

**Renewed Regulatory Framework for Electricity**  
**Board File Nos.: EB-2010-0377, EB-2010-0378, EB-2010-0379, EB-2011-0043 and**  
**EB-2011-0004**

**COMMENTS OF THE**  
**NATIONAL CHIEF’S OFFICE FOR THE ASSEMBLY OF FIRST NATIONS**

**April 20, 2012**

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**1 INTRODUCTION**

The National Chief’s Office (NCO) for the Assembly of First Nations (AFN) is a registered intervenor in the Board’s consultation on a Renewed Regulatory Framework for Electricity (RRFE).

The AFN is the national First Nations representative organization for all the First Nations in Canada. The AFN represents the interests of First Nations nationally, including 133 Ontario First Nation communities. First Nations have an interest in this consultation from the perspectives of aboriginal and treaty rights holders, consumers, generators, distributors and transmitters.

Counsel for NCO has reviewed Board Staff’s discussion papers and has participated in the Board’s stakeholder consultation sessions.

These are the comments of the NCO in response to this stakeholder consultation.

## **2 OUTCOMES**

In her speech to the Electricity Distributors Association AGM on March 26, 2012<sup>1</sup>, Board Chair, Ms. Rosemarie Leclair made it clear that the RRFE consultation is focused on outcomes rather than process.

This paper discusses some of the broader considerations that the NCO considers relevant to development of such a framework. The NCO concludes that the following should be added to the list of desired outcomes of the RRFE:

- First Nations are disproportionately represented among low-income energy consumers. Rising prices should not deprive them of their entitlement to an adequate, reliable and affordable supply of electricity. If necessary, in the face of rising prices, the Board should revisit its power to implement affordable rate programs
- First Nations in remote communities rely on diesel generation for their electricity supply. The Board should treat as a priority, connection of remote communities to the grid to replace reliance on diesel generation
- First Nations wishing to participate in Ontario's energy industry should not be unfairly denied the opportunity to do so. The Board should take steps to eradicate the historic systemic discrimination that has prevented full participation by First Nations in Ontario's energy industry
- The Board should exercise its powers and amend its codes so as to encourage, facilitate and maximize opportunities for First Nations to participate in and benefit from transmission, distribution and other energy infrastructure projects throughout Ontario
- The Board should give close scrutiny and significant weight to First Nations participation in transmission projects that are the subject of a designation procedure. The combination of competitive tendering with significant weight to Aboriginal participation is a paradigm for and should be extended by the Board to other transmission and distribution projects
- The Board should ensure that it avoids conflicts of interest between its roles as adjudicator and planner.

## **3 FRAMEWORKS WITHIN FRAMEWORKS**

In this consultation, Board Staff has produced five discussion papers that are detailed and helpful treatments of their respective topics. However, this puts the cart before the horse. Normally a framework is the context from which detail is derived rather than the other way round.

The RRFE is an opportunity for the Board to deal not only with specific issues of concern but also to review and rethink the fundamentals of electricity regulation.

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<sup>1</sup> "Delivering Value to the Customer: Efficient Utilities and Effective Regulation"

The Board already has an overarching framework that guides even this exercise. That framework may be found in the Board's duty to act in the public interest, in the objectives and requirements contained in its governing statute: the *Ontario Energy Board Act, 1998* (OEBA) and in the *Electricity Act*

That statutory framework in turn operates within the framework of Canada's Constitution and international law.

### 3.1 THE PUBLIC INTEREST

The Courts have held that the legislative scheme of the OEBA is subject to the public interest<sup>2</sup> and the Board has acknowledged that its duty is to serve the public interest:

*Our Mission*

*To promote a viable, sustainable and efficient energy sector that serves the public interest and assists consumers to obtain reliable energy services at reasonable cost.*<sup>3</sup>

### 3.2 STATUTORY OBJECTIVES

The OEBA sets out guiding objectives for the Board:

- To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service
- To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry
- To promote electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances
- To facilitate the implementation of a smart grid in Ontario
- To promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Government of Ontario, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities<sup>4</sup>

### 3.3 STATUTORY REQUIREMENTS

The Board's jurisdiction and powers are also circumscribed by the provisions of individual sections of the OEBA and the *Electricity Act*.

