

IN THE MATTER OF the *Ontario Energy Board Act 1998*, S.O.1998, c.15, (Schedule B);

AND IN THE MATTER OF an Application by Canadian Niagara Power Inc. ("CNPI"), for approval to establish a deferral account.

REPLY SUBMISSION OF CNPI

March 1, 2011

In accordance with Procedural Order No. 1 in this proceeding, this is the Reply Submission of CNPI regarding its request to establish a deferral account to record costs associated with the Board's designation process.¹ Board staff filed a submission on February 22, 2011. This Reply Submission addresses the specific arguments made by Board staff in its submission.

Board staff has taken the position that the ECT is the starting point for the designation process, and therefore CNPI is not entitled to a deferral account at this time because it has not yet been designated. Specifically, Board staff wrote:

"The Board's designation process is not yet in place. Based on the Policy, since CNPI has not been designated, it is not entitled to be granted Board approval to establish a deferral account at this time. It is clear that the purpose of a deferral account is for recording development costs which only begin when a transmitter is designated and not for recording expenses related to participating in any designation process implemented by the Board."

CNPI respectfully submits that Board staff's position is inconsistent with the *Board Policy: Framework for Transmission Project Development Plans* (the "Policy"). According to the Policy, in order for transmitters to be eligible for designation, they must file plans in the form mandated by the filing requirements. The Policy specifically provides that the transmitter that is successful in being designated will be able to recover its cost for preparing a plan:

"Only the transmitter that is successful in being designated will be able to recover the cost of preparing a plan."

Since plans must be prepared *prior* to designation, clearly the Policy contemplates that plan preparation costs that pre-date designation are recoverable (albeit only for the successful

¹ EB-2010-0059

transmitter). The typical way a successful transmitter would recover its plan preparation costs would be to apply to disburse a deferral account in which those costs were recorded. Based on Board staff's logic, if CNPI is granted a deferral account at the same time it is designated, it would be difficult for CNPI to recover its plan preparation costs that pre-date the deferral account. Therefore, Board staff's position that CNPI is not entitled to a deferral account until it is designated is inconsistent with the Policy.

Further, as explained in CNPI's responses to Board staff's interrogatories, if the Board were to delay granting CNPI a deferral account, it would be at a competitive disadvantage relative to two of CNPI's competitors who have indicated that they are already engaged in preliminary transmission development work. These competitors are Great Lakes Power Transmission LP ("GLPL") and Hydro One Networks Inc. ("HONI"), who were both granted deferral accounts.²

In its submission, Board staff noted that the HONI's and GLPL's deferral accounts were granted on March 25, 2010, prior to the development of the Policy issued on August 26, 2010, and that the deferral accounts did not envisage recovery of costs associated with participation in the Board's designation process. CNPI submits that what is relevant is that both HONI and GLPL have deferral accounts *now* that they can use to record their costs associated with the designation process. Perhaps HONI and GLPL will be unsuccessful in disbursing their designation process costs (CNPI understands that they have no assurance from the Board that amounts recorded in their deferral accounts will be recoverable from ratepayers), but at least they will have an opportunity to apply for disbursal. Without a deferral account, CNPI may not.

If Board staff is suggesting that CNPI should be treated differently from HONI and GLPL because HONI and GLPL obtained approval for their deferral accounts before the Policy was issued, we note that CNPI filed its application for a deferral account on July 23, 2010, which predates the issuance of the Policy. What is essential in designating proponents is a fair process. The Policy contemplates fairness among proponents:

"This is comparable to the more usual business model in which proponents prepare proposals or bids at their own costs and own risk. In this way, the Board seeks to ensure that all transmitters will be on equal footing when submitting plans..."³

To treat CNPI differently from HONI and GLPL simply because of the timing of the respective applications for deferral accounts would be unfair and contrary to the Policy.

Board staff seems to have raised a deficiency of information provided by CNPI as a basis for denying it a deferral account. Specifically, Board staff wrote:

CNPI's parent FortisOntario Inc. ("FortisOntario"), and the First Nations' Lake Huron Anishinabek Transmission Company Inc. ("LHATC") announced on February

² EB-2009-0409 and EB-2009-0416

³ The Policy at page 11.

2, 2011 that FortisOntario and LHATC have entered into a binding memorandum of understanding for a joint venture to develop, construct and operate regulated electricity transmission projects in Ontario. CNPI did not provide information regarding timing or cost of the project or the amount that CNPI expects to record in the proposed deferral account.

If Board staff is raising a deficiency of information as a basis for denying CNPI a deferral account, CNPI questions why Board staff did not ask CNPI to provide that information in the interrogatory process. To forego the opportunity to ask for that information, and then raise its absence at the end of the process is improper.⁴ On this point, CNPI can disclose that it intends to apply for designation in regard to the transmission line between Nipigon and Wawa (the "East-West tie"), and has initiated preliminary work in that regard. According to *Ontario's Long-Term Energy Plan*, the East-West tie will be a project to which the Board's designation process will apply:

"The East-West tie will be submitted to the OEB to carry out a designation process to select the most qualified and cost-effective transmission company to develop the line."

As such, the following submission by Board staff is incorrect:

"It is clear that the project for which CNPI is seeking a deferral account has not been the subject of a Board-led designation process."

In regard to the amount that CNPI estimates it will record in the deferral account, CNPI would agree to cap the amount at \$2 million and apply to the Board to raise the cap in the future, if necessary. This proposal is more reasonable than providing a rough estimate, because it will give the Board assurance that CNPI is not recording excessive amounts in the deferral account.

In conclusion, CNPI submits that it is not premature to grant it a deferral account now, as submitted by Board staff. CNPI notes that Board staff did not object to the July 23, 2010 effective date proposed by CNPI. Further, CNPI asks that the Board consider the following further points in its deliberation:

- FortisOntario's partnership with LHATC is consistent with Ministry of Energy directives to provide opportunities for participation by First Nations in these projects. It is also considered by the Board as a criterion for deciding which transmitter should be designated for a project.
- In order to develop meaningful consultation and participation with First Nations, an extensive consultation process has already begun well in advance of the first Notice of Designation Hearing. A comprehensive consultation plan needs to be developed for each

⁴ We direct Board counsel's attention to the evidentiary rule from *Browne v. Dunn*.

application; yet this can only be developed after meaningful discussions with the appropriate First Nations and their Chiefs.

- To deny or delay CNPI's request for approval to establish a GEA deferral account to record its preliminary expenses would put CNPI and its First Nations partners at a distinct disadvantage to its competitors. CNPI submits that this result would be contrary to the Policy's objective of encouraging competition, and would also be contrary to Ministry directives encouraging First Nations participation. Both the Ministry of Energy and the Ministry of Aboriginal Affairs have indicated the importance of the role of First Nations in future transmission developments.
- In order to prepare a competitive application, pre-engineering, initial costing, and initial environment assessment planning work is being carried out.

All of which is respectfully submitted.

March 1, 2011



Andrew Taylor