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November 30, 2011

SENT VIA EMAIL

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, Suite 2700
Toronto, Ontario
M4P 1E4

Dear Ms. Walli:

Re: Nishnawbe Aski Nation ("NAN") Interrogatories directed to Hydro One Remote Communities Inc. ("Remotes")
Application for Licence Amendment EB-2011-0021
Hydro One Remote Communities Inc.
DMC File No.: 10041

NAN hereby provides additional submissions on the issue of the duty to consult and accommodate, as requested by the Board in its Interim Decision and Procedural Order #3, dated October 12, 2011 ("Interim Decision #3").

In Interim Decision #3, the Board stated that NAN may file a further submission identifying the Aboriginal rights or title that may be adversely affected by Remotes' application for certain exemptions from the Distribution System Code ("DSC") and to serve and file same no later than November 30, 2011.

1. Duty to Consult and Accommodate and the Issue of Aboriginal title and/or rights

The Board's request that NAN identify the Aboriginal rights or title that may be adversely affected by Remotes' application can only be answered by understanding the broader context of the general features of Treaties 5 and 9, the Crown's fiduciary relationship and responsibilities to First Nation communities, the constitutional basis of Aboriginal law in Canada, and the Electrification Agreements which the Federal Government and Ontario Hydro (which was a crown corporation) entered into during the past two decades.

As the Board is aware, it is NAN's submission that the duty to consult and accommodate is called into play by Remotes' Application, especially since Remotes is requesting that it be exempted from provisions specifically designed to assist the poorest consumers of electricity in the Province.

The Ontario Energy Board has previously confirmed that it has jurisdiction to assess the adequacy of Crown consultation prior to approving applications which could infringe upon Aboriginal rights or title: *Re Hydro One Networks Inc., EB-2007-0707, OEB Decision dated September 15, 2008.*

For the reasons outlined below, NAN submits that not only does Remotes have an obligation to engage in substantive consultation with NAN concerning the proposed exemptions from the DSC but that, given the legal obligations which Remotes and its predecessor, Ontario Hydro, have assumed under agreements with the Federal Government, that a duty to accommodate also arises in the circumstances.

2. General rights under Treaties 5 and 9

NAN communities are located in geographical areas in Ontario covered by Treaties 5 and 9. Treaty 5 deals principally with land in Manitoba but it also covers a smaller area in Ontario.

Most NAN communities are located in the area covered by Treaty 9. Treaty 9 is the only Treaty with the Federal Crown which was also signed by a provincial government (i.e. Ontario).

Although the meaning and application of the two Treaties has been the subject of ongoing discussion between First Nations and the Federal Crown since they were signed, the reserves created pursuant to those Treaties were, on the face the Treaties, done so with the commitment that First Nations were not to be "molested" within any reserve and that non-Aboriginal persons would not have any claims or rights on reserves without the consent of the First Nations involved.

It is NAN's position that the activities being carried out by Remotes, whose corporate predecessor (Ontario Hydro) was a crown corporation, require the continuing consent of any affected NAN communities.

The rights and/or title which are being affected by activities carried out on any reserve rest on the ancient title and other rights enjoyed by First Nations before Treaties 5 and 9 were signed, that is, their control over the territory which they occupied and used to meet their needs.

Further, Treaties 5 and 9 confirm that the consent of First Nations is required for activities which are being conducted by non-Aboriginal persons on reserves. NAN also submits that, to the extent that previous consent has been given, any material change in the manner in which activities are carried out would give rise to a duty to consult and accommodate.

Since Remotes is requesting that it be exempted from having to comply with laws of general application in Ontario (e.g. the DSC) on reserve land, such that the exemptions would affect the

current benefits and entitlements of First Nations under (a) any Treaties, (b) federal and provincial statutes, and/or (c) agreements executed for First Nations, the exemption request by Remotes triggers the duty to consult with and accommodate NAN communities.

The principle of “free prior and informed consent” (“FPIC”), which has been recognized by the United Nations, is the internationally-recognized principle that a First Nations community has the right to give or withhold its consent to any proposed activities that may affect the manner in which First Nations live on their customary and other lands.

