

December 21, 2007

VIA EMAIL AND REGULAR MAIL

Board Secretary
Ontario Energy Board
2300 Yonge Street
P.O. Box 2319
Toronto, ON M4P 1E4

ATTENTION: **MS. KIRSTEN WALLI**

Dear Ms. Walli:

RE: INTERVENTION APPLICATION (EB-2007-0791)

I am legal counsel for the Métis Nation of Ontario (MNO). Please accept the following as the MNO's request for intervenor status in the application and hearing of the Ontario Power Authority's (OPA) proposed expenditures and revenue requirements for the 2008 fiscal year.

The MNO represents the citizens of the Métis Nation living in Ontario as well as rights-bearing Métis communities. In previous communications with the Ontario Energy Board (OEB), the MNO has provided detailed information and maps in relation to its membership, mandate, governance structures and representation of rights-bearing Métis communities throughout the province. Based on the information previously provided to the OEB, the MNO was granted intervenor status in the OEB's review of the Integrated Power System Plan (IPSP). Rather than include that information again in this intervention application, the MNO would refer the Board to its previous intervention application.

The MNO believes it has an interest in this application and hearing. As set of in its draft Aboriginal Consultation Policy, the OEB recognizes that the Crown has an obligation to consult, and, where appropriate, accommodate Aboriginal peoples whose rights may be affected by Crown actions. Courts have recognized that these consultation obligations to Aboriginal people are triggered in the early planning stages of potential projects and developments authorized by the Crown. The OPA is an agent of the Crown and is tasked with energy related planning on behalf of the Ontario Government. As such, it is the MNO's opinion that the OPA's Business Plan should at the very least mention and/or outline how the Crown's consultation obligations are going to be or are being addressed by the OPA in its annual business plan and expenditure request.

It is the MNO's position that the OPA's 2008 Business Plan and future business plans should make reference to how the OPA's consultation obligations to Aboriginal peoples are being addressed or how the OPA is proposing to address these consultation obligations in the upcoming fiscal year (*e.g.*, how Aboriginal consultation fits into the OPA's strategic objectives, how Aboriginal peoples will be engaged and consulted, what resources within the OPA's expenditure request are being dedicated to consulting with Aboriginal peoples, etc.). In addition, the MNO believes that Aboriginal peoples should be consulted and engaged in the development of the OPA's annual business plans in order to assist in identifying strategic objectives from year-to-year as well as assist in identifying how those strategic objectives can be achieved vis-a-vis Aboriginal engagement and participation.

Moreover, on August 27th, 2007, the Minister of Energy issued a directive to the OPA with respect to the procurement of up to 2,000 MW of Renewable Energy Supply. Within this directive, the Minister wrote the following:

In the course of the consultation process on the Integrated Power Supply Plan, the OPA heard from First Nation and Métis people their desire to be consulted in the planning of electricity projects.

It is my view that First Nations and Métis people should be consulted early in the planning and development stages for the renewable energy projects under this 2,000 MW direction. As such, I direct that the OPA develop guidelines and processes to ensure that appropriate consultation with First Nation and Métis peoples takes place. The Crown will continue to assess the adequacy of the consultation, including whether there is accommodation, where appropriate, for impacts that the specific projects may have on Aboriginal or treaty rights.

In the OPA's 2008 Business Plan, the only mention of consulting within Aboriginal peoples is one sentence under the section dealing with the OPA's Strategic Objective 3. Specifically, the OPA undertakes to complete the following:

Procurement processes will also be reviewed and revised as necessary to recognize any duty the Crown may have to consult with affected First Nations.¹

The MNO has several concerns with this single reference to consultation with Aboriginal peoples within the OPA's entire 2008 Business Plan:

- 1) the MNO is concerned that this OPA commitment only relates to First Nations, rather than being inclusive of the Métis,
- 2) the commitment within the 2008 Business Plan does not seem to accurately reflect or capture the clarity and tone of the Minister's August 27th directive with respect to developing "guidelines and processes to ensure that appropriate consultation with First Nation and Métis people takes place", and
- 3) the 2008 Business Plan's only reference to consultation with Aboriginal peoples relates to procurement process and fails to address the OPA's other consultation related obligations outlined above (*i.e.* Aboriginal consultation within the planning stage).

¹ EB-2007-0791, Exhibit A-9-1, Page 18 of 37

The MNO believes the OPA's 2008 Business Plan as well as future business plans of the OPA submitted to the OEB should detail how the OPA is addressing consultation obligations to Aboriginal peoples in all parts of the OPA's annual work where the duty to consult is triggered (i.e. planning, procurement, conservation initiatives, etc.).

Consistent with the general approach contemplated in the OEB's draft Aboriginal Consultation Policy, the MNO believes that the OEB's review of the OPA's 2008 Business Plan is an appropriate opportunity to raise these issues in order to have them addressed by the OPA at a hearing. As well, the MNO hopes that by raising these issues, the OEB can provide direction to the OPA in relation to the development and submission of future business plans vis-a-vis addressing Aboriginal consultation obligations.

The MNO does not have a preference in relation to a written or oral hearing. However, the MNO will be seeking costs in order to participate as an intervenor in either a written or oral hearing. The MNO has more than just a "public interest" in these proceedings, as a representative of an Aboriginal people with constitutionally protected rights. As well, the MNO believes it should be eligible for costs based on s. 3.04 of the OEB's *Practice Direction on Cost Awards*.

If you require anything further, I can be reached at 416-945-7958 or via email at jason@jtmlaw.ca.

Yours very truly,

A handwritten signature in black ink, appearing to read "Jason Madden", followed by a period.

Jason Madden

c.c. Ms. Miriam Heinz, Regulatory Coordinator, Ontario Power Authority
Mr. Tony Belcourt, President, Métis Nation of Ontario