON's Environment Office at (519) 534-5507 or environmentoffice@saugeenojibwaynation.ca as early as possible. Please note that the agreement does not replace any existing consultation and regulatory processes required for developing an energy project. Projects proposed within the area covered by the agreement remain subject to all required Ontario environmental approvals and permits. Please contact the Ministry of Energy and Mines for further information.

Grand Council Treaty #3's Manito Aki Inaakonigewin (MAI), "Great Earth Law"

Grand Council Treaty #3 (GCT#3) is comprised of 28 First Nations with a mandate to protect the future of the Anishinaabe people and protect inherent and Treaty rights. Treaty #3 covers northwestern Ontario and extends west into Manitoba, with 26 communities located in Ontario. The [MAI or Great Earth Law](#) outlines the protocols and expectations of GCT#3 with respect to development within the treaty area, and for which proponents should consider when developing a project within Treaty #3. For GCT#3 map, please visit: [Our Nation - Grand Council Treaty #3](#). For additional details about the MAI, please refer to: [Manito Aki Inakonigaawin - Grand Council Treaty #3](#).

Superior North Land Claims

There are 10 northern First Nation communities in Ontario represented in land claims referred to collectively as the Superior North Land Claims.

Six First Nations are involved in negotiations to resolve Aboriginal title claims, known as the Michano litigation, against Canada and Ontario seeking a declaration of unextinguished exclusive Aboriginal Title to an area approximately 60,000 sq. km in size, north of the Lake Superior. The First Nations represented are: Biigtigong Nishnaabeg (Pic River First Nation), Netmizaaggamig Nishnaabeg (Pic Mobert First Nation), Biinjitiwaabik Zaaging Anishinaabek (Rocky Bay First Nation), Bingwi Neyaashi Anishinaabek (Sand Point First Nation), Long Lake #58 First Nation and Pays Plat First Nation. Negotiations are ongoing, and there is a heightened consultation and accommodation requirement associated with lands subject to these claims. For a map of areas affected by these claims, please go to the Notice of Caution on the Mining Lands Administration System (MLAS) at [MLAS Map Viewer \(gov.on.ca\)](#).

Concurrently, there are 4 Reserve Land Entitlement claims in an area surrounding Lake Nipigon related to reserve entitlement involving Animbiigoo Zaagi'igan Anishinaabek (Lake Nipigon Ojibway), Kiashke Zaaging Anishinaabek (Gull Bay First Nation), Whitesand First Nation and Red Rock First Nation. These communities assert that reserve lands received

under the Robinson Superior Treaty of 1850 differ from what the First Nations understood they were entitled to. While these claims are in the early stages of negotiation, additional consultation consideration for these communities may be required.

For more information about these Aboriginal Title claims, please contact the Ministry of Indigenous Affairs and First Nations Economic Reconciliation at IAONorthwest@ontario.ca.

For information about other land claims in Ontario, please visit:
<https://www.ontario.ca/page/current-land-claims>.

v) PROJECT APPROVALS, PERMITTING AND OTHER REQUIREMENTS

The links and information below are not exhaustive and may not include information about all permits, authorizations, or requirements a project may need, including Federal or municipal authorizations. The information is not intended to instruct a proponent about what permits or authorizations are required for a particular project. Proponents should contact the appropriate ministries to determine specific project requirements, including about any Indigenous consultation requirements.

Ministry	Type of Information	Source
Environment, Conservation and Parks (MECP)	Environmental approvals and registrations that energy projects may require	<ul style="list-style-type: none"> - Access Environment – environmental approvals and registrations: https://www.ontario.ca/page/list-environmental-approvals-and-registrations - Get a renewable energy project approved: https://www.ontario.ca/page/get-renewable-energy-project-approved - Class Environmental Assessment for Transmission Facilities: https://www.ontario.ca/page/class-ea-minor-transmission-facilities
Natural Resources (MNR)	Approvals and permit requirements for renewable energy developments on Crown land	<ul style="list-style-type: none"> - Renewable energy project approval and permit requirements: https://www.ontario.ca/page/renewable-energy-project-approval-and-permit-requirements - Renewable Energy on Crown Land Policy:

		https://www.ontario.ca/page/renewable-energy-crown-land-policy .
Citizenship and Multiculturalism (MCM)	Checklists and resources to help proponents screen projects for known (previously recognized) and potential cultural heritage resources, and determine whether further technical cultural heritage studies should be undertaken	<ul style="list-style-type: none"> • <i>Criteria for Evaluating Archaeological Potential</i> • <i>Criteria for Evaluating Marine Archaeological Potential</i> • <i>Criteria for Evaluating Potential for Built Heritage Resources and Cultural Heritage Landscapes</i> • <i>Engaging Indigenous communities in archaeology: a draft technical bulletin for consultant archaeologists in Ontario ontario.ca</i>

vi) **INDIGENOUS ENERGY SUPPORT PROGRAM**

The IESO's Indigenous Energy Support Program (IESP) promotes broad equitable participation in Ontario's energy sector for First Nation and Métis communities and organizations by supporting community capacity building, including energy planning and energy infrastructure development, as well as the building of energy knowledge and awareness, and skills related to energy projects.

