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VIA MAIL AND EMAIL

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
26th Floor
2300 Yonge Street
Toronto, ON
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Dear Ms. Walli:

Re: Transmission Project Development Planning
Board File Number: EB-2010-0059

Vulnerable Energy Consumers Coalition - Comments

As Counsel to the Vulnerable Energy Consumers Coalition (VECC) I am writing, per the Board's Letter of April 19th, to provide VECC's comments on the above issue. The comments are organized according to the sections of the Staff Discussion Paper and include both observations on the Discussion Paper as well as responses to the individual issues noted.

Section 1.0 - Introduction

Legislative and Statutory Framework

The GEA amendments to the OEB Act referenced on pages 3-4 do not make any distinction between "development plans" and "construction plans". However, section 70(2.1)(3) requires a licensee to expand its transmission system in accordance with a "plan" that has been approved by the Board. In reality, this obligation can only apply to "construction plans". The development stage of a project involves consultation, route planning, engineering and site/environmental studies to choose among options as well as to prepare a leave to construct application. As result, the information available at the time the development plan

is being established is generally not sufficient to support either leave to construct approval or inclusion of the actual assets that will be constructed in rate base.

The necessary information to support these approvals will only be available after the development stage/plan has been completed. The Board should make it clear that approval of a development plan does not trigger an obligation under section 70(2.1)3 to construct facilities. Similarly, approval of the development plan does not provide authorization to include the construction costs of the facilities in rates.

Definitions

The definitions section describes two phases of the transmission project development process. However, for completeness, transmission project development is really a three stage process:

1. Needs Identification Phase, including the identification of a system need (e.g., equipment, areas of the system or business processes that do not perform adequately or do not meet standards/regulatory/legal requirements), an initial assessment of alternatives based on established planning criteria and an identification of viable alternatives for further consideration. While cost is likely to be one of the criteria it is understood that cost estimates prepared at this stage will have greater uncertainty than those prepared in the next stage.
2. Development Phase, including the evaluation of remaining alternatives (and options for implementing them), the preparation of detailed cost estimates, consultation with affected stakeholders (e.g. land owners, First Nations, etc.) and the completion of a detailed Project Plan, including a risk management plan. This phase will culminate with the application for necessary regulatory approvals (e.g. s. 92) and/or requests for inclusion of the associated costs in a future test year's rates.
3. Implementation/Construction Phase, including the work to build the necessary assets (e.g. project management, engineering, procurement and construction work) as described in the Project Plan.

Section 2 – The OPA and Transmission Planning

This section identifies four broad categories of transmission investment that are likely to be identified through the OPA's Economic Connection Test (ECT) assessment process. The Paper then goes on to propose that two of them (i.e., Enabler Facilities and Network Expansion) would be subject to the designation and transmission development plan approval process described in Section 3 of the Paper.

While not explicitly stated in the Paper, VECC assumes that the split is based on the fact that the other two categories of investment (Capacity Enhancements and Network Reinforcement) directly involve existing transmission assets and

therefore are appropriately undertaken by the current transmission asset owner. In contrast, there are real opportunities for Enabler Facilities and Network Expansion to be undertaken by a transmission owner/operator other than the one who owns the facilities the new assets will be connected to.

The Paper notes (page 6) that the development (and eventual construction) of Capacity Enhancements and Network Reinforcements will be addressed through the normal rate-setting and, where applicable, leave to construct processes. They will not be subject to the designation and plan approval process described in Section 3 of the Paper. However, in VECC's view, where such projects are undertaken to accommodate the connection of renewable energy generation facilities they would still form part of the transmitter's "plan" as required under section 70(2.1)2 of the Act.

Section 3 notes (page 7) that "a substantive evaluation of the need for any particular enabler or transmission network facility would then follow at the leave to construct stage". VECC assumes that the same would apply for Capacity Enhancements and Network Reinforcements and that a substantive evaluation of the "need" would also occur for these types of facilities at the leave to construct stage. Where a leave to construct is not required, VECC assumes that the review would occur when approval is sought to include the cost the facilities in rates.

