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Sent by Courier and Electronic Mail

June 30, 2009

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

Attention: Ms. Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2009-0077
Proposed Amendments to the Distribution System Code
Submissions of the National Chief's Office on behalf of
the Assembly of First Nations

INTRODUCTION

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

The Assembly of First Nations is the national representative organization for all the First Nations in Canada. The Assembly represents the interests of 615 First Nations nationally, of which 134 are located in Ontario.

These are the NCO's submissions on the Board's proposed amendments to the Distribution System Code.

NCO SUBMISSIONS

There has been an historic discrimination against Aboriginal participation in Ontario's energy generation, transmission and distribution.

The *Green Energy and Green Economy Act, 2009 (GEA)* will add the following to the Board's statutory objectives

"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” [Emphasis Added]

The cost of developing a renewable energy project is high. The cost of connection to a distribution system, even on the basis proposed in the Board’s Notice of Proposal to Amend the Distribution System Code (Notice), represents a significant capital outlay that may frustrate or hinder Aboriginal participation.

Affirmative action in favour of Aboriginal participation in Ontario’s renewable energy generation, transmission and distribution is a policy of the Government of Ontario.

Consistent with that policy, the NCO submits that the Board should exempt renewable energy generation projects from all connection, expansion and enabling improvement costs where there is an Aboriginal or Aboriginal partnership proponent.

A similar exemption should apply to small capacity renewable energy projects. In a previous set of amendments to the Distribution System Code, the Board made special arrangements for connecting small generation facilities to the grid (EB-2008-0102). The Board did not deal with the cost of connection in that proceeding.

The NCO takes this opportunity to note, once again, that many Aboriginal communities are without electricity or have inadequate electricity supply. The Government, and consequently the Board and the Ontario Power Authority (OPA), should take the opportunity presented by its policies in the *GEA* to ensure that these communities are connected to the grid or provided with their own sustainable micro-grids.

Subject to these overriding considerations, the NCO is generally supportive of the comments made on behalf of Northwatch.

BACKGROUND AND ARGUMENT

The NCO is an intervenor in the Integrated Power System Plan (IPSP) proceeding (EB-2007-0707) and in the Transmission Connection Cost Responsibility Review (EB-2008-0003).

In those proceedings, the NCO argued that

- ♦ there is an inherent discrimination against Aboriginal participation in Ontario’s energy generation
- ♦ Aboriginal generators should be placed on a level playing field with other generators in relation to Ontario’s energy generation and transmission



- ♦ cost of and procedures for connection to transmission facilities are two facets of that discrimination
- ♦ the rectification of these issues will likely require affirmative action

Similarly, cost of and procedures for connection to distribution facilities are facets of that discrimination, requiring affirmative action.

THE BOARD'S STATUTORY OBJECTIVE TO IMPLEMENT GOVERNMENT POLICY

The Notice notes at paragraph B

Green Energy and Green Economy Act, 2009

The *Green Energy and Green Economy Act, 2009*, which received Royal Assent on May 14, 2009, will, when proclaimed, make a number of amendments to the [Ontario Energy Board] Act. Of those amendments, the following are relevant to the issue of cost responsibility associated with the connection of renewable generation facilities to a distribution system.

- i. The Board will have, as a new objective, 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” [Emphasis Added]

The Notice cites, at paragraph C, the following policy as its rationale for this proceeding

The amendments to the Act set out in the *Green Energy and Green Economy Act, 2009* make it clear that the connection of renewable energy generation facilities is a policy matter of priority for the Government. In order to facilitate the implementation of that policy as expeditiously as possible, the Board believes that it is desirable to move forward with its review of the assignment of cost responsibility associated with the connection of renewable generation facilities to distribution systems.

AFFIRMATIVE ACTION FOR ABORIGINAL RENEWABLE ENERGY GENERATORS

It is clear that affirmative action in favour of Aboriginal renewable energy generators is also a “policy of the Government”, so as to require



- ♦ provision of opportunities and resources for Aboriginal communities to build, own and operate their own renewable energy projects.¹
- ♦ consideration of the principle of Aboriginal partnership opportunities in energy generation and transmission²

SMALL GENERATORS

The Board has, in previous amendments to the Distribution System Code, made special arrangements for connecting small generation facilities (EB-2008-0102).

In that proceeding, the Board noted

Several stakeholders representing generators expressed concerns about the technical requirements imposed by distributors and the generally high costs of connection.

These comments do not relate specifically to the subject-matter of this consultation. The Board will remain mindful of these concerns and may address them at a later date if warranted.

ABORIGINAL CONSULTATION

This proceeding does not discharge or substitute for the duty of the Crown to consult and accommodate Aboriginal communities in respect of distribution facilities.

Without prejudice thereto, it is noted that the Board issued a draft Aboriginal Consultation Policy (EB-2007-0617) on June 18, 2007. It is understood that the draft policy is currently in abeyance.

The Board should consider finalising its Aboriginal Consultation Policy for use in relation to proposed enabler facilities.

Yours truly,

A handwritten signature in blue ink, appearing to read 'Paul Manning', is written over the typed name.

Paul Manning

cc: Mr. John Kim Bell, Bell & Bernard Limited
Document #: 250327

¹ See Ministry of Energy and Infrastructure Backgrounder to the *GEA*, attached.

² See a) Minister Smitherman's Supplemental Directive to the OPA in relation to the IPSP dated September 17, 2008, attached, and b) the price adder for Aboriginal Partnerships selling energy to the grid in the OPA's draft Feed in Tariff documents.