The IESP, available to First Nations and Métis communities and organizations, provides funding through three Areas of Funding: a) Capacity Building, b) Economic Development, and c) Energy Resiliency & Monitoring

For more information about the program, please visit: <https://www.ieso.ca/Get-Involved/Indigenous-Relations/Indigenous-Energy-Support-Program>

SECTION 2:
Steps and Timelines Associated with the Crown's Duty to Consult Process for
Electricity Storage Projects

A. Steps and Timelines Associated with the Crown's Duty to Consult Process for Electricity Storage Facilities

The table below provides an overview of the steps involved in the Ministry of Energy and Mines (MEM)'s consideration of potential Indigenous consultation requirements associated with Electricity Storage Facilities participating in the Independent Electricity System Operator (IESO)'s Long-Term 2 Request for Proposals (LT2 RFPs). Note that this timeline is for MEM's processes and does not reflect the processes of other authorizing ministries.

The target timelines included here set out best practice standards, which require all parties involved to work together to mitigate delays to overall project timelines associated with the Crown's Duty to Consult (DTC) process.

Step	Description of Step	Target Timeline
1. Request for Duty to Consult (DTC) Assessment	Successful LT2 RFP proponents of Electricity Storage Facilities (as defined in the IESO Market Rules) contact MEM using the <i>"Request for Duty to Consult (DTC) Assessment"</i> template included in the Indigenous Consultation Information Package to request 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 LT2 RFPs.
2. DTC Assessment Letter	MEM undertakes a preliminary DTC assessment for each proponent that has submitted a Request for a Duty to Consult Assessment, and sends a letter indicating either: <ul style="list-style-type: none"> a) that the Crown may owe a duty to consult with Indigenous communities in respect of the Project, the list of Indigenous communities that should be consulted, and delegating the procedural aspects of this duty to 	Within 25 business days of receipt of Request for Duty to Consult Assessment <i>(note: this is a target timeline and additional time may be required in certain circumstances)</i>

	<p>the Proponent (see “<i>Delegation Letter</i>” template); or</p> <ul style="list-style-type: none"> - b) that it is the Crown’s determination that the duty to consult is not triggered. <p>If a), above, MEM would also send notification letters to potentially impacted Indigenous Communities advising that MEM, on behalf of the Crown, has delegated the procedural aspects of consultation to the Proponent for the Project.</p> <p>If b), above, skip to step 5.</p>	
3. Indigenous Consultation Record	Proponent submits a complete Indigenous Consultation Record to MEM for review. See Delegation Letter template below for additional details about should be included in the Indigenous Consultation Record.	At least 90 days prior to the anticipated commencement of clearing, grading, or material alteration of the project site.
4. DTC Sufficiency Letter or Further Direction	<p>MEM either:</p> <ul style="list-style-type: none"> a) is satisfied that the procedural aspects of consultation delegated to the Proponent are sufficiently undertaken, and issues a DTC Sufficiency Letter to the Proponent; or b) is not satisfied that the procedural aspects of consultation delegated to the Proponent are sufficiently undertaken, or if there are outstanding issues or more information needed, MEM issues notice to the Proponent providing further direction to the Proponent to address any outstanding rights-based matters or remedy any consultation-related deficiencies. 	Within 60 days of receipt of a complete Indigenous Consultation Record.
5. Submission of DTC Sufficiency Letter to IESO	Proponent submits to the IESO a DTC Sufficiency Letter, or a letter from MEM	Prior to commencement of site clearing, grading,

	confirming that the Crown's Duty to Consult is not triggered.	or material alteration of the project site.
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Note: Electricity Storage Facilities may also require the development of transmission connection lines and/or transmission stations. These transmission facilities could require a *Class Environmental Assessment for Transmission Facilities, February 2024* (Class EA for TF), and may also have separate Indigenous consultation requirements. Proponents should contact the Ministry of the Environment, Conservation and Parks as early as possible in the project planning process to clarify applicability and requirements for the Class EA for TF. If the Class EA for TF applies, the proponent should contact MEM, who is the primary contact for the Crown's preliminary assessment of the duty to consult for the Class EA for TF. For more information about the Class EA for TF, please visit: <https://www.ontario.ca/page/class-ea-minor-transmission-facilities>.

B. TEMPLATE: Request for Duty to Consult (DTC) Assessment for Electricity Storage Projects

Successful LT2 proponents of Electricity Storage Facilities (as defined in the IESO Market Rules) should contact Shannon McCabe, Manager, Strategic Indigenous Initiatives, Ministry of Energy and Mines (MEM) by email at: shannon.mccabe@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 Electricity Storage Project.
2. Description of the project, location, including GPS coordinates, map and proposed project development timelines. Please share shapefiles in the WGS 1984 Web Mercator Auxiliary Sphere coordinate system, if available.
3. Information about the Project Site and adjacent lands (e.g., privately-owned land, Crown Land, Indigenous Lands, each as defined in the LT2 RFPs, 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.