Pursuant to the NAN Chiefs-in-Assembly resolution (10/23), which set out the requirement for FPIC within NAN territory, any proposed government policy that affects any part of NAN territory, including the manner in which First Nations communities enjoy historical or current benefits, cannot proceed without the FPIC of the affected First Nation communities.

3. Fiduciary responsibilities of the Federal Crown toward members of First Nations communities

As part of the historical relationship between First Nations and the Crown (be it the Crown in right of Canada or the Crown in right of a province), any time the government is interacting with First Nation communities, the honour of the Crown is said to be at stake. The Supreme Court of Canada decision in *Guerin v. The Queen*, [1984] 2 S.C.R. 335 confirmed that the government has a fiduciary duty towards First Nations in Canada.

The Supreme Court of Canada noted that the unique nature of aboriginal title imposes an enforceable fiduciary duty upon the Crown to act in the best interests of First Nations. Aboriginal title is an inherent right based on historical occupation of the land and it predates the enactment of British and Canadian statutes, including the *Royal Proclamation of 1763*.

The principle of the “fiduciary duty” of the Crown has become central to the interpretation of section 35 of the *Constitution Act, 1982*, which also provides for the protection of aboriginal rights.

The existence of the fiduciary duty of the Crown toward First Nations communities means that any proposed government policy (e.g. exemption from protective and benefit-conferring provisions in the DSC) which may affect the rights enjoyed by such communities, including the manner in which activities are being carried out on reserves (and other lands subject to aboriginal title or claims), will give rise to a duty to consult and accommodate.

4. Rights of NAN communities and residents under the *Constitution Act, 1867*, the *Constitution Act, 1982*, the *Indian Act*, and certain agreements made under that statute

Section 91(24) of the *Constitution Act, 1867* gave Parliament exclusive power to legislate in matters related to “Indians, and Lands reserved for the Indians.” Pursuant to that constitutional authority, Parliament enacted the *Indian Act* in 1876 and various other statutes relating to the recognition and protection of the rights of First Nations.

Further, Part II, section 35 of the *Constitution Act, 1982*, specifically recognized the existing aboriginal and treaty rights of First Nations. Section 35 of the *Constitution Act, 1982* reads:

35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

(2) In this Act, "Aboriginal Peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

(3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.

(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

Section 25 of the same *Act* confirms that the rights and freedoms in the *Charter of Right and Freedoms* shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including (a) any right or freedoms that have been recognized by the Royal Proclamation of October 7, 1763, and any right or freedoms that now exist by way of land claims agreements or which may be so acquired.

As the Ontario Energy Board is aware, the Department of Aboriginal Affairs and Northern Development is responsible for administering the *Indian Act* under the direction of the Minister of Aboriginal Affairs and Northern Development.

The *Indian Act*, as amended, confirms the legal status of persons who qualify as an "Indian" under the *Act*. The *Indian Act* also outlines the structure of Canada's reserve system, the nature of aboriginal self-government, and certain obligations of the federal government toward First Nations. The rights flowing from the *Indian Act* are beyond legal challenge under the *Constitution Act, 1982*, in part because section 25 of the *Constitution Act, 1982* provides that the *Canadian Charter of Rights and Freedoms* shall not be construed as undermining or negating treaty or other rights of Canada's aboriginal peoples. Leaving aside the issue of aboriginal rights which already existed as of the enactment of section 35, and the issue of other rights which may be acquired in the future, the rights of NAN communities under Treaties 5 and 9, which include the right to control access to reserves and the right to control activities on reserves, require consultation where changes to existing activities are being proposed by a licensee or invitee who provides services in NAN communities.

As noted below, there is also clear contractual basis to the duty to consult as it relates the Application of Remotes before the Ontario Energy Board. The proposed exemptions from the DSC would have the effect of derogating from the contractual expectations and benefits of First Nations communities under the Electrification Agreements executed by Ontario Hydro, the corporate predecessor of Remotes.

5. Electrification Agreements executed by the Federal Crown and the provincial Crown corporation formerly known as Ontario Hydro

Since the 1980s, a number of Electrification Agreements were executed by the Federal Government pursuant to its responsibilities under the *Indian Act*. The Electrification Agreements are a significant expression of First Nations rights under the aegis of the Federal Government, as well as under the Province of Ontario, to provide electrical services to ensure a reasonable standard of living in remote communities.

