

IN THE MATTER OF sections 70 and 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B;

AND IN THE MATTER OF a Board-initiated proceeding to designate an electricity transmitter to undertake development work for a new electricity transmission line between Northeast and Northwest Ontario: the East-West Tie Line.

SUBMISSION OF NORTHWATCH PHASE I OF PROCEEDING TO DESIGNATE TRANSMITTER FOR EAST-WEST TIE LINE

I. BACKGROUND OF NORTHWATCH

Northwatch is a public interest organization and a coalition of environmental and social justice /social development organizations in northeastern Ontario.

Northwatch focuses on northeastern Ontario, specifically the six federal districts of Nipissing, Timiskaming, Cochrane, Sudbury, Manitoulin and Algoma, though Northwatch works at times with colleagues in northwestern Ontario on some issues, including electricity planning and nuclear waste siting concerns.

Northwatch has a strong interest in how the residents and regions of northeastern Ontario will or may be affected by the East-West Tie line. Specifically, in Phase I of this proceeding, Northwatch is concerned with how the designation of a transmitter to undertake development of the East-West Tie line may support and/or counter Northwatch's interests and objectives.

II. NORTHWATCH'S SUBMISSIONS

A. DECISION CRITERIA: ISSUES 1 TO 4

Northwatch agrees with Board Staff¹ that the purpose of the East-West Tie line is somewhat different than the purpose of transmission infrastructure originally envisioned for designation in the EB-2010-0059 Board Policy: Framework for

¹ Board Staff Submission dated April 24, 2012, pages 2 and 4.

Transmission Project Development Plans dated August 26, 2010 (the “Board Policy”).

Under the Board Policy, the process to designate a licensed transmitter to develop transmission network expansions or enabler lines facilitated entrance of new transmitters into Ontario and competition amongst the transmitters to drive economic efficiency.²

However, in his letter to the Board dated March 29, 2011, the then Minister of Energy urged the Board to create a process that emphasized a different purpose. The Minister asked the Board to create a process through which selection of the “most qualified and cost-effective transmission company” to undertake development of the East West Tie line would be facilitated.³

Notwithstanding the different purpose of the East-West Tie line to the purpose of envisioned under the Board Policy, the Minister of Energy suggested that the Board Policy “is well suited to apply to the East-West Tie project”⁴. Northwatch submits that, in keeping with the suggestion of the Minister above, the decision criteria originally identified in the Board Policy, namely, organization, technical capability, financial capacity, schedule, costs, landowner and other consultations and other factors, should all remain as general decision criteria.

Issue 1 - Additional Criteria

In addition, given that the purpose of the East-West Tie line, as articulated by Board Staff, is to maintain a reliable, cost-effective supply of electricity over the long term in Northwest Ontario⁵, Northwatch submits that the following additional criteria not expressly identified in the Board Policy are necessary. Northwatch respectfully requests that the Board add the criteria below to the list of original decision criteria.

² Board Policy, page 1.

³ Letter from then Minister of Energy, Brad Duguid, to then Chair of the Board, Cynthia Chaplin, dated March 29, 2011.

⁴ *Ibid.*

⁵ Board Staff Submission dated April 24, 2012, page 2.

Ability to Mitigate Environmental Impacts

Northwatch submits that each applicant should be evaluated based on:

- 1 experience identifying environmental issues and ecological values, including earth features, habitat, flora and fauna, when developing transmission infrastructure
- 2 proposed approach to identify environmental issues and ecological values, including earth features, habitat, flora and fauna, if chosen to develop the East-West Tie line
- 3 experience developing and applying measures to avoid or mitigate adverse impacts to the environment, when developing transmission infrastructure
- 4 proposed approach to develop and apply measures to avoid or mitigate adverse impacts to the environment, if chosen to develop the East-West Tie line.

Items 1 to 4 above could be summarized as the additional criterion of “ability to mitigate environmental impacts”.

Northwatch is aware that environmental impacts resulting from development of the East-West Tie line will be the subject of an Environmental Assessment during the Leave to Construct phase. However, Northwatch submits that an assessment of the transmitters’ abilities to measure and mitigate environmental impacts is substantively different and within the scope of this Phase I proceeding (and the subsequent Phase II designation of a transmitter proceeding).