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<sup>2</sup> *Union Gas Ltd. v. Township of Dawn* (1977), 15 O.R. (2d) 722 at para. 29 (Div. Ct.)

<sup>3</sup> Board Website: <http://www.ontarioenergyboard.ca/OEB/Industry/About+the+OEB/What+We+Do>

<sup>4</sup> OEBA s. 1

So, for example

- The Board must fix or approve rates for transmission, distribution and the Standard Supply Service for distribution utilities electricity that are “just and reasonable”<sup>5</sup>
- When granting leave to construct an electricity transmission or distribution line, the Board must be satisfied that it is in the public interest in relation to:
  1. The interests of consumers with respect to prices and the reliability and quality of electricity service
  2. Where applicable and in a manner consistent with the policies of the Government of Ontario, the promotion of the use of renewable energy sources<sup>6</sup>
- The Board must review each integrated power system plan (IPSP) submitted by the Ontario Power Authority (OPA) to ensure it complies with any directions issued by the Minister and is economically prudent and cost effective<sup>7</sup>

### **3.4 RIGHTS AND DUTIES UNDER THE CONSTITUTION AND INTERNATIONAL LAW**

The Board's responsibilities, not least its role as an adjudicator, are directly impacted by a number of constitutional and international human rights and duties including

- The Crown's duty to consult and accommodate Aboriginal peoples<sup>8</sup>
- The duty to take into account international human rights law and standards such as the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP)<sup>9</sup> in interpreting domestic legislation<sup>10</sup>
- The right of individuals to be free from discrimination<sup>11</sup>

## **4 IMPLICATIONS FOR A REGULATORY FRAMEWORK FOR ELECTRICITY**

The task of balancing the varied interests in the regulation of an energy monopoly is a difficult one. The role of the Board as regulator is crucial. The NCO offers the following comments on some of the principles that should be inferred from the statutory and jurisprudential context within which the Board operates.

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<sup>5</sup> OEBA s. 78(3)

<sup>6</sup> OEBA s. 96(2)

<sup>7</sup> *Electricity Act* s. 25.30 (4)

<sup>8</sup> *Per Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511, 2004 SCC 73 - The duty to consult and accommodate Aboriginal peoples is grounded in the honour of the Crown as an essential corollary of the *Constitution Act, 1982* section 35

<sup>9</sup> GA Res. 61/295, UN GAOR, 61st Sess., Supp. No. 49 Vol. III, UN Doc. A/61/49 (2007) [UNDRIP] - endorsed by Canada on November 12, 2010

<sup>10</sup> See *Canada (Human Rights Commission) c. Canada (Attorney General)*, 2012 FC 445 (2012) per Mactavish J. at paras 350 and 351

<sup>11</sup> *Canadian Charter of Rights and Freedoms* s. 15 and UNDRIP Article 2

#### **4.1 PUBLIC INTEREST**

*What is the "public interest"?*

The public interest is variously defined as "common well-being" or "general welfare". Many claim to act in the public interest but few agree precisely what it is. These comments do not attempt to define "public interest" save to consider the question, who or what is "the public" for this purpose?

*Who is "the public"?*

The public is people: individuals as distinct from governments, corporations, institutions and other entities. To determine whether something is in the public interest involves a consideration of whether that something benefits the "common well-being" or "general welfare" of individuals.

That is not to dismiss the importance of governments, corporations, institutions and other entities but they are only important, in the context of the public interest, to the extent that they benefit individuals.

So, for example, the financial welfare of an industry may be in the public interest but only insofar as that industry contributes to the welfare of individuals, say by employment or by contributing to the overall stability of the economy.