Electrical services can hardly be considered a privilege or luxury in remote communities. Affordable and reliable electrical power is essential to the continuing health, welfare, educational opportunities, social cohesiveness, and living standard of First Nations communities.

The Electrification Agreements confirm significant contractual obligations on the part of Remotes in First Nations communities. The exemptions being proposed by Remotes will affect the contractual benefits and rights of First Nations communities under the Electrification Agreements. The Agreements relating to each remote NAN community were negotiated by the Federal Government with the specific objective of providing benefits to First Nation residents and organizations.

The Crown in right of Ontario is a party to the Electrification agreements because each Agreement was executed by Ontario Hydro, a crown corporation at the time. By way of background, in 1974, the *Power Corporation Act*, replaced the *Power Commission Act* and, in doing so, Ontario Hydro was created as a crown corporation governed by a board of directors.

By 1998, however, the energy landscape had changed considerably in Ontario and the enactment of the *Energy Competition Act* restructured Ontario Hydro into three major entities, Ontario Power Generation, the Ontario Hydro Services Company, and the Independent Market Operator. In May 2000, the Ontario Hydro Services Company became the holding company currently known as Hydro One Inc. with five (5) subsidiaries, one of which is Remotes.

Although Remotes was incorporated under the *Business Corporations Act*, it has assumed all of the legal obligations of Ontario Hydro (which was a Crown corporation) under the Electrification Agreements with the Federal Government.

NAN has enclosed one of the Electrification Agreements with these submissions, the Kingfisher Community Electrification Agreement, executed on March 23, 1989 ("Kingfisher Agreement").

The Kingfisher Agreement is one among several Agreements under which Remotes provides services to First Nation communities. Section 15(a) of the Kingfisher Agreement also states that the Agreement "shall enure to the benefit of and be binding upon the parties hereto, their administrators, successors, executors and assigns, respectively." Remotes is a corporate successor of Ontario Hydro.

Although benefits and rights accrue to the Federal Government as a signatory to an Electrification Agreement, they only do so in the Government's role as a trustee for the true beneficiaries under the Agreements: the customers of electrical services in remote communities. In NAN communities served by Remotes, the vast majority of the customers are First Nations

individuals, band offices, and community service providers (e.g. health clinics, churches, schools, police, etc.).

Moreover, a review of the Kingfisher Agreement makes it clear that a distinction is made between First Nations customers and other customers under the Electrification Agreements.

Under section 6(a) of the Kingfisher Agreement, system capacity charges are *not* to be collected by Remotes for electrical services to the following customers:

- (a) an Indian commercial activity;
- (b) an Indian community enterprise;
- (c) an Indian residence;
- (d) a school, teacherage or other property operated by the Minister [of Aboriginal Affairs and Northern Development]; or
- (e) any premises specifically designated by the Minister.

The express terms of the Kingfisher Agreement (and other Electrification Agreements) in fact raise the issue whether Remotes is currently in compliance with its contractual obligations because Remotes has been levying system capacity charges to First Nations customers to reconnect residences and other buildings after Remotes has physically removed lines, meters, and other equipment from buildings.

Based on the express terms of the Electrification Agreements, such practices and charges are not permitted.

Further, under section 6(d) of the Kingfisher Agreement, Remotes has agreed under contract that the “interpretation of rates and conditions of service shall be governed by the rules made by Ontario Hydro from time to time covering supply to Remote communities for diesel generation.” It should be obvious that the DSC, which applies to the activities of Remotes and other electricity distributors in Ontario, would qualify as part of the rules governing the supply of electricity to remote communities.

Since Remotes is actually seeking to be relieved of its obligation to follow certain provisions in the DSC, it is, in effect, seeking to avoid obligations under the Electrification Agreements to which it is contractually bound.

Given that First Nations individuals and communities are beneficiaries under the Electrification Agreements, it is submitted that any attempt by Remotes to derogate, detract from, or alter its existing obligations under those Agreements would give rise to a duty to consult with First Nations representatives. Section 12(a) of the Kingfisher Agreement states that any change involving the terms of the Agreement may be implemented by a Change Order or Amending Agreement. As the Board knows, one party to a contract cannot unilaterally change the terms of the contract.