In VECC's submission the Board should make it clear that for Capacity Enhancements and Network Reinforcements, the funding of development work is a matter to be considered as part of the rate setting process. Furthermore, while the OPA's ECT may be sufficient to support proceeding to the "development" stage something more substantive will be required for purposes of leave to construct approval and rate setting. Such an approach would be comparable to what the Paper proposes in Section 3 for Enabler Facilities and Network Expansion projects.

Section 3 – A Proposed Framework for the Development of Enabler Facilities and Network Expansion Projects

General Approach

The Paper anticipates (page 6) that "virtually all projects that will be subject to the proposed designation and plan approval process ... will be projects for which a leave to construct is required" and the proposed process is predicated on the assumption that this will be the case. In VECC's view this is a reasonable assumption. However, the Paper should make it clear that, if this is not the case, when the substantive review of "need" will occur. As discussed above, if there is no "leave to construct" approval required, VECC's view is that this review should occur at the time approval is sought to include the construction costs of the project in rates.

The Paper also anticipates (page 7) that the OPA will conduct and document the ECT in a manner that will make the outcome sufficiently robust for project development purposes. This may be a reasonable assumption to make at this point in time. However, there is currently no detailed information available as to precisely what the OPA's assessment process will entail and/or what information will be published upon completion. VECC submits that Board Staff should work with the OPA to ensure the adequacy of the ECT outcome's documentation. Indeed, in VECC's view, it may be necessary for the first "designation process" to consider whether the documentation is adequate. In the alternative, once the results of the first ECT process are released, the Board could hold a brief consultation process to consider the adequacy of the information available as a basis for supporting (and ratepayers funding) project development initiatives.

The Paper states (page 8) that "development costs represent a relatively small portion of total project costs". The level of development costs will be driven by the number of options¹ the proponent expects to assess, the level of consultation to be undertaken (including potential capacity funding for certain stakeholders), and the precision required for the final cost estimates. In order to ensure a fair competitive tendering process, the Board will have to clearly set out its expectations and ensure that prospective proponents clearly document their planning assumptions. Otherwise, it will not be possible to critically compare the "bids" of competing proponents.

Process to Designate a Transmitter

In VECC's view the OPA's "ECT report" (page 9) must include more than just its conclusions regarding the need for network expansions and enabler facilities. It must also include details regarding the expected use (timing and capacity) for the facilities and any uncertainty regarding the eventual use of the facilities, its assessment regarding the anticipated costs and resulting economics of the facilities and any assessments regarding notable issues to be managed in the development and construction of the facilities. The Board should make its expectations clear and Board Staff should work with the OPA to ensure they are met.

The Paper requests (page 10) comments on the issue of whether new entrants should be licensed as transmitters as a condition of participation in the designation process. VECC notes that the information needed to support the application for a transmitter's licence is very similar to that required to satisfy the proposed designation criteria (pages 10-13). As a result, VECC does not see why an application for a transmitter's licence could not be considered

¹ Even in cases where the "need" for a particular transmission line is identified there may be a need to explore various options in terms of alternative routes, alternative types of construction (e.g. pole configuration), alternative voltages, etc. Also, the need to consider different options may arise during the consultation process as specific stakeholder issues are identified.

simultaneously with an application for project development designation. At the end of the process, only licensed transmitters should be designated as project developers. However, there is no need to limit the pool of potential competitors/applicants to those parties who currently hold a licence. It should be sufficient to have a licence application pending (i.e. submitted and awaiting approval) at the time the application for designation is made.

The Paper also requests comments (page 10) on how much time should be given for filing transmission project development plans after notice of the designation process has been given. In all likelihood, the OPA will have been working with incumbent transmitters (e.g. Hydro One Networks) in the development of its ECT Report. Clearly, such transmitters will have foreknowledge of the ECT report and require less time to prepare their transmission project development plans.

At this time, VECC is not in a position to offer a specific opinion (i.e., # of months) on this issue. However, if the process is to be truly “competitive” then sufficient time must be allowed to permit parties who have not been working with the OPA to prepare their proposed plans. VECC also notes that the three months often allowed for the Qualification to Tender is just the first stage in the tendering process and only identifies those parties who will be asked to submit detailed proposals on specific projects.

