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June 3, 2010

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Our File No. 101340

Kirsten Walli
Board Secretary
Ontario Energy Board
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Dear Ms. Walli:

**Re: Transmission Project Development Planning - Board File No.: EB-2010-0059 ("TPDP") –
Submissions of Lake Huron Anishinabek Transmission Co. Inc. ("LHATC")**

1. Introduction

In its Supplemental Decision on Cost Eligibility, dated May 27, 2010, in which the Ontario Energy Board determined LHATC to be eligible for costs, it stated:

"The Board believes that the LHATC is in a position to bring a unique perspective to this consultation (emphasis added) that is relevant to that part of the Board's mandate that is the subject of the consultation".

LHATC is a First Nations owned corporation, incorporated under the Ontario Business Corporations Act, which represents the nineteen Robinson-Huron Treaty First Nations. The Company has been created by these First Nations to own and operate electricity transmission projects in their traditional territories. The president of the company is John Beaucage, former Grand Chief of the Union of Ontario Indians.

LHATC is of the view that transmission projects are excellent potential investments for First Nations in that they are long lasting, require less equity than many other projects of comparable size, produce a steady, reasonably predictable income, and, with First Nations oversight and management, will ensure the integrity and protection of the traditional territories of the First Nations which the project(s) will traverse.

As noted in the Staff Discussion Paper (page 3, paragraph 5), the Board's new objective specific to renewable energy, for which the transmission support is the subject of this

consultation, is 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".

One of those policies is set out in the Electricity Act. The Electricity Act, as amended by The Green Energy and Green Economy Act, 2009, permits the Minister to 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, and such programs, or funding for, or associated with aboriginal participation in the development of such facilities or systems". In addition, the Ontario Government, through the Ministry of Finance, has established the Aboriginal Loan Guarantee Program, to facilitate First Nations capital investment in such projects.

In designing a process to designate transmitters for the various transmission enabler and expansion projects required to support the expansion of renewable energy projects in Ontario, the Board needs to take into account the opportunities such a process will afford for First Nations to participate in the development, ownership, and management of the required transmission projects, in particular, those projects which will traverse First Nations' traditional territories.

LHATC will address certain of the questions in which the Board seeks comment, and raises a few additional points within this overall policy context. For convenience, we have reproduced the text of the questions, which we intend to address from the Discussion Paper. We will intersperse comments on other issues as required to maintain an orderly presentation of ideas.

2. Should new entrants be required to be licensed as transmitters as a condition of participation in a designation process?

No, they should not, for several reasons. Some companies may wish to get a transmission licence prior to applying for designation for strategic reasons, but they should not be compelled to do so.

As the Board noted, under the current law, a licence is required to own and operate a transmission system, and as such, is only required when a facility is constructed and energized. There is no compelling reason to change that.

To begin with, as envisaged in the Staff Discussion Paper, the transmission licensing process would be an expensive process, and one that is duplicative of the filing requirements for the designation process. New companies, like LHATC, do not yet have the resources necessary to develop the team and make the financial arrangements, both private and public, necessary to obtain a transmission licence. However, it will be acquiring these resources over the next twelve to eighteen months, prior to the designation proceeding(s). With respect to funding, it appears that the Ontario Power Authority's "soft costs" program, The Aboriginal Renewable Energy Fund, does not,

oddly enough, provide funding for initial feasibility studies (technical, economic, environmental, legal) for distribution or transmission projects, while the Government's Aboriginal Loan Guarantee Program provides assistance with capital costs, but not the upfront economic, technical, regulatory, and legal assessments.

Second, the degree of financial and technical capacity the Board staff expects to see demonstrated in a licence application is not clear, nor is the notion of being qualified and committed to doing business in Ontario. One is qualified to do business in Ontario by incorporating a company under the Ontario Business Corporation Act (or the Federal Business Corporation Act) and one would not enter the daunting and complex designation process without being committed to doing business in Ontario.

Third, the rather vague nature of the above standard would allow another party to seek to restrict competition in the transmission sector, by objecting to the grant of a licence to a new corporation on the grounds that applicant cannot provide all the information required for the Application for Electricity Transmission Licence, effectively giving it "two kicks at the can". In the event the Board were to require a company to obtain a transmission licence, as a precondition to filing a designation application, it must ensure that the proceedings are not contentious. A licence application proceeding should not be allowed to be a barrier to entry.

Fourth, there are more efficient alternatives. The prior requirement for a transmission licence would place an extra hurdle and an unneeded distraction for interested companies, which could stretch out and delay the designation process, particularly if the licence proceeding became contentious. Since all of the information required to apply for a transmission licence would also be required to become a designated transmitter (and much more besides), a more efficient process would be for the Board to combine the two processes into one, in respect of those applicants for designation that are not already licensed transmitters in Ontario, and, where necessary, issue the transmission licence along with the designated transmitter status. Given the importance of timely construction of transmission support for the Government's renewable energy objectives, it is important to streamline the process.