Because Remotes’ proposed exemptions from the DSC will impact the rights and benefits currently enjoyed by First Nations individuals and communities under the Electrification

Agreements, the OEB must consider those Agreements in making a final determination on Remotes' Application, and Remotes must discharge its duty, as a contracting party and as the successor to a crown corporation (i.e. Ontario Hydro), to consult with First Nations representatives with a view to reaching an accommodation in the Application.

A negotiated agreement with First Nations would be far more preferable than forcing the matter to a determination where the Ontario Energy Board is being called upon to evaluate the adequacy of Remotes' discharge of the duty to consult.

6. Hydro One Inc.'s own commitment to consultation

In its own website (www.hydroone.com), Hydro One Inc. states that "Hydro One understands the value and importance of building relationships with communities on a foundation of mutual trust, confidence and accountability".

Remotes is a wholly-owned subsidiary of Hydro One Inc. The website of Hydro One Inc. also confirms that the consultation principles and policies of Hydro One Inc. are to be considered applicable to the activities of its subsidiaries, including Remotes.

With respect to First Nations and Metis communities, Hydro One has articulated the following policy for itself and its subsidiaries:

Hydro One is committed to developing and maintaining relationships with First Nations and Metis peoples that demonstrate mutual respect for one another.

Hydro One owns assets on reserve lands and within traditional territories of First Nations and Metis peoples. Hydro One recognizes that First Nations and Metis peoples and their lands are unique in Canada, with distinct legal, historical and cultural significance.

Hydro One is committed to working with First Nations and Metis peoples in a spirit of cooperation and shared responsibility. Forging relationships with First Nations and Metis communities based upon trust, confidence, and accountability is vital to achieving our corporate objectives.

Hydro One's First Nations and Metis Policy enhances and complements other corporate policies and will guide Hydro One in its relationships with First Nations and Metis peoples.

NAN submits that this commitment and undertaking on the part of Hydro One, which would extend to the activities conducted by Remotes, can only be achieved where the "duty to consult and accommodate" is implemented in a substantive manner, particularly where Remotes proposes to obtain exemptions from laws of general application (e.g. the DSC) in Ontario.

All of which is respectfully submitted to the Board.

Yours very truly,

Barrister & Solicitor



Douglas M. Cunningham
DMC/am

- c: Grand Chief Stan Beardy
- c: Mel Stewart (NAN Consultant)
- c: Michael Engelberg (Assistant General Counsel, Hydro One Networks Inc.)

7 F. N. B. - 11111111
Ret. "P"
JUNE 28 1987
187
AGREEMENT FOR ELECTRICAL SERVICE

KINGFISHER COMMUNITY ELECTRIFICATION

THIS AGREEMENT made in triplicate this 23rd day of March 1987.

B E T W E E N:

HER MAJESTY THE QUEEN, in right of Canada, represented herein
by the Minister of Indian and Northern Affairs Canada,
hereinafter referred to as "I.N.A.C."

OF THE FIRST PART

- and -

ONTARIO HYDRO, a body corporate, continued by the Power
Corporation Act, R.S.O. 1980, c.384,

hereinafter referred to as "Ontario Hydro"

OF THE SECOND PART

WHEREAS, I.N.A.C. has requested Ontario Hydro to undertake the provision
of community services in the community of Kingfisher Lake, Ontario, according
to the terms and conditions hereinafter set forth;

AND WHEREAS, by virtue of the Power Corporation Act, Ontario Hydro is
authorized to supply electrical services to customers and premises in rural
Ontario districts.

NOW THEREFORE and in consideration of the mutual promises and obligations
contained in the Agreement, I.N.A.C. and Ontario Hydro covenant and agree as
follows:

1. DEFINITIONS

- (a) "Band", means a Band as defined in the Indian Act, R.S.C. 1970, C.1-6;
- (b) "Customer", means a user of power supplied through systems
constructed or acquired pursuant to this Agreement;
- (c) "Indian" means a person who is an Indian within the meaning of the
Indian Act (Canada) and includes any other persons who the parties
agree is an Indian for the purposes of this Agreement; — page one
- (d) "Indian commercial entity", means a sole proprietorship, partnership,
company or corporation, carrying on business in Ontario, entirely
owned by one or more Indians;