*The Board's First Duty*

This is all to say that not all consumers are equal. The principal duty of the Board in serving the public interest is to serve the interest of individuals.

In modern society, an adequate, reliable and affordable supply of electricity serves basic human needs. The Board is a regulator of monopoly services. Its duty to the public implies an equal duty to each individual and in turn, at least as a starting point, that each individual has an equal stake in that monopoly and equal entitlement to its services.

This is not a radical point of view. "Postage stamp" rates have long been a feature of regulated monopolies in general and the Ontario electricity system in particular. Such rates are an established example of socialization of costs in rate design. There may be sound economic reasons for departing from pooled costs and there may be sound reasons also for introducing other socialization measures, but that is the starting point for regulation of a monopoly.

It follows that one strand of the Board's duty to serve the public interest is to ensure that no significant group of individuals is deprived of its entitlement to an adequate, reliable and affordable supply of electricity. It follows also that no significant group of individuals, wishing to participate in Ontario's energy business, should be unfairly denied the opportunity to do so.

#### **4.2 GOVERNMENT POLICY AND FIRST NATIONS**

*What is the role of government policy in the framework?*

The requirement to be consistent with the policies of the Government of Ontario is a regularly reoccurring theme in the Board's statutory jurisdiction.

Two of the Board's statutory objectives require it:

- To promote electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances.
- To promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Government of Ontario, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities.

It is also a required component of the Board's approval of an application for leave to construct a transmission or distribution line. The Board must be satisfied that grant of leave to construct is in the public interest in relation to the promotion of the use of renewable energy sources, in a manner consistent with the policies of the Government of Ontario.

*What is the government's policy for First Nations participation in the energy industry?*

Although there are several individual illustrations, perhaps the most readily accessible summary of government energy policy in relation to Aboriginal peoples is to be found in its Long Term Energy Plan (LTEP).<sup>12</sup> The NCO notes the following main themes

**The Government is committed to Aboriginal Participation in the energy sector...**

*The Ontario government is committed to encouraging opportunities for Aboriginal participation in the energy sector ...*

*First Nation and Métis communities have diverse energy needs and interests. Ontario will work to ensure there is a wide range of options for Aboriginal participation in Ontario's energy future....*

*Ontario...recognizes that Aboriginal communities have an interest in economic benefits from future transmission projects crossing through their traditional territories ...*

*There are a number of ways in which First Nation and Métis communities could participate in transmission projects. Where a new transmission line crosses the traditional territories of aboriginal communities, Ontario will expect opportunities be explored to:*

- *Provide job training and skills upgrading to encourage employment on the transmission project development and construction.*
- *Further Aboriginal employment on the project.*
- *Enable Aboriginal participation in the procurement of supplies and contractor services.*

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<sup>12</sup> Ontario's Long Term Energy Plan, Chapter 5 - Aboriginal Communities

*Ontario will encourage transmission companies to enter into partnerships with aboriginal communities, where commercially feasible and where those communities have expressed interest.*

*Ontario...recognizes that successful participation by First Nation and Métis communities will be important to advance many key energy projects identified under a Long-Term Energy Plan. The path forward needs to be informed by regular dialogue with First Nation and Métis leadership through distinct processes. Working with First Nation and Métis leadership, Ontario will look for opportunities to promote on-going discussion of these issues.*

### **The Government is committed to connecting remote communities to the grid**

*Ontario's remote First Nation communities currently rely on diesel generation for their electricity supply — but diesel fuel is expensive, difficult to transport, and poses environmental and health risks. According to analysis done so far, transmission connection would be less expensive over the long term than continued diesel use for many remote communities.*

*New transmission supply to Pickle Lake is a crucial first step to enable the connection of remote communities in northwestern Ontario. A new transmission line to Pickle Lake - one of this plan's five priority projects - will help to service the new mining load and help to enable future connections north of Pickle Lake.*