Decision Criteria and Process

The Organization and Experience criteria do not include any specific reference to team experience in identifying and managing environmental and socio-economic issues. This goes beyond simply managing required provincial and federal environmental regulatory processes to include identifying and managing associated land use, aesthetic, socio-economic and community impacts.

- *Schedule*

It may be premature to expect applicants to be able to provide a detailed schedule regarding the construction of the proposed facilities. One of the purposes of the development process is to more clearly define the project and the specific issues that need to be managed. Management of these issues could well affect the definition of the construction stages as well as their timing. What would be reasonable to expect is a broad schedule outlining when construction is anticipated to start and when the major components are expected to be in-service.

VECC is uncertain what the intent of the Paper is with respect to the discussion regarding the prioritization of projects within the “plan”. If the ECT identifies a requirement for more than one transmission project to facilitate the development of renewable generation within a specific area, the projects are inter-related and

an Applicant is proposing to do development work on more than one of projects, then it is important for the Board to understand how the Applicant sees the various projects as being inter-related and prioritized. Conversely, if the Applicant is not proposing to undertake the development work for all of the (inter-related projects), it will be necessary for the Applicant to make clear its planning assumptions/requirements regarding the timing of the other transmission projects.

However, if an Applicant is applying to undertake the development of two unrelated transmission projects (e.g., projects in totally different parts of the province) then VECC does not understand the need for the Applicant to indicate how it prioritizes the projects. In such cases, if it is proposing to undertake multiple development projects the Applicant should be able to demonstrate a capability of completing all of them within the proposed schedule.

Alternatively, is it the intent of the Paper to request that an Applicant proposing to undertake more than one transmission development project indicate its priority/preference as to which projects it would undertake assuming circumstances changed and it did not have the capacity to undertake them all? In this regard, VECC assumes that the Applicant considers that it currently has the capacity to undertake all the projects in its Application otherwise it would not have included them.

- *Costs*

In order for the Board to compare the anticipated costs submitted by various Applicants it will be necessary of the applications to include details regarding:

- The anticipated scope of the development work with supporting budget breakdown
- The anticipated scope for the actual construction project with supporting budget breakdown
- The inflation assumptions used.
- The discount rates used in any net present value analysis
- The contingency costs incorporate in the estimates
- The overhead costs (if any) included in the estimates.

- *Financing*

What is of particular importance is whether or not the proponent has the financial capacity to undertake the project and whether the resulting cost of capital will vary from what would otherwise “normally” be allowed by the Board in terms a debt/equity structure, borrowing rates and ROE for transmitters. Issues that could affect the cost of capital include the anticipated need to request alternative regulatory treatment of the projects costs (as noted in the Paper). Other issues include the credit rating of the proponent and the sources of debt financing available to the applicant.

- *Land Owner and Other Consultations*

Reference is made to “required” consultations. There is a difference between consultations that are required from a legal perspective, what may be required from a regulatory perspective to facilitate the leave to construct approval and what is required in order to ensure general public acceptance. There are also various definitions of what constitutes “consultation” ranging from simply informing stakeholders to seeking consensus on the preferred option. The Applicant should be required to set out its plans and expectations regarding consultation and identify why the proposed scope for consultations is both necessary and sufficient.

The Paper requests comments on whether the proposed decision criteria are appropriate, whether the criteria should be weighted and, if so, which criteria are more important. With respect to the proposed decision criteria, there should be an Impacts criterion that will enable the Board to evaluate the capability of the Applicant to identify and manage the impacts of the proposed project. These impacts would include not only environmental impacts (e.g. aquatic, vegetation and wildlife resources) but also land use, socio-economic & community, aesthetic and archaeological impacts. This is somewhat related to consultation but more proactive (i.e., identification and proposals for mitigation of issues occur prior to public consultation). The Board may also wish to consider a Risk Management criterion that would enable the Board to evaluate the manner in which the transmitter intends to identify and manage/mitigate risks to the timely and cost effective completion of the project.