DEFINITIONS (Continued)

- (e) "Indian community enterprise", means an undertaking, including a business undertaking, operated by a Band;
- (f) "Indian residence", means a residence which consists of one or more housekeeping units in which every occupant is an Indian or a non-Indian who is a boarder or a lodger paying compensation to an Indian in respect of such occupation;
- (g) "Minister", means the Minister of Indian and Northern Affairs Canada;
- (h) "Work", means the work described and defined in Section 2 of this Agreement; and
- (i) "System capacity charge", means a charge for the capital cost of generating or distributing plant.
- (j) "Remote Community", means a community isolated from Ontario Hydro's electrical grid.

2. SCOPE OF WORK

Ontario Hydro shall undertake the following:

- (a) Construct a diesel generator building (64' x 24').
- (b) Construct a Ontario Hydro staff house.
- (c) Supply and install a diesel fuel tank farm to meet Environment Canada standards.
- (d) Supply and install three diesel generators.
- (e) Supply and install controls and a programmed controller.
- (f) Supply and install a distribution system substantially in accordance with Appendix 'C' drawing No. 525 consisting of:
 - 6450 metres of 3 phase line;
 - 750 metres of single phase line;
 - 3500 metres of secondary complete with transformers and street lighting;
 - 98 service connections.
- (g) Supply and install a heat energy distribution system consisting of:
 - approximately 230 metres of 2-3" insulated underground piping;
 - heat exchangers, control equipment piping and heat energy meters for the school, gymnasium and clinic/social services buildings.

3. BASIS OF PAYMENT

- (a) I.N.A.C. shall pay to Ontario Hydro all direct and indirect costs incurred to supply and install the community services as defined in Section 2 of this Agreement and outlined in Appendix A "Expenditure Plan" and Appendix B "Cost Estimate".
- (b) The total liability of I.N.A.C. in respect of this Agreement shall not exceed the sum of \$2,230,000. A yearly cash flow shall be mutually agreed upon by the parties.
- (c) If at any time during the progress of the Work it becomes apparent that the total costs will exceed the costs as shown in this Agreement, Ontario Hydro shall inform the Minister of this fact in writing.
- (d) The payment of any money by I.N.A.C. or the Minister hereunder is subject to there being an appropriation for the particular service for the fiscal year in which any commitment hereunder would come in course of payment.
- (e) Payment will be made on approved invoices.
- (f) The Project Manager will be accountable for the application of the expenditures relative to the work in this Agreement.
- (g) Ontario Hydro will repay I.N.A.C. any overpayment relating to unexpended balances and disallowed expenses.

4. PROJECT MANAGER

For The Work performed in accordance with clause 2 herein:

- (a) the Project Manager representing the Minister of the Department of Indian and Northern Affairs Canada is appointed by the Regional Manager of Technical Services who will be responsible for each phase and/or the complete project as described and defined by this Agreement. The Project Manager's responsibility and accountability is as described in Chapter 148 of the Administrative Policy Manual, issued by Treasury Board of Canada, entitled "Cost Control of Project".
- (b) The Project Manager is Mr. D.B. Morellato, P.Eng. at the time of execution of this Agreement, however the Ontario Regional Manager of Technical Services may assign other personnel to the position of Project Manager as circumstances may dictate without requirement of an Amending Agreement.
- (c) The Regional Manager of Technical Services will advise Ontario Hydro in writing of any changes to the position of Project Manager when they occur.

TIME FRAME

- (a) Notwithstanding the date on which this Agreement is signed, the effective date for completion of the work shall be March 31, 1993.
- (b) This Agreement shall continue in force for a period of twenty years following the in-service date of the Work and from year to year thereafter until terminated by notice in writing by either party which notice shall fix the date of termination. This notice may not be given prior to the twentieth anniversary of the in-service date of the Work and the date fixed for termination shall not be less than 365 days after the date of the notice of termination.