*Subject to cost contributions from benefiting parties, Ontario will focus on supplying Pickle Lake from the Ignace/Dryden area immediately. A line to serve the Nipigon area specifically will continue to be considered as the need for it evolves.*

*As part of this project, the government will also ask the OPA to develop a plan for remote community connections beyond Pickle Lake, including consideration of the relevant cost contributions from benefiting parties, including the federal government. This plan may also consider the possibility of onsite generation such as small wind and water to reduce communities' diesel use.*

### **The Government is committed to consultation and accommodation**

*Where new transmission lines are proposed, Ontario is committed to meeting its duty to consult First Nation and Métis communities in respect of their aboriginal and treaty rights and accommodate where those rights have the potential to be adversely impacted.*

A recent example of government policy in action may be found in the designation process for the East-West Tie Transmission line<sup>13</sup>, where the Minister of Energy has indicated that the Board should "...take into account the significance of aboriginal participation to

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<sup>13</sup> Currently before the Board - Transmission Infrastructure: East-West Tie Line (EB-2011-0140)

delivery of the transmission project, as well as a proponent's ability to carry out the procedural aspects of Crown consultation."<sup>14</sup>

*What does this mean for a regulatory framework?*

The Board must act consistently with these policies in carrying out its responsibilities under the OEBA or any other Act.<sup>15</sup> These policies are also an essential element of any leave to construct application because the public interest requirement is specifically defined to include consistency with government policy.

It follows therefore that the Board should give significant weight to participation by First Nations in transmission projects crossing their lands or traditional territories.

It also follows that the Board should treat as a priority connection of remote communities to the grid to replace reliance on diesel-powered generation. The NCO has made submissions to the Board in a number of proceedings and consultations that remote communities should be connected to the grid or provided with sustainable self-contained electricity supply such as a micro-grid to replace diesel powered generation.

#### **4.3 DISCRIMINATION AGAINST FIRST NATIONS**

In the proceeding for review of the OPA's Integrated Power Supply Plan (IPSP) and procurement processes<sup>16</sup> and in subsequent proceedings, NCO asserted that:

- a) First Nations and other Aboriginal peoples in Ontario have endured systemic discrimination contrary to section 15(1) of the Charter that has prevented their ability to participate fully in the mainstream economy of Ontario, including, but not limited to, energy generation, transmission and distribution, by reason of their race, national or ethnic origin, and their colour
- b) the absence of adequate affirmative action programs<sup>17</sup> sustains this systemic discrimination

It follows from this and Article 2 of UNDRIP that eradication of discrimination is a key element of any framework within which the Board operates. So, for example:

- The Board should exercise its powers and amend its codes so as to encourage, facilitate and maximize opportunities for First Nations to participate in and benefit from transmission, distribution and other energy infrastructure projects throughout Ontario
- The Board should give close scrutiny and significant weight to First Nations participation in transmission projects that are the subject of a designation procedure. The combination of competitive tendering with significant weight to

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<sup>14</sup> Minister's letter to the Board Chair dated March 29, 2011

<sup>15</sup> OEBA s. 1

<sup>16</sup> EB-2007-0707 (IPSP Proceeding)

<sup>17</sup> Permitted by the Charter s 15(2)

Aboriginal participation is a paradigm for and should be extended by the Board to other transmission and distribution projects

#### **4.4 CONSULTATION**

The Crown's duty to carry out Aboriginal consultation and accommodation is well established. The Board may in a proceeding before it have the responsibility to adjudicate the adequacy of such consultation and accommodation.

NCO has noted previously that there is a tension between the Board's role as an adjudicator and its attempts, in the absence of an IPSP, to undertake planning that is properly the responsibility of the OPA.