In this connection, the OPA has indicated that Economic Connection Test process will commence in August, and be completed by the end of the first quarter of 2011. The Board estimates that the designation and plan approval hearing would take from four to nine months from the time it receives applications for designation. It proposes three months' preparation time for applicants following release of the ECT report (the Board staff appears to be considering a single hearing to deal with all the projects found to be "economic" by the OPA) will take between four and nine months. Assuming a mid-point of seven months, suggests a designation hearing commencing in September 2010. The OPA report will be public, so interested parties could begin to prepare their submissions early in 2011. However, companies with transmission assets in Ontario have already begun preliminary work on the enablers, and, on the network expansion projects they would most like to develop and own.

Fifth, it is fairer to new companies, that are not already operating transmission facilities in Ontario, or in other jurisdictions, to eliminate any unnecessary and costly steps in the process. It is also more consistent with the government's policy of providing opportunities for First Nations to own and operate transmission projects.

3. In the Discussion Paper, the Board staff has suggested (page 5) a division of transmission facilities into four categories: capacity enhancements, network reinforcement, enabler facilities, and network expansion. Only the last two would be subject to competitive bids.

The Board needs to clarify the process and the test for the selection of the transmission facilities, which will be included in the designation process, open to competitive bids. In addressing this issue, the Board should err on the side of providing the maximum number of opportunities for companies in which First Nations have substantial ownership, especially in parts of the province where such lines will traverse either reserves and/or their traditional territories.

The Ontario Energy Board Act speaks about the need for expansion or reinforcement of transmission systems. It does not define the terms. Reinforcement is not a technical term and is used in different ways in different regulatory contexts. For clarity, network reinforcement should be defined to mean transmission work undertaken on existing lines, stations, and related equipment, eg. switches to increase their capacity.

The Board staff also suggests that capacity enhancements should include regional transmission line upgrades and uses the terms major network expansions and network expansions interchangeably. The staff does not rely on any statutory or regulatory authority to make those characterizations. To be clear, adding a second transmission line to a network line facility or a dual purpose network/connection line is not a reinforcement of a transmission facility, it is an expansion of a transmission facility, whether one proceeds by analogy from the definition in the Distribution System Code or from the reasonable definition offered above. Major network expansions should be clarified to mean work done to expand the transmission network, through construction of new network facilities.

The Board needs to exercise its judgment carefully in defining these categories, taking into account how such terms have been used in various contexts. For example, network facilities and line connections facilities have recognized meanings in cost allocation, and in the light of its statutory objectives and government policy, as reflected in the Electricity Act, the Ontario Energy Board Act, and other recent government initiatives. The range of projects open to new applicants, especially new applicants in which First Nations have significant ownership participation, should not be restricted by defining projects as enhancements, or reinforcements, rather than expansions. In the absence of other legal criteria, the Distribution System Code may provide some guidance.

4. Recovery of Pre-Designation Development Costs

The paper provides no support for the possibility of cost recovery to applicants for development costs incurred for designation in the pre-designation period. This lack of support places new companies, such as LHATC, at a competitive disadvantage against companies which already have transmission facilities in Ontario. The Board will recall that at least Hydro One and Great Lakes have Board established deferral accounts in which to accumulate project development costs for later recovery, provided they are deemed prudent.

LHATC urges the Board to allow companies which do not have deferral accounts for pre-designation development costs to obtain them. As noted above, funds of the magnitude involved in preparing an application to the Ontario Energy Board to be a designated transmitter are not currently available for First Nations sponsored companies from any source, public or private.

5. Criteria

The criteria, as drafted, tend to discriminate against new companies, such as LHATC.

The criteria need to be interpreted in a manner that do not discriminate against new, start-up companies that wish to develop and own transmission projects, like LHATC. Such companies do not have the resources of companies with transmission assets in Ontario or companies which, while new to Ontario, have transmission assets in other places, or affiliates thereof. It is likely that, at least in the pre-designation stage, LHATC will not be able to hire as employees a substantial group of financial, technical, and legal professionals. It will have to contract out work to various professional organizations, to assist to put together proper technical, financial, and operational components of the project, on the understanding that, if designated, it will put the required resources in place on a more permanent basis. Nor will it have had experience in transmission, either inside or outside Ontario, although its advisors may have had such experience. Rather than impose overly onerous conditions on applicants during the designation process itself, which will screen out many newer companies, the Board should be prepared to designate applicants subject to their meeting certain milestones with respect to, for example, the establishment of a full management and technical complement, and the establishment of such agreements with third parties as are necessary to supplement the capabilities of the existing employees, and necessary commitments with respect to financing the project.

LHATC attaches particular importance to the criteria entitled "Land Owner and Other Consultations". The criteria states:

"the transmitter's approach to and plan for carrying out all required consultations, including with municipalities, landowners, and First Nations and Métis groups". The LHATC corporation has the full support of the sponsoring First Nations, many of whose traditional territories will be traversed by various transmission facilities.

6. Reply

Given what is likely to be a wide divergence of views on the scope, nature, and implication of the designation process, LHATC recommends that the Board allow a right of reply to each contributor.

Yours truly,

FOGLER, RUBINOFF LLP



Thomas Brett

TB/dd