6. SYSTEM CAPACITY CHARGES

- (a) Ontario Hydro shall collect a system capacity charge from each Customer requesting service with the exception that no system capacity charge shall be made for service to:
 - i) an Indian commercial entity;
 - ii) an Indian community enterprise;
 - iii) an Indian residence;
 - iv) a school, teacherage or other property operated by the Minister;
 - or
 - v) any premises specifically designated by the Minister.
- (b) The system capacity charge payable by any Customer shall comprise:
 - i) a fair and reasonable charge, representing the Customer's share of the installed cost of the generating plant in the community, determined by multiplying the amount of power in kilowatts made available to the customer and a rate in dollars per kilowatt, to be determined by Ontario Hydro, plus
 - ii) a charge for distribution facilities, (lines, transformers, services, and meters) installed by Ontario Hydro for the exclusive use of the Customer, or, where such facilities are used to supply more than one Customer, such portion of the actual costs as is determined by Ontario Hydro.
- (c) Except for the provisions herein relating to the making of system capacity charges, all rates and charges for providing electrical service to any Customer (including I.N.A.C.) shall be payable by that Customer and shall be the rates and charges authorized from time to time by Ontario Hydro for the relevant classification of service.
- (d) The interpretation of rates and conditions of service shall be governed by the rules made by Ontario Hydro from time to time covering supply to Remote Communities for diesel generation.

SYSTEM CAPACITY CHARGES (Continued)

- (e) Where a system capacity charge, or any part thereof, duplicates an amount payable by I.N.A.C. for facilities installed, such charge or portion thereof collected from the Customer shall be applied as a credit to the amount payable by I.N.A.C.
- (f) Notwithstanding anything contained in this clause 6 Ontario Hydro shall be entitled to collect from any Customer charges for establishing facilities to which I.N.A.C. has not paid the costs of establishing. Any charges collected shall belong to Ontario Hydro and shall not be applied as a credit to the account payable by I.N.A.C.

7. CHANGES TO SYSTEM

- (a) Whenever, by reasons of increased electrical load, it becomes necessary to alter, add to, remove or transfer any of the components of that system, Ontario Hydro shall determine the capital portion of the cost of such a change and which portions shall be paid for by I.N.A.C. and other Customers.
- (b) Notwithstanding any determination of costs, Ontario Hydro shall not be obliged to alter, add to, remove or transfer any of the components of the system prior to acceptance by I.N.A.C. and other Customers of the said apportionment of costs and an undertaking to pay the same.

8. OWNERSHIP

- (a) The property comprising the community services constructed pursuant to this Agreement shall become the property of Ontario Hydro and Ontario Hydro shall be fully responsible for all operating personnel and for the entire direct and indirect operation and maintenance costs, including the renewal and/or replacement of the various system components.

9. NOTICES

- (a) Notices required or provided for in this Agreement shall be forwarded by prepaid registered mail, telex, telegram or telephone facsimile addressed as follows:

If to I.N.A.C.:

Regional Director General
Indian and Northern Affairs Canada
25 St. Clair Avenue East
Toronto, Ontario M4T 1M2
Telephone Facsimile Number: 1-416-973-6472

If to Ontario Hydro:

The Secretary
Ontario Hydro
700 University Avenue
Toronto, Ontario M5G 1X6
Telephone Facsimile Number: 1-416-592-2086

10. INDEMNITY

- a) Ontario Hydro shall indemnify and save harmless I.N.A.C. from and against all claims, losses, costs, damages, actions, suits or other proceedings by whomsoever made, brought or prosecuted in any manner based upon, arising out of, related to, occasioned by or attributable to their performance or purported performance of this Agreement by Ontario Hydro, its servants, agents, assigns, contractors and subcontractors in performing the Work.

11. RESERVE LANDS

I.N.A.C. will authorize Ontario Hydro, its servants, agents and contractors to enter upon, use and occupy any reserve lands, at no cost to Ontario Hydro for the purposes of the installation and maintenance of the community service, during the term of the Agreement, by permit made pursuant to and subject to the provisions of the Indian Act. Ontario Hydro shall not be required to perform its obligations under this Agreement prior to appropriate permit(s) being provided to Ontario Hydro.

AMENDMENTS

- (a) Any change involving the terms of this Agreement may be implemented by a Change Order or Amending Agreement.