Northwatch is also aware that the proposed criterion “ability to mitigate environmental impacts” may be included under one or more of the original decision criteria set out in the Board Policy. Northwatch notes that the Board Policy suggests that the original decision criteria were meant to “emphasize the Board’s priorities, not to be exclusive.”⁶

However, Northwatch is concerned that, if analysis of the abilities of the transmitters to mitigate environmental impacts is not expressly included as a criterion, such analysis will not be assigned a ranking of importance or weight (as

⁶ Board Policy, page 13.

is discussed further under Issues 5 and 6 below) by the Board or the intervenors. In short, the ability of the applicants to mitigate environmental impacts will be overlooked. Therefore, Northwatch requests that the Board add “ability to mitigate environmental impacts” as a decision criterion.

Ability to Mitigate Socio-Economic Impacts to Residents and Communities

Northwatch submits that each applicant should also be evaluated based on:

- 1 experience identifying social, economic and recreational values of both residents and communities, including First Nations and Métis residents and communities, when developing transmission infrastructure
- 2 proposed approach to identify social, economic and recreational values of both residents and communities, including First Nations and Métis residents and communities, if chosen to develop the East-West Tie line
- 3 experience developing and applying measures to avoid or mitigate adverse impacts to residents and communities, including First Nations and Métis residents and communities, when developing transmission infrastructure
- 4 proposed approach to develop and apply measures to avoid or mitigate social, economic and recreational impacts on both residents and communities, including First Nations and Métis residents and communities, if chosen to develop the East-West Tie line.

Items 1 to 4 above could be summarized as the additional criterion of “ability to mitigate socio-economic impacts to residents and communities”. Northwatch requests that the Board expressly add this as an additional criterion to the list of decision criteria to ensure that it will not be overlooked by the Board or intervenors.

Conclusion - Additional Criteria

The East-West Tie line project as proposed will have significant impacts on the environment and the local communities in northeastern and northwestern Ontario, including First Nations and Métis communities (such impacts include economic, social, recreational impacts and impacts to community values). While such impacts inevitably result from any transmission project, the impacts above

have the potential to be particularly significant in the North, where the East-West Tie line is proposed, given the:

- 1 fragility of the natural environment⁷
- 2 socio-economic vulnerability of northern Ontario residents and communities (vulnerability to impacts that may result from the East-West Tie line project).⁸

As noted earlier, Northwatch submits that the purpose of the East-West Tie line is to create a reliable, cost-effective supply of electricity to Northwest Ontario. The purpose is not to improve accessibility for and competition amongst transmitters, as was the purpose under the Board Policy for other transmission projects. Northwatch suggests that the most qualified and experienced transmitter that best meets all of the decision criteria proposed above (specifically, the original decision criteria and the additional criteria proposed by Northwatch) should be designated. The additional criteria proposed by Northwatch are integral to the determination of a qualified transmitter. The additional criteria proposed specifically address issues (environmental, socio-economic) not otherwise addressed by the original criteria, issues that are specific and fundamental to development of the East-West Tie line.

Northwatch submits that the additional criteria proposed allow the Board to better fulfill its objectives under section 1 of the *Ontario Energy Board Act, 1998* (the “OEB Act”). In particular, the objectives of protecting the interests of consumers, whether in regard to prices and electricity service, or promoting conservation and

⁷ Northern Ontario has generally thinner and more acidic soils, slower growth rates, and relatively lower levels of biodiversity than southern Ontario. Therefore, northern Ontario forests and other natural areas have slower recovery rates from environmental disturbances. Northwatch also notes that an East-West Tie corridor could potentially intrude into the Great Lakes Heritage Coastal area and habitat for endangered species, such as remnant caribou herds.

