

Indigenous Energy Policy

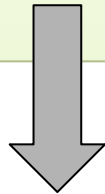
Briefing
January 2018

CONFIDENTIAL DRAFT

Indigenous Energy Policy Framework

1. Meeting the Duty to Consult

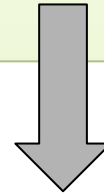
Work with agencies, developers and other ministries to ensure the Crown's duty is met on energy activities



More communities directly involved in energy projects

2. Community Involvement

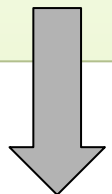
Support and encourage First Nation and Métis community participation in the energy sector



Community concerns and interests used to better inform energy activities

3. Building Relationships

Strengthen and maintain relationships with communities and leaders to inform ministry policy



Regular two-way flow of information

Key Issues

- Cost of Electricity
- Duty to Consult
- OEB Board Representation
- Long Term Energy Plan

Cost of Electricity – First Nation Delivery Credit

- The cost of electricity and delivery charges were identified as the prevailing grievance at the First Nations-Ontario Energy Table. ENERGY agreed to explore options for a First Nations Rate.
- The minister directed the OEB to work with First Nations to research options that would address energy affordability on reserve and to report back on its findings.
- The OEB worked with the Chiefs of Ontario to engage with First Nations and developed options for a First Nations electricity rate. The OEB provided a report to the Minister in January 2017.
- Ontario announced the Fair Hydro Plan which includes the elimination of the delivery charge for on-reserve First Nation customers, which took effect on July 1, 2017 (as noted on slide 18).
- On-reserve First Nation customers are now saving an average of \$85 per month.

Duty to Consult and Energy Projects

- The Ministry works with its partner ministries to ensure the duty to consult is met where Aboriginal or treaty rights may be adversely affected by a Crown action. Energy activities that may trigger the duty to consult include:
- **Natural gas pipelines:**
 - ENERGY is identified within the OEB *Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario, 2016* as the lead Ministry to coordinate the Crown's duty to consult obligations that may be triggered by applications for Leave to Construct for projects covered by these guidelines.
 - The Ministry of Energy coordinates with the Ontario Pipeline Coordinating Committee and the OEB in this process
- **Minor transmission projects (e.g. 115 kV lines, pole replacements)**
 - ENERGY is identified within Hydro One's Class EA for Minor Transmission Facilities as the primary Crown contact for the duty consult, while the MOECC retains overall responsibility for the Class EA process.
- **Major transmission projects (e.g. Line to Pickle Lake, East West Tie)**
- **Generation**
 - Hydroelectric expansions and new hydroelectric projects (e.g. HESOP)
 - Renewables (solar, wind, bioenergy)
- **Other projects being monitored**
 - Inter-provincial hydrocarbon pipelines (e.g. OEB approval)
 - Nuclear Waste

Delegating Procedural Aspects of Consultation

- The Duty to Consult always rests with the Crown but certain aspects of consultation can be expressly delegated by government to project developers.
- The government remains accountable for consultation but is charging the developer with the responsibility to meet with Indigenous communities, maintain records of the interactions, and consider the manner in which the proposed project impacts Aboriginal and treaty rights.
- For energy sector developments, this is preferred since developers are likely able to better explain their project and consider feedback about potential impacts, and are better positioned to discuss ways to mitigate impacts by making adjustments to the project.
- The Ministry of Energy typically delegates the procedural aspects of consultation through a letter or Memorandum of Understanding to the proponent.
- The Crown also has a legal obligation to accommodate, where appropriate. The Crown will advise proponents about whether any accommodation is required and will assess the adequacy of any accommodation.
 - Accommodation refers to any measure(s) that will avoid, minimize or mitigate adverse impacts of a proposed Ontario action or decision on established or credibly asserted Aboriginal or treaty rights.
- Duty to consult obligations are distinct from the ministry's policy goal of Indigenous participation in energy projects. The Crown views commercial agreements between proponents and Indigenous communities as distinct and separate from consultation and accommodation, unless those commercial arrangements have been specifically established to address rights impacts.

Board Representation

- In 2015, Chiefs of Ontario has expressed interest in having First Nation representation on the OEB Board of Directors.
 - Preliminary discussions took place between OEB, Ministry of Energy and COO about this issue.
 - A Board position may not achieve the desire for greater First Nation perspectives in OEB decisions, given the requirement of the Board for impartial decision making.
 - Other options for Indigenous involvement at the OEB were explored and the OEB welcomed ideas from First Nations to have further participation and representation at the OEB.
- The Chair of the OEB wrote to select First Nation Leadership to request their views on exploring different options to enhance representation at the OEB in January 2016.
- COO may have re-evaluated this approach and has not continued to raise the issue with the Ministry.

2017 Long Term Energy Plan

- Indigenous communities bring unique and important perspectives and knowledge to the energy planning process. Engagement with First Nation and Métis communities is an important component of updating the Long Term Energy Plan (LTEP).
- The Ministry of Energy held 17 Indigenous engagement sessions across the province to inform the update of the LTEP in the fall of 2016.
- Other key groups such as the Métis Nation of Ontario, Chiefs of Ontario and Political Territorial Organizations were engaged by the ministry in partnership with the Independent Electricity System Operator, and were provided internal capacity funding to support participation.
- Feedback received through these engagements is important in the development of the 2017 LTEP which was released in October 2017.



2017 Long Term Energy Plan: Indigenous Communities

- Key commitments outlined in the 2017 LTEP:
 - **Conservation Programs:**
 - The IESO is reviewing and will report back to the Ministry in January 2018 on options to improve conservation programs and their availability for First Nations and Métis, including communities served by Independent Power Authorities.
 - **Energy Planning and Project Support:**
 - The Aboriginal Community Energy Plan program will be expanded to help communities implement their energy plans.
 - Options will be explored for supporting energy education and capacity building, the integration of small-scale renewable energy projects, net metering and other innovative solutions that address local or regional energy needs and interests.
 - The government's Natural Gas Grant Program will support the expansion of natural gas access to First Nation communities.
 - **Remote Communities:**
 - Connection of remote First Nation communities and support the four First Nation communities for which transmission connection is not economically feasible will continue to be a priority.

2017 LTEP Cont'd

- **Project Financing**
 - Innovative financing models and support tools will be investigated to address barriers to the financing of projects led or partnered by First Nations or Métis. □
- **Continued Engagement**
 - The government will report back to First Nations and Métis between LTEPs to provide updates on the Province's progress and seek ongoing feedback. □