13. FORCE MAJEURE

- (a) If the performance of this Agreement by either party hereto is delayed, interrupted or prevented by reason of any strike, lockout, injunction, coalition between workers or other labour trouble, accident, fire, explosion, flood, embargo, war, riot, Act of God, enemy action, blockade, any decision, order or restriction of any government or subdivision or agency thereof, while acting in its sovereign capacity, or for any other cause whether or not of the nature of the character specifically enumerated above, which is beyond the reasonable control to such party, such party shall not be held responsible for failure to perform during the period of and to the extent that such party is delayed by one or more of such causes, provided that performance of this Agreement shall be resumed as soon as practicable after such disability is remedied.

14. MEMBERS OF THE HOUSE OF COMMONS and FORMER CIVIL SERVANTS

- (a) No member of the House of Commons shall be admitted to any share or part of this Agreement or to any benefit to arise therefrom.
- (b) No former public office holder who is not in compliance with the post employment provisions of the conflict of interest and post employment code for public office holders shall derive a direct benefit from this Agreement.

15. ENURES TO BENEFIT

- (a) This Agreement shall enure to the benefit of and be binding upon the parties hereto, their administrators, successors, executors and assigns, respectively.

16. FINANCIAL REPORTING REQUIREMENTS

- (a) Ontario Hydro will provide a financial report and a progress report to I.N.A.C. on a quarterly basis, specifying year to date expenditures, forecasted total annual expenditures, progress to date and forecasted progress for those years in which Work is done. The detail of the financial and progress report will be the subject of negotiation between I.N.A.C. and Ontario Hydro.
- (b) Ontario Hydro shall establish and maintain financial records, in accordance with generally accepted accounting principles and practices, to ensure the adequacy, accuracy, completeness and timeliness of reports and plans based upon these records.

SIGNED, SEALED AND DELIVERED)
on behalf of HER MAJESTY the)
QUEEN IN RIGHT OF CANADA,)
represented by the MINISTER)
of INDIAN and NORTHERN)
AFFAIRS CANADA:



Regional Director General
Ontario Region

S. Batra 26/06/89
Finance Officer

None

Witness

Witness M. J. Gusto June 26/89

Witness

Ontario Hydro

H. K. Wright
Vice-President, Regions

ONTARIO HYDRO
March 23, 1989
Mississippi
March 29, 1989
Ron Stewart

APPENDIX 'A'
EXPENDITURE PLAN

1989/90	\$ 750,000.00
1990/91	1,317,000.00
1991/92	163,000.00
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TOTAL.....	\$2,230,000.00

APPENDIX 'B'
COST ESTIMATE

CONSTRUCTION COSTS

1. Generators	280,900.00
2. Controls	200,000.00
3. Building	275,000.00
4. Tank Farm	334,100.00
5. Heat Recovery	140,000.00
6. Three Phase Line	510,000.00
7. Single Phase	48,000.00
8. Secondary, Transformers & Lighting	282,000.00
9. Staff House	130,000.00
10. Well	20,000.00
11. Septic Field	10,000.00
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TOTAL.....	\$2,230,000.00

APPENDIX 'C'

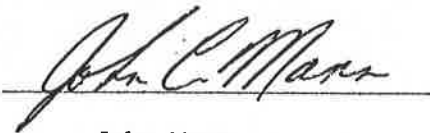
Attached Distribution System
Drawing No. 91655 K.R.D. - 525

APPENDIX 'A'
EXPENDITURE PLAN

1989/90	\$ 402,100.00
1990/91	1,664,900.00
1991/92	163,000.00

*expenditure
change only.
JP*

TOTAL.....	\$2,230,000.00
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John Mann
Supt. Of Finance and Administration

Mar. 30/90

Date

APPENDIX 'B'
COST ESTIMATE

CONSTRUCTION COSTS

1. Generators	280,900.00
2. Controls	200,000.00
3. Building	275,000.00
4. Tank Farm	334,100.00
5. Heat Recovery	140,000.00
6. Three Phase Line	510,000.00
7. Single Phase	48,000.00
8. Secondary. Transformers & Lighting	282,000.00
9. Staff House	130,000.00
10. Well	20,000.00
11. Septic Field	10,000.00

TOTAL.....	\$2,230,000.00
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APPENDIX 'C'

Attached Distribution System
Drawing No. 91655 K.R.D. - 525