⁸ Due to a generally less diverse economy and current economic distress of communities dependent upon the forest sector as well as economic variability of the mineral sector, northern Ontario residents and communities are particularly vulnerable. Smaller communities with more depressed economies are also more affected by social disruption due to short or longer term changes in employment levels, and influxes of short term “commuting” work forces. The larger effect of these influences in northern communities is a result of both scale – smaller populations are more greatly impacted by fluctuations – and of relative scarcity of employment and procurement options.

demand management, are forefront for the Board to consider when carrying out its responsibilities. Northwatch submits that the additional criteria proposed serve to ensure that the interests of consumers in the North, whether First Nations, Métis, land users, and/or those with environmental interests are better protected when the Board designates a transmitter to undertake development of the East-West Tie line.

Northwatch also submits that the experience of the applicants and the proposed approaches of the applicants in the East-West Tie line project are necessary criteria as they relate to:

- ♦ identification of potentially affected land uses and land users
- ♦ development and application of measures to engage interested land users in project planning and implementation, including measures to ensure effective and transparent information sharing, decision-making and dispute resolution processes.

Northwatch submits that the above are covered within the existing criterion of “landowner and other consultations” and therefore the Board need not add the above as (an) additional decision criterion/criteria. Nevertheless, Northwatch requests that the Board and intervenors take the above into account when analyzing the transmitters’ applications in Phase II of the transmitter designation proceeding. Northwatch is certainly supportive of the Board revising the “landowner and other consultations” criterion to specifically include or refer to the bulleted items above. Northwatch submits that this may be accomplished by revising the name of this criterion to “ability to identify and engage land users and other parties”.

Issues 2-4

Northwatch, for the most part, concurs with Board Staff’s submissions regarding Issues 2, 3 and 4. Northwatch agrees with Board Staff that it is the Minister’s clear intention, as stated in his letter to the Board dated March 29, 2011, that the transmitters be evaluated based on the significance of Aboriginal participation to the delivery of the East-West Tie project and the transmitters’ abilities to carry out Aboriginal consultation. Northwatch also agrees that, while the Minister’s letter is not a Directive, the letter requires serious consideration from the Board (Issue 4).

Northwatch submits that First Nations and Métis participation (Issue 2) and ability of the transmitter to carry out First Nations and Métis consultation on behalf of the Crown (Issue 3) should be included as decision criteria.

Northwatch is not aware that the Crown has made any delegation of responsibility for consultation to the applicants. However, Northwatch differs from Board Staff on whether the Board should regard those transmitters that have engaged First Nations and Métis communities in their plans more favourably than those that have not. Northwatch submits that the Board should look to the following when assessing the transmitters' plans:

- 1 extent to which the transmitter has engaged First Nations and Métis communities regarding the transmitter's plan for development of the East-West Tie line project
- 2 extent to which the transmitter plans to engage First Nations and Métis communities regarding the transmitter's plan for development of the East-West Tie line project
- 3 experience and willingness of the transmitter to engage First Nations and Métis communities.

Northwatch notes that Board Staff's proposed filing requirements (at Appendix A of Board Staff's Submission) sufficiently encompass the above at sections 2 and 8.⁹ However, Northwatch specifically requests that the Board give particular attention to the above when evaluating applicants' plans.

B. DECISION CRITERIA: ISSUES 5 AND 6

Three-Step Approach

Northwatch agrees with Board Staff that the Board should choose the transmitter that best understands the challenges of the East-West Tie line project, has the best plan for meeting those challenges and has the most experience meeting

⁹ See Board Staff Submission, Appendix A, pages 3, 11 and 12.

similar challenges in the past. Northwatch submits that this is the first step that the Board should take in evaluating a transmitter's plan.¹⁰

Northwatch further submits that the Board should ensure that all criteria listed below are met by the transmitters to a certain threshold extent, this threshold being subject to the Board's discretion. This is the second step that the Board should take in evaluating a transmitter's plan.

Finally, Northwatch submits that the Board should assign weight to the decision criteria (including the additional criteria proposed by Northwatch) in the following order, from most weight to least:

- 1 ability to mitigate environmental impacts
- 2 land owner and other consultations (land owners, land users, First Nations and Métis communities)
- 3 ability to mitigate socio-economic impacts to residents and communities
- 4 technical capability
- 5 organization
- 6 financial capacity
- 7 costs
- 8 schedule.

