

Sent by Electronic Mail

May 5, 2009

Ontario Energy Board
2300 Yonge Street,
27th Floor
Toronto, ON M4P 1E4

Attention: Ms. Kirsten Walli

Dear Ms. Walli:

**Re: EB-2008-0003
Transmission Connection Cost Responsibility Review
National Chief's Office on Behalf of the Assembly of First Nations
Comments on Revised Notice of Proposal to Amend Transmission System
Code**

We are counsel for the National Chief's Office on behalf of the Assembly of First Nations (NCO), a registered participant in this proceeding.

We have, in previous correspondence dated August 11, 2008 and December 5, 2008, commented on the Board Staff Discussion Paper and the Board's Notice of Proposal to Amend the Transmission System Code.

This letter responds to the Board's request for comments on its Notice of Revised Proposal to Amend the Transmission System Code dated April 15, 2009 (Notice):

- 1 We note that the Board has elected not to adopt the comments proposals in our letter dated December 5, 2008 and reserve the NCO's position in relation to those matters.
- 2 The Amendments envisage a procedure in which the Board will conduct the process to designate a transmitter to construct the enabler line. In the absence of an applicant, the Board has reserved to itself the ability to designate a transmitter. Where aboriginal consultation is required, it should commence at the earliest opportunity. The Board's designation procedure and the procedure in leave to construct applications should therefore incorporate requirements for aboriginal consultation.
- 3 The Board's independence in proceedings relating to an enabler line may be compromised by its role in designating/appointing the transmitter to construct that enabler line. The Board should consider carefully whether it can carry out this role consistently with the independence required of it as a tribunal.



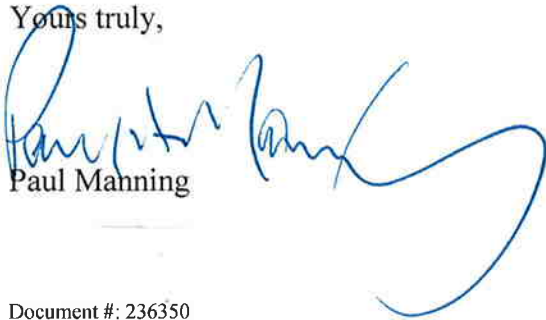
4 The Notice states that:

In the normal course, the Board anticipates that the transmitter that is designated to undertake development activities relating to an enabler facility will also be the transmitter that will eventually construct and own the enabler facility. However, the Board does not wish to preclude at the outset the possibility that this might not be the case.

This appears inconsistent with the Board's proposal to amend the definition of "enabler facility" in section 2.0.28 A of the code to read "... that is or will be constructed, owned and operated by a transmitter".

All of which is respectfully submitted.

Yours truly,



Paul Manning

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