The NCO does not intend to reiterate its position save to note that

- The RRFE should ensure that conflicts of interest between the Board's functions as adjudicator and planner are avoided
- The duty to carry out Aboriginal consultation and accommodation is engaged where a Government planning function is performed by the Board

For the avoidance of doubt, participation by the NCO in the Board's RRFE consultation

- Does not constitute Aboriginal consultation
- Does not admit or acknowledge compliance by the Crown with its duty to consult on the subject matter of the RRFE consultation.
- Is distinct from and without prejudice to the interest and position of any First Nation community, group or other organization or individuals.

#### **4.5 RATE MITIGATION AND "JUST AND REASONABLE" RATES**

The NCO has noted in other proceedings before the Board that First Nation peoples are disproportionately represented among low-income energy consumers. While the NCO commends the Board on its low-income emergency assistance program (LEAP), it is entirely possible that the rate increases in prospect will overwhelm the ability of that program to provide adequate relief.

Consistently with earlier comments about the public interest, rates that deprive a significant group of individuals of its entitlement to an adequate, reliable and affordable supply of electricity are not in the public interest and cannot properly be described as "just and reasonable".

The NCO notes that the Board has jurisdiction to implement an affordable rates program.<sup>18</sup> This power remains a part of the Board's regulatory framework that should be revisited if rates rise too high.

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<sup>18</sup> *Advocacy Centre for Tenants Ontario v. Ontario Energy Board* 2008 CanLII 23487 (ON SCDC)

## **5 CONCLUSION AND APPENDICES A-E**

The NCO has responded to the specific questions raised by Board Staff in this consultation in the Appendices to this paper. They should be read in conjunction with and subject to these comments.

### **APPENDIX A**

#### **PERFORMANCE & INCENTIVES (EB-2010-0379)**

The NCO recognizes that the Board needs to balance a number of demands when carrying out its responsibilities. So, for example, the Board's statutory objectives

- To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service
- To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry

must be achieved in the face of practical requirements such as the need to

- Replace aging transmission and distribution infrastructure
- Expand and improve that infrastructure to implement the *Green Energy and Green Economy Act*

The Board's discussion paper and its supporting concept paper ("Concept Paper")<sup>19</sup> suggests that performance based regulation (PBR) is a preferable option for Ontario. That is partly because it will produce lower prices for consumers but also because it will allow the Board to leverage its own resources more efficiently than a traditional ratemaking approach, given the large number of and distributors (six large and approximately eighty small) that it regulates.<sup>20</sup>

#### **Consolidation of Distributors**

Mr. Ken Quesnell, Board Member, echoed this concern during the stakeholder conference:

*"...if someone were to listen to this conversation not knowing the history on this, I think they would be quite surprised that we're dealing with 77 commercial entities when we're talking about the distribution sector"*<sup>21</sup>

Mr. Quesnelle went on to say that consolidation is an objective that the industry has said should be pursued through a business rather than a policy model. In other words, the financial success of a utility should make it an attractive acquisition target by another utility.

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<sup>19</sup> Pacific Economics Group Research paper "Defining, Measuring and Evaluating the Performance of Ontario Electricity Networks: A Concept Paper"

<sup>20</sup> Concept Paper – Introduction 1.1

<sup>21</sup> Stakeholder Conference Transcript, Wednesday, March 28, 2012 at p. 193

The NCO agrees that consolidation would make the industry more efficient and allow the Board to operate more efficiently. The NCO wonders, however whether the commercial paradigm will truly lead to this end and, even if it will, whether it will do so quickly enough. The Board should keep this issue and the option of pursuing a policy approach to consolidation under close scrutiny.