Weighing the criteria is the third step that the Board should take in evaluating a transmitter's plan.

Designation of Runner-Up

In response to Board Staff's request, Northwatch submits that the Board should select one "runner-up" for designation, to allow for a back-up should the designated transmitter fail to bring an application for leave to construct.

¹⁰ See Board Staff Submission, page 8.

C. FILING REQUIREMENTS: ISSUES 7 AND 8

Northwatch adopts the revised filing requirements as proposed by Board Staff in Appendix A of Board Staff's submission, save and except for the proposed additions identified below. Northwatch expressly supports Board Staff's inclusion of increased requirements relating to First Nation and Métis participation and consultation in Board Staff's revised filing requirements. Northwatch also expressly supports subsections 5.1 and 8.3 of Board Staff's revised filing requirements as drafted.¹¹

Proposed Additions to Board Staff's Revised Filing Requirements

The Board Policy states:¹²

The Board notes that, while the environmental assessment is a separate process, the criteria listed were meant to emphasize the Board's priorities, not to be exclusive. The filing requirements include an allowance for "any other information that [the applicant] considers relevant to its plan." It is here that a transmitter could include information on local employment, community partnerships, innovative models, etc.

Northwatch emphasizes that the G-2010-0059 Filing Requirements for Transmission Project Development Plans (the "original filing requirements") referred to in the Board Policy above contemplate inclusion of information relating to environmental, socio-economic, community and land user impacts and experience of the transmitters to mitigate such impacts in their development plans.

Northwatch also notes that Board Staff have included similar language in their proposed filing requirements:¹³

In addition to the items listed in these Filing Requirements, the applicant may choose to file any other information that it considers relevant to its application for designation.

Northwatch submits that this catch-all phrase *permits* the applicants to include information relating to their ability to mitigate and their experience with

¹¹ This comment is in response to Board Staff's request for specific comment on the adequacy of subsections 5.1 and 8.3 as proposed in Board Staff's proposed filing requirements.

¹² Board Policy, page 13.

¹³ Board Staff Submission, Appendix A, page 2.

environmental, socio-economic, community and land user impacts, but does not *require* the applicants to include such information in their development plans.

Northwatch submits that if the Board accepts and incorporates Northwatch's proposed additional decision criteria (ability to mitigate environmental impacts, ability to mitigate socio-economic impacts to residents and communities, and ability to identify and engage land users and other parties), the Board should include such criteria in the applicants' filing requirements. This is in keeping with Board Staff's suggestion that, if the decision criteria change, the filing requirements will need to be modified.¹⁴

For the reasons noted earlier by Northwatch, Northwatch requests that the Board include Northwatch's proposed additional decision criteria in the filing requirements for the applicants.

Northwatch proposes that the Board include the following in Board Staff's proposed filing requirements (the subsections below indicate the logical place, by subsection, for such additions to be included):

5.8 A brief description of the applicant's:

- ◆ experience identifying environmental issues and ecological values, including earth features, habitat, flora and fauna, when developing transmission infrastructure
- ◆ proposed approach to identify environmental issues and ecological values, including earth features, habitat, flora and fauna, if chosen to develop the East-West Tie line
- ◆ experience developing and applying measures to avoid or mitigate adverse impacts to the environment, when developing transmission infrastructure
- ◆ proposed approach to develop and apply measures to avoid or mitigate adverse impacts to the environment, if chosen to develop the East-West Tie line.

¹⁴ See Board Staff Submission, page 10.

5.9 A description of how the applicant proposes to report progress and completion of the tasks listed at the second and fourth bullets in subsection 5.8 above to the Board.

5.10 A brief description of the applicant's:

- ◆ experience identifying social, economic and recreational values of both residents and communities, including First Nations and Métis residents and communities, when developing transmission infrastructure
- ◆ proposed approach to identify social, economic and recreational values of both residents and communities, including First Nations and Métis residents and communities, if chosen to develop the East-West Tie line
- ◆ experience developing and applying measures to avoid or mitigate adverse impacts to residents and communities, including First Nations and Métis residents and communities, when developing transmission infrastructure
- ◆ proposed approach to develop and apply measures to avoid or mitigate social, economic and recreational impacts on both residents and communities, including First Nations and Métis residents and communities, if chosen to develop the East-West Tie line.