In VECC’s view it is not practical to establish pre-determined “weights” for the various criteria. The relative importance of the criteria is likely to be project specific and depend on where the risks are perceived to be the greatest. There may be projects where technical capability is relatively more important due to factors such as the terrain involved while for other projects satisfactory consultation with First Nations or landowners may be deemed to be the critical risk factor for the project. However, in VECC’s view, there are certain criteria such as Organization/Experience, Technical Capability and Capacity (Financial and Resource-wise) to undertake the project, where there is a minimum requirement to qualify (i.e., Applicants either pass/fail).

Implications of Plan Approval

Comments are sought as to whether the Staff’s proposals regarding the implications of plan approval are reasonable. In general VECC believes they are with the following proviso. The Paper suggests that the Board could, in its decision approving a designated transmitter and the transmission project development plan, also state that the budgeted amount for development was found to be a prudent expense for future cost recovery. VECC sees this as

reasonable provided there is a sufficiently detailed work plan and budget such that there is no question (after the fact) as to what the required tasks were and the budget for each. This will prevent future disagreements as to whether the scope of the development work actually undertaken was consistent with the approved budget. Also, in the event that the OPA were to determine that the project was not required or that a material change in scope was needed, it would allow the Board to determine what costs (for work already completed) should be recoverable by the Applicant.

Designating Multiple Transmitters

While the circumstances are likely to be rare, VECC can conceive of instances where it may be appropriate to designate two transmitters to develop the same project. For example if the new facilities are needed in an area where there are two incumbent transmission owners and the OPA has been unable to establish that connection to one is clearly preferred. As there may be a natural bias for each transmitter to “prefer” the option connecting to its facilities – there could be merit in accepting proposals from both. Alternatively, the Board could accept a 3rd party proposal (if there was one) with the view that it would equally consider the merits of both options. Another example could be where the options involve significantly different technologies (e.g. overland vs. underwater) or designs (pole structure, voltage, etc.) and no single proponent has the necessary technical experience with all the options. Alternatively, existing transmitters seeking designation may have assets that are materially different such that leveraging their experience/synergies would lead to materially different cost estimates for each option. However, the potential benefits of designating more than one transmitter would have to be clearly weighed against not only the increased costs but also the fact that both designated transmitters would need to undertake consultation activities with relevant stakeholders, who themselves will likely have limited time and resources to devote to the process.

Hearing for Leave to Construct

The Paper suggests (page 16) that the OPA will be responsible for supporting the characteristics, inputs, construction and application of the ECT and that it is preferable that it do so once – rather than at every leave to construct hearing. In VECC’s view it is important to distinguish between the ECT methodology which will presumably be common to the assessment of all projects and the input assumptions used which will be specific to a particular project. VECC agrees that the appropriateness of the methodology should only need to be reviewed once. Absent an IPSP type proceeding, this will likely occur as a part of the first proceeding dealing with the designation of transmitters for purpose of project development. However, in VECC’s view, the specific input assumptions used by the ECT methodology to assess the need for a particular transmission project will need to be assessed as part of the Designation proceeding. Furthermore, given the passage of time during the development phase of the project there will likely

be a requirement, at the Leave to Construct phase, to assess whether the input assumptions used for the initial ECT are still valid as part of the substantive need evaluation.

Hearing for Rate Recovery

VECC generally agrees with the points raised in this section of the Paper. The discussion regarding the potential for change in the “need” of a particular project highlights the need for the OPA to provide regular updates regarding the continued requirement for ECT-identified transmission projects and for the Board to attach milestones and reporting requirements to each Plan approval.

Proposed Filing Requirements

In VECC's view a distinction needs to be made between a) a transmitter's project development plan and b) an Application to the Board for designation as the “developer” for certain transmission projects. A transmitter's project development plan for projects that accommodate the connection of renewable energy generation projects will form part of the overall “plan” as required under section 70(2.1)(2) of the Act. The other part of the “plan” as required under the Act would set out the transmitter's plans for the construction (as opposed to the development) of new facilities. The project development plan could also include development projects related to Capacity Enhancements and Network Reinforcement (neither of which are subject to the designation process); projects for which the transmitter has already received approval from the Board to be the designated developer and projects where it is seeking to be designated as the developer.