8. If the project requires transmission facilities (lines or stations) to be developed or constructed by the Proponent, please indicate whether they are subject to the Class Environmental Assessment for Transmission Facilities (Class EA for TF).

Note: if the transmission facilities require a Class EA for TF, please contact MEM at the above noted email address to initiate an assessment of whether there is a duty to consult in relation to the transmission facilities. A separate letter of delegation for the transmission facilities may be required.

C. Delegation Letter Template for Electricity Storage Facilities

Within the target timeline of 25 business days of receipt of the Request for Duty to Consult Assessment, the Ministry of Energy and Mines (MEM) undertakes a preliminary DTC assessment, and sends a letter indicating:

- a) 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 “*Delegation Letter*” template); or
- b) that it is the Crown’s determination that the Duty to Consult is not triggered.

If a), above, MEM will send a Delegation Letter to the proponent (see example template below) and will send a notification to Indigenous communities. Please note this template is draft and subject to change.

Sample Template:

Ministry of Energy and Mines

Energy Networks and Indigenous
Policy Branch

Indigenous Energy Policy

77 Grenville Street, 6th Floor
Toronto, ON M7A 2C1
Tel: (416) 562-9492

ministère de l'Énergie et des Mines

Direction Générale des Réseaux
Énergétiques et des Politiques
Autochtones

Politique Énergétique Autochtones

77 Rue Grenville, 6^e Étage
Toronto, ON M7A 2C1
Tel: (416) 562-9492



DATE

VIA EMAIL

[Name]

[Title]

[Proponent]

[Address]

[Address]

**Re: IESO Long-Term Request for Proposals (LT2 RFP)– [Proponent/Project] –
Delegation of Procedural Aspects of the Crown’s Duty to Consult**

Dear [Name],

Thank you for notifying the Ministry of Energy and Mines (MEM) of [Proponent’s] Long-Term 2 (LT2) 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 [Description of construction activities, for example: construction of concrete

pads, footings, other structures, excavation for substation foundations and cabling, and expected timelines, etc.].

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 affect those rights.

Although the legal duty to consult remains with the Crown, the Proponent has a critical role to play in ensuring the duty to consult is met. 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 and addressing 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 First Nation and Métis communities about potential impacts of the project. The Crown remains responsible for providing oversight of the consultation process and for ensuring the adequacy of consultation with communities to whom the duty to consult is owed, irrespective of project timelines.

Based on MEM'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, MEM 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, MEM 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. Ministry contacts are also available to support on an issue specific basis if needed.

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:

Indigenous Community	Contact Information (Note: contact information is believed to be accurate, however, personnel may have changed)
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[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, First Nation and Métis 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 MEM immediately, along with any related information provided by the applicable community, 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.

Please note that this delegation letter is specific to the Electricity Storage Facility only and does not pertain to transmission facilities that may be required for the Project. Transmission facilities may be subject to the Class Environmental Assessment for Transmission Facilities (Class EA for TF Facilities), and proponents are encouraged to contact the Ministry of the Environment, Conservation and Parks about applicability, and about any Indigenous consultation requirements. If it is determined that Indigenous consultation is required under the Class EA for TF, please contact MEM to request a separate duty to consult assessment and delegation.

Indigenous Consultation Record

Please send your Indigenous Consultation Record for the Project, as described in the appendix, to [Name], [Title], Indigenous Energy Policy at the Ministry of Energy and Mines at [email address] **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 MEM with sufficient time to review and understand any rights-based concerns raised and, where appropriate, for MEM 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 MEM with your Indigenous Consultation Record, please do not hesitate to contact MEM.

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

[*If applicable:*] MEM 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 Transmission Facilities.]

Where the Crown has indicated that the Crown's duty to consult may be triggered in relation to an Electricity Storage Facility subject to an IESO LT2 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 MEM'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 and Mines at [email address].

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,

Shannon McCabe, Manager
Strategic Indigenous Initiatives

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 Project 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 measures 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.
- Note that different forms of attempts (e.g. phone call, email, registered mail) are strongly recommended to ensure Project information is received.
- 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;
 - If you remain unclear, consider reaching out to your MEM contact to seek guidance;
- 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 / or
 - Compensation; and
- informing Indigenous communities about how their concerns were taken into consideration and whether the Project proposal was altered in response. Such information should also be provided to MEM.

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. You may also wish to inform yourself of any community-specific consultation protocols publicized by Indigenous communities, as this may help inform best practices for how to consult with each community effectively and respectfully.

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 any proposed activity; or
 - environmental monitoring.

This information is critical to MEM's assessment of the sufficiency of consultation. Until a complete Indigenous Consultation Record is provided, MEM cannot begin its assessment. Please note that where concerns are raised by Indigenous communities, it is helpful to MEM's assessment if each concern is outlined in a table, with a clear description of the Proponent's proposed mitigation measure(s) for each concern, and the Indigenous community's response to the proposed mitigation(s).

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. Where the project is within municipal limits, permission should also be obtained to share information learned with those municipalities.

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. Note that MEM will provide communities with an opportunity to provide input on any outstanding matters.

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.