5.11 A description of how the applicant proposes to report progress and completion of the tasks listed at the second and fourth bullets in subsection 5.10 above to the Board.

.....

8.6 A brief description of the applicant's experience, ability and proposed plan to:

- ◆ identify potentially affected land uses and land users
- ◆ develop and apply measures to engage interested land users in project planning and implementation, including measures to ensure effective and transparent information sharing, decision-making and dispute resolution processes.

Northwatch also requests that the Board revise the first paragraph under section 8 of Board Staff's proposed filing requirements to state:

The applicant must demonstrate the ability to conduct successful consultations with landowners, First Nations and Métis communities and other relevant parties. In addition, the designated transmitter will be required to satisfy environmental and other requirements that are **both within and** outside the jurisdiction of the Board. **It is**

within the Board's jurisdiction to evaluate the applicant's ability to mitigate environmental impacts and to evaluate the applicant's plan to mitigate environmental impacts to determine whether the applicant will be able to prepare a successful leave to construct application.

[The revised language proposed is in bold.]

D. OBLIGATIONS AND MILESTONES: ISSUES 9 TO 12

Northwatch largely agrees with the submissions of Board Staff regarding issues 9-12. Northwatch submits that the Board could set development milestones in Phase I of the proceeding and include these in setting filing requirements. As Board Staff suggests, this approach would give potential applicants more certainty regarding expectations.¹⁵

Northwatch also agrees with Board Staff that the Board should obtain input from the transmitters themselves as part of their applications for designation.

Specifically, Northwatch submits that the Board require the transmitters to file descriptions of how each proposes to report its progress regarding the various aspects of the development and construction of the East-West Tie line.

Northwatch diverges from Board Staff on one point. Board Staff submits that "the Board should not impose a development work plan and therefore method of work on the transmitters by setting specific milestones in the filing requirements."¹⁶

Northwatch submits that the Board should specifically request how the applicants propose to report on progress during the development and construction stages of the East-West Tie line project in the filing requirements. Such requests are broad and do not restrict the applicants. Instead, these requests allow the applicants to propose the process for reporting to the Board.

Subsections 5.9 and 5.11 as proposed by Northwatch above exemplify how the Board may ask the applicants to propose processes for reporting to the Board.

¹⁵ Board Staff Submission, page 12.

¹⁶ *Ibid.*

E. CONSEQUENCES OF DESIGNATION: ISSUES 13 TO 16

Northwatch agrees with the submissions of Board Staff regarding issues 13 to 16.

That stated, with respect to issue 14 and Board Staff's submission that the successful applicant for designation should be able to recover its costs incurred after the Phase I proceeding of preparing a plan for an application for designation, Northwatch's support is cautious and limited. Northwatch does not want to burden vulnerable northern Ontario residents and communities.

F. PROCESS: ISSUES 17 TO 23

Northwatch largely agrees with the submissions of Board Staff regarding issues 17-23, with the exception of those items set out below.

Northwatch submits that the adequacy of a written hearing versus an oral hearing will be determined largely by the effectiveness of the interrogatory process. For reasons of efficiency and resource conservation, Northwatch generally favours a written hearing for Phase II of the designation proceeding, but wishes to suggest that the Board take an approach which allows for an oral hearing if a sufficient number of parties identify this as being necessary.

Further, Northwatch shares Board staff's view that equal access by all designation applicants to information held by incumbent transmitters relevant to the development of the East-West Tie line is vital to the fairness of the Board's designation process. Northwatch submits that equal access by all parties, including intervenors, to information related to the designation process is also vital to the fairness of the Board's processes. Therefore, Northwatch requests that the Board ensure that all intervenors have equal access to information held by incumbent transmitters regarding the East-West Tie line.

All of which is respectfully submitted to the Board.