GREEN ENERGY ACT A BOLD PLAN FOR A GREEN ECONOMY

February 23, 2009

The proposed Green Energy Act (GEA) is a bold series of coordinated actions to enhance economic activity and reduce our impact on the climate with two equally important thrusts:

1. making it easier to bring renewable energy projects to life, and
2. fostering a culture of conservation by assisting homeowners, government, schools and industrial employers to transition to lower and more efficient energy use.

If passed, the Green Energy Act, along with significant amendments to 15 other statutes, such as the Electricity Act, the Environmental Protection Act and the Planning Act, would set Ontario on a course to a greener future. Following passage of the legislation, additional regulatory and policy decisions would also be required as the government moved forward with its vision for a greener economy and a culture of conservation.

Some key measures to help expand renewable energy, which would follow from passage of the proposed legislation, include:

- creating an attractive feed-in tariff regime – a pricing system for renewable energy – that will guarantee rates and help spark new investment in renewable energy generation, help increase investor confidence and access to financing for renewable energy projects
- establishing a streamlined approvals process, and provide service guarantees for renewable energy projects
- establishing a right to connect to the electricity grid for renewable energy projects
- appointing a Renewable Energy Facilitator to offer one-window assistance and support to project developers in order to facilitate project approvals
- streamlining approvals for large transmission projects
- establishing, for the first time, province-wide standards for renewable energy projects – like standardized setback requirements for wind farms. Approval processes for renewable energy projects would continue to ensure high safety and environmental standards
- helping local communities to build and operate their own renewable energy generating facilities, including support for community projects
- implementing a smart power grid in Ontario, making it easier to connect renewable energy generation to the system
- offering incentives for small scale renewables, such as zero or low interest loans to assist homeowners in financing the capital cost of residential renewables.

If passed, the GEA (and related policy initiatives) would also create the opportunity for consumers, public institutions and industry to better manage their energy use through a series of conservation initiatives, including:

- making energy efficiency a key purpose of Ontario's Building Code, establish a fixed review period of every five years to identify further opportunities to increase energy conservation and establish an advisory council to provide energy efficiency advice to the Minister of Municipal Affairs and Housing
- Greening Ontario government and broader public sector buildings/facilities, and establish Leadership in Energy and Environmental Design (LEED) Silver as the standard
- requiring the development of energy conservation plans throughout the broader public sector, including municipalities, universities, colleges, schools and hospitals
- establishing North American leading energy efficiency standards for household appliances, including efficient use of water. Energy STAR would be standard so household appliances sold in Ontario achieve continued reductions in energy use
- mandatory home energy audits prior to sale of homes
- making more energy-efficient products more available to more consumers
- establishing mandatory electricity conservation targets for local distribution companies and empowering them to better deliver conservation programs to consumers
- increasing productivity in the Ontario industrial sector through energy efficiency programs and demand management plans
- requiring targeted conservation measures to protect low-income Ontarians.

If passed, the GEA would create an estimated 50,000 jobs in its first three years. The economic benefits would be spread across the province through local involvement in energy production, and opportunities for First Nations and Métis communities.

Among the key economic measures that would result through passage of the GEA are:

- creating a feed-in tariff regime described above
- enabling domestic content rules for renewable energy projects, leading to increased job opportunities here at home
- providing opportunities for local communities, First Nations and Métis communities to build, own and operate their own renewable energy projects
- resources for municipalities and Aboriginal communities.

Minister of Energy
and Infrastructure

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September 17, 2008

Mr. Colin Andersen
Chief Executive Officer
Ontario Power Authority
1600-120 Adelaide Street West
Toronto ON M5H 1T1

Dear Mr. Andersen:

Re: Amendments to Supply Mix Directive Issued June 13, 2006

I write in my capacity as the Minister of Energy and Infrastructure pursuant to the authority granted to me under subsection 25.30(2) of the *Electricity Act, 1998*, in order to address more fully certain aspects of the Ontario Power Authority (OPA)'s Integrated Power System Plan (IPSP), which has been under development for several years, and which was submitted to the Ontario Energy Board (OEB) on August 29, 2007.

The Plan itself represents a considerable effort by the OPA to meet the province's demand and supply requirements for the next 20 years and we are grateful for the leadership efforts of the OPA. However, there are various aspects of the plan that have proven to be worthy of further consideration, given the change in circumstances since the development of the IPSP.

Therefore, I require that the OPA revisit its IPSP with a view to establishing new targets in the following areas, and in a manner consistent with further enhancing its current emphasis in these areas:

- The amount and diversity of renewable energy sources in the supply mix;
- The improvement of transmission capacity in the 'orange zones' in northern Ontario and other parts of the province that is limiting the development of new renewable energy supply;
- The potential of existing coal-fired assets to be converted to biomass;
- The availability of distributed generation;
- The potential for pumped storage to contribute to the energy supply during peak times; and
- The viability of accelerating the achievement of stated conservation targets, including a review of the deployment and utilization of Smart Meters.

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Additionally, we would ask that the OPA undertake an enhanced process of consultation with First Nations and Métis communities in light of potential duty to consult obligations. Furthermore, we would ask that the principle of Aboriginal partnership opportunities be considered in matters of both generation and transmission.

The Supply Mix Directive, dated June 13, 2006, and approved of by the Lieutenant-Governor in Council, shall in all other respects remain in full force and effect. In furtherance of this Directive, the OPA shall provide an amended and revised IPSP. It is expected that the revised IPSP would be provided to the OEB by the OPA no later than six (6) months from the date hereof. All other elements of the IPSP outside the specific issues noted above could continue during the six-month review period.

Sincerely,

A handwritten signature in black ink, appearing to read "George Smitherman". The signature is fluid and cursive, with the first name "George" written in a larger, more prominent script than the last name "Smitherman".

George Smitherman
Deputy Premier, Minister