### **The RIIO Model**

That is not to ignore the potential financial benefits of PBR. Board Staff favours the model issued on October 4, 2010 by the United Kingdom's Office of Gas and Electricity Markets, the RIIO Model as a good paradigm for Ontario. The Concept Paper notes:

*It is indisputable that price cap regulation in the UK has delivered considerable benefits to British consumers. There have been substantial declines in prices for all regulated utility services in Britain (except water, where there has been substantial new investment to comply with EU water quality standards) since RPI-X controls took effect. The British "building block approach" to price cap regulation can create some incentives for firms to pursue efficiency gains and, over time, these efficiency gains have been distributed to customers in the form of price reductions<sup>22</sup>*

If a PBR is to be an effective quasi-market proxy it should be:

- Comprehensive - a comprehensive scheme should cover both capital investment and O and M. However, the markers for success of a publicly regulated monopoly may differ from those of a business. Given its comments on public interest discussed earlier in this paper, the NCO submits that a comprehensive scheme should incorporate environmental and socio-economic metrics
- Peer-based - incentives should be based on their performance as compared to other utilities on a level playing field. A level playing field in Ontario must have regard to the marked differences in area and population served by Ontario's distributors. The Concept Paper notes

*..Differences in customer mix and customer density between utilities... can significantly impact utility cost...<sup>23</sup>*

The RIIO Model is well suited to accommodate these requirements. It envisages a "balanced scorecard" to comparisons across companies measured relative to a normalised baseline. The balanced scorecard will measure inputs in in six categories: customer satisfaction; safety; reliability and availability; conditions for connection; environmental impact; and social obligations.

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<sup>22</sup> Concept Paper p. 139

<sup>23</sup> Concept Paper p. 113

**APPENDIX B****MITIGATION (EB-2010-0378)****Low-income consumers and rate mitigation**

The NCO was surprised to see that Board Staff's discussion paper seeks to put rate affordability by low-income consumers out of scope of this consultation, saying that the issue is best addressed through the Board's initiatives for low-income consumers relating to emergency financial assistance (EB-2008-0150) and customer service requirements (EB-2007-0722).

In the NCO's view, rate affordability by individuals who are low-income consumers is an essential element of any RRFE. Rate affordability and rate mitigation are not substantively dealt with by the emergency financial assistance offered by LEAP. Whether or not it is specifically dealt with by Board Staff's discussion paper, the NCO submits that rate affordability for low-income consumers is an issue within the wider purview of the RRFE.

It is clear from this consultation that consumers must anticipate substantial bill increases. In the case of low-income consumers it is very unlikely that those increases will be matched by increases in income.

As discussed in section 4.5 of this paper, rates that deprive a significant group of individuals of an adequate, reliable and affordable supply of electricity are not in the public interest and cannot properly be described as "just and reasonable".

Aboriginal and other low-income consumers may soon be faced with bills that have precisely this effect. In that circumstance, the Board should revisit its jurisdiction to implement rate affordability programs.

**Rate shock**

Board Staff's discussion paper focuses mainly on 'rate shock'. The NCO has the following comments.

The Board's conventional mechanisms to deal with rate shock have worked fairly well to date. The current threshold is a good "rule of thumb".

Section 4.2 of Board Staff's discussion paper summarizes some alternative mechanisms for rate shock smoothing that it characterises as "financing tools". These may be useful mechanisms that are best considered and, where appropriate, incentivized as part of network investment planning

As discussed above, the NCO does not consider rate smoothing to be an exhaustive treatment of the concept of mitigation.

Rate smoothing will not be able to accommodate bill increases that are inherently unaffordable. Trying to deal with such increases by introducing new mechanisms for rate smoothing is misconceived.

Consideration of the total bill is appropriate to the question of whether rates are affordable. A rate application may be an appropriate time to review whether rates are

affordable. This does not necessarily mean that the form and design of a rate affordability program should or would require a distributor to bear the cost of mitigation where its rate increase does not cause the total bill increase.

