

August 5, 2009

Ontario Energy Board
P.O. Box 2319, 27th Floor
2300 Young Street
Toronto ON M4P 1E4

Attn: Kirsten Walli
Board Secretary

**RE: Response to Ontario Energy Board Procedural Order No.1 Yellow Falls
Power Limited Partnership Application for Leave to Construct, Board File
No. EB-2009-0120**

Thank you for your positive response to the Wabun Tribal Council request for intervenor status in regard to the proposed Yellow Falls project. The Council along with the First Nations of Mattagami, Flying Post and Wahgoshig wish to present the Ontario Energy Board (OEB) with evidence regarding the Projects failure to comply with Ontario and Canadian statute in regard to the impact that this project will have on their territories and their Treaty and Aboriginal Rights.

In Procedural Order No.1 issued by the OEB it indicates that it will grant the Wabun Tribal Council intervenor status but suggests limitations on the questions crucial to the First Nations position in relation to the Project. Specifically, the Board has determined that the question of First Nations consultation is not one that they need consider when deliberating whether to grant Leave to Construct the Project. The Wabun Tribal Council and the First Nations it represents disagree with this assumption. As an agent of the Crown the OEB is obligated to uphold the honor and duty of the Crown and, as outlined in recent Supreme Court decisions, does indeed have the Duty to Consult when considering decisions that will impact the Aboriginal and Treaty rights of First Nations.

The Wabun Tribal Council will be consulting with legal counsel in relation to the OEB Duty to Consult and believes that the OEB is incorrect in assuming it has no responsibility in consulting with First Nations. It is our position that as the OEB as a Crown agency responsible for taking a decision that will "Grant Leave to Construct" the OEB has assumed a critical role in the Project approval process and therefore its' decision has the potential of impacting the First Nations Aboriginal and Treaty Rights. It therefore follows that the First Nations who are impacted must be consulted before actions are taken by the OEB.

There is also a limitation on the type of evidence the OEB has seen fit to examine in relation to the First Nations request for intervenor status. In this case the OEB has ordered that an oral hearing will not be required. As a People whose history, customs and

traditions are largely based on oral translations it would be impossible for the First Nations to state their evidence with you given the restriction in Order No.1. Further, the Supreme Court of Canada has ruled in favor of First Nations on this matter and has determined that oral histories and arguments must be given equal standing when considering matters of First Nations Aboriginal and Treaty Rights. The Wabun Tribal Council request that the OEB allow an oral hearing in order that the full evidence be presented to the Board.

The First Nations and the Wabun Tribal Council will pursue all avenues in their power including court challenges should the OEB and the First Nations not be able to come to some agreement on the nature of our evidence and the method in which they are allowed to present it.

We look forward to presenting both oral and written evidence to the OEB in support of our claim. Should you have any questions please contact the undersigned.

Sincerely,

Jason Batise,
Technical Services Advisor
Wabun Tribal Council

CC Chief Walter Naveau, Mattagami First Nation
Chief David Babin, Wahgoshig First nation
Chief Murray Ray, Flying Post First Nation
John Edmond, Barrister and Solicitor