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July 14, 2009

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

Attention: Ms. Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: Submission of the NCO
EB-2009-0152
The Regulatory Treatment of Infrastructure Investment for Ontario's Electricity Transmitters & Distribution

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 Board has kindly allowed an extension of time until today for the NCO to comment on the Board Staff discussion paper on infrastructure investment planning.

These are the NCO's submissions on the Board Staff Discussion Paper.

INTRODUCTION

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

The 134 First Nations of Ontario represented by the AFN are a substantial body of consumers (ratepayers) in relation to regulated services under the *Ontario Energy Board Act*.

The NCO has made submissions, relevant to this proceeding, in the following proceedings:

- the Integrated Power Supply Plan (IPSP) (EB-2007-0707)

- the Transmission Connection Cost Responsibility Review (EB-2008-0003)
- the Low Income Consumer Consultation (EB-2008-0150)
- the Proposed Amendments to the Distribution System Code proceeding (EB-2009-0077)

It is surprising to the NCO, given the submissions it has made in these proceedings and the developing government policy that acknowledges the right of Aboriginal peoples to participate in Ontario's energy industry, that none of the matters raised in these submissions are even touched upon in the Board Staff Discussion Paper.

The Board Staff Discussion Paper endeavours to anticipate and accommodate government policy and priorities for infrastructure investment. To be consistent, the Board must also anticipate and accommodate the matters raised in these submissions.

THREE PERSPECTIVES

The NCO has confined its submissions to the following three perspectives relevant to First Nations in Ontario:

1 First Nations as generators

2 First Nations as transmitters and distributors

3 First Nations as consumers

FIRST NATIONS AS GENERATORS

In its submissions in proceedings

- EB-2008-0003 (Transmission Connection Cost Responsibility Review) and
- EB-2009-0077 (Proposed Amendments to the Distribution System Code)

the NCO argued for the capital cost allocation options for connection to transmission and distribution infrastructure that would throw least capital cost upon Aboriginal proponents of renewable energy projects.

The NCO's submission in EB-2009-0077, dated June 30, 2009, referenced the new statutory objective of the Board 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]

That objective will come into effect upon proclamation of the recently enacted *Green Energy and Green Economy Act, 2009*.

For the reasons set out in that submission[1], affirmative action in favour of Aboriginal participation in Ontario's renewable energy generation, transmission and distribution is a policy of the government of Ontario", so as to require

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

Consistent with that policy, the NCO submits that the Board should exempt Aboriginal renewable energy generation projects from responsibility for the costs of connection to and the costs of expansion, extension and enabling improvement of transmission and distribution infrastructure.

FIRST NATIONS AS TRANSMITTERS AND DISTRIBUTORS

Similarly, government policy, when read in conjunction with the Board's new statutory objective, mandates affirmative action in favour of aboriginal transmitters and distributors.

The *Green Energy and Green Economy Act, 2009* will introduce the following provision into the *Electricity Act, 1998*

> Direction re programs for Aboriginal participation
>
> (4.5) The Minister may direct the OPA to establish measures to facilitate the participation of Aboriginal peoples in the development of renewable energy generation facilities, transmission systems and distribution systems

[1] Copy attached.

and such measures may include programs or funding for, or associated with, Aboriginal participation in the development of such facilities or systems.

Although action under this section is contingent on Ministerial directive to the OPA, it is a clear indication of government policy to facilitate, by funding and other means, participation of Aboriginal peoples in the development, not only of renewable energy generation, but also of transmission and distribution systems.

As such, it informs the Board's new statutory objective. The OPA is proposing a price adder in its Feed in Tariff for Aboriginal renewable energy generation projects. The NCO submits that the Board should introduce a price adder or other additional financial incentive for Aboriginal transmission and distribution investment.

FIRST NATONS AS CONSUMERS

ABORIGINAL COMMUNITIES ON-GRID

Aboriginal peoples are disproportionately represented among low-income energy consumers. The NCO made submissions on this issue in the Low Income Consumer Consultation (EB-2008-0150).

The *Green Energy and Green Economy Act, 2009* will introduce the following provision into the *Ontario Energy Board Act*

> Cost recovery, connecting generation facilities
>
> 79.1 (1) The Board, in approving just and reasonable rates for a distributor that incurs costs to make an eligible investment for the purpose of connecting or enabling the connection of a qualifying generation facility to its distribution system, shall provide rate protection for prescribed consumers or classes of consumers in the distributor's service area by reducing the rates that would otherwise apply in accordance with the prescribed rules. (Emphasis Added)

The NCO submits that the Board should seek the Minister's direction, before amending the Transmission System Code, the Distribution System Code or otherwise implementing the Board Staff Discussion Paper, on the introduction of rate protection under this section for Aboriginal consumers in particular and low-income consumers in general.

ABORIGINAL COMMUNITIES OFF-GRID

The NCO has noted in

- the Transmission Connection Cost Responsibility Review (EB-2008-0003) and
- the Proposed Amendments to the Distribution System Code proceeding (EB-2009-0077

that there are Aboriginal communities that are not served by the grid. Electricity is provided to these communities mostly by diesel generators. Not only is this a costly solution but it is contrary to government policy to phase out fossil fuel-fired energy generation.

The NCO submits that the Board should urgently consider, as part of its review, the introduction of a program to allow the extension of the grid and/or the introduction of a

[redacted]

Yours truly,

Paul Manning

cc:

[redacted]

- 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 transmission[2]

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,

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) Minster 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.

Ontario

BACKGROUNDER

Ministry of Energy and Infrastructure

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.

Amy Tang, Minister's Office, 416-327-6747
Anne Smith, Communications Branch, 416-325-1810

Minister of Energy
and Infrastructure

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Ontario

September 17, 2008

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

Dear Mr. Andersen: Colin

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.

.../cont'd

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,

George Smitherman

George Smitherman
Deputy Premier, Minister