In contrast, an Application is in response to a Board Notice requesting development proposals for specific transmission projects as identified in a particular ECT Report completed by the OPA. Clearly a transmitter's development plan for accommodating renewable generation facilities (and indeed its overall transmission development and construction plan) should be part of the Application as it provides relevant information related to the capability and capacity of a transmitter as well as signifying potential areas for synergy and efficiency.

However, there is a difference between the role of the Board depending on the context of the proceeding initiated by such a Notice: a) approving a transmitter as the developer for certain projects and, thereby, authorizing their inclusion in the transmitter's overall development plan, versus b) approving the transmitter's overall transmission development plan. In VECC's view, the latter approval could significantly increase the scope of the proceeding to the consideration of projects and issues beyond those identified in the OPA's ECT. Indeed, if the Notice indicates that the purpose of the proceeding is to designate one or more

“developers” for specific transmission projects then the proceeding is not properly constituted to deal with the approval of a transmitter’s overall development plan.

Given this distinction, VECC’s following comments focus on the appropriateness of the filing requirements as they pertain to the designation of a transmitter for purposes of undertaking the development work associated with specific transmission projects.

Overview of Plan and Applicant

As noted earlier, in VECC’s view, it is sufficient that the Applicant have submitted an application to be a licensed transmitter prior to the date of filing.

The Application should include an outline of the transmitter’s planned development and construction activities in Ontario. Ostensibly, the portion of this plan aimed at expansion and/or reinforcement of the licensee’s system to accommodate the connection of renewable generation would meet its obligations under section 70(2.1)(2) of the Act. The purpose of this outline would be to not only demonstrate the transmitter’s experience and commitment to Ontario but to also to indicate the extent to which its resources are already committed. The Applicant should be required to demonstrate that it has the resource capability (financial, engineering, construction resources, etc.) to complete all of its planned activities in Ontario.

Transmission Project(s)

Project Identification

It should be recognized that some of the items listed (e.g. structure types, right-of-way width, etc.) may be the subject of further study as part of the development work and therefore at the “application stage” the transmitter will not be in a position to provide specifics. In other cases, the development work may lead to the introduction/consideration of alternatives not identified at the application stage. Where the transmitter anticipates different alternatives/options will be explored as part of the development work, this should be noted in the Application.

Costs

The estimated budget for the development of the project should be broken down according to the major milestones and activities identified in the project development schedule.

As discussed above, at the “application stage” there is likely to be considerable uncertainty regarding the estimated construction cost of the project. It is only upon completion of the development phase that a quality cost estimate can be

expected. Unless there is some specific reason for concern, little weight should be given to differences in cost of construction estimates unless they are significant (e.g. > 25%).

Additional comments regarding the need to clearly document the assumptions underlying the cost estimates are provided above under VECC's discussion of Section 3.

Land Owner and Other Consultations

The consultation plan for the project should include any plans for providing capacity funding for parties to participate in the consultation process and such funding should form part of the overall project development budget.

Other Filing Requirements

As noted earlier, VECC has suggested that two additional criteria be added: Impacts and Risk Management.

To address Impacts the Applicant should provide, as part of the Application:

- Its initial assessment of the impacts that the project is likely to cause
- Its plan for further assessing the potential impacts of the project
- Its approach to managing known impacts and those that may be developed.

With respect to Risk Management, the Applicant should provide:

- Any preliminary assessments regarding the risk factors that could impact the timely and cost effective completion of project
- Its plans (as part of the development work) for further identifying risks and mitigating them during the development phase of the project as well as its plans for completing a risk management plan as part of the leave to construct application.

Thank you for the opportunity to comment. If any clarification is required regarding the comments please contact either Bill Harper (416-348-0193) or myself (416-767-1666).

Yours truly,

Michael Buonaguro
Counsel for VECC