## **APPENDIX C**

### **REGIONAL PLANNING (EB-2011-0043)**

#### **First Nations: transmission project participation and remote community connection**

As discussed in paragraph 4.2 of this paper, a combination of its statutory objectives and government policy require the Board to

- Give significant weight to participation by First Nations in transmission projects crossing their lands or traditional territories.
- Treat as a priority the connection of remote communities to the grid to replace reliance on diesel generation

#### **Determination of Regions**

Board Staff's discussion paper notes several options for determining regions for planning purposes including

- Transmission asset functionality
- Regional municipal/county district boundaries
- A group of two or more distributors, where common infrastructure needs require
- IESO and/or the OPA's regional planning boundaries
- A hybrid approach, preferred by Board Staff, pre-designating broad regions with some internal flexibility

In essence a planning region is any geographical area or areas that can be identified as distinct in such a way as to merit separate planning. In that sense, each of these options has some merit.

So, for example, the NCO submits that First Nation lands and territories have common issues such as those identified in section 4.2 of this paper, that merit separate planning treatment.

Board Staff's discussion paper includes an option for determining regions under which development of a regional plan is triggered by the infrastructure needs of more than one distributor.

The NCO suggests that a more formalized version of this approach, mandating appropriate distributors to work together on their investment planning, would be a useful first step to implementing a policy led approach to consolidation of the industry discussed in Appendix A to this paper.

All of which is to say, that there is a need retain flexibility in identifying regions in order to deal with specific situations that merit separate planning as they arise.

The NCO agrees with Board Staff that regional planning should take into account relevant land use planning documents and policy at Provincial, regional and municipal level. Regional electricity planning should not presume or usurp the land use planning function. Wherever possible, transmitters and distributors should work closely with land use planning authorities to integrate electricity transmission/distribution planning with land use planning.

### **Reclassification of Certain Network Assets**

The NCO has no issue in principle with the proposals in paragraph 4.2.2 of Board Staff's discussion, subject to the following comments.

#### **Cost responsibility options for transmission line connection assets**

It appears from Board Staff's discussion paper that all of the proposed options involving pooling will result in shifts in cost burdens from faster growing to slower growing regions (e.g., from southern Ontario to northern Ontario regions).<sup>24</sup>

Before making any changes, the Board should investigate the likely impact of those changes to ensure that they do not shift cost responsibility from advantaged to disadvantaged communities.

Subject to that and consistent with its earlier comments concerning the public interest<sup>25</sup>, the NCO favours the pooling of costs across the Province for transmission line connection facilities where:

- The customer is a distributor
- The transmission line connection facility is consistent with current Provincial and municipal land use planning documents and policies
- There are appropriate and efficient controls to ensure prudent and consistent expenditure. Preferably those controls should be a combination of criteria to be set out in changes to the TSC and the Board's regulatory oversight. Otherwise, there should be a basic framework for expansion such as Hydro One's basic service option

## **APPENDIX D**

### **DISTRIBUTION NETWORK INVESTMENT PLANNING (EB-2010-0377)**

#### **Incentive based approach to information filings**

The NCO agrees with the following approaches identified in the Concept Paper<sup>26</sup>

*The OEB can condition approvals of cost of service applications on the quality and thoroughness of information provided by the applicant, as well as the*

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<sup>24</sup> Board Staff Discussion Paper - para 4.3.2

<sup>25</sup> Paragraph 4.1 of this Paper

<sup>26</sup> Appendix B: Mitigation (EB-2010-0378) - Concept Paper para. 5.8

*network's performance on certain cost and quality measures. In the UK, Ofgem has established a kind of fast-tracking of the applications of companies if their rate applications satisfy similar criteria. These changes are an important part of the new Revenue using Incentives to deliver Innovation and Outputs (RIIO) framework that Ofgem is implementing to refine and supplement the RPI-X approach that it has administered for the last 20 years.*

## **APPENDIX E**

### **ISSUES FOR COMMENT ATTACHED TO BOARD LETTER APRIL 5, 2012**

**EB-2010-0377, EB-2010-0378, EB-2010-0379,**

**EB-2011-0043 AND EB-2011-0004**

NCO has endeavoured to address these issues in its comments in this paper and appendices.