



## SIX NATIONS LANDS & RESOURCES

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January 5, 2012

Via EMAIL: [boardsec@ontarioenergyboard.ca](mailto:boardsec@ontarioenergyboard.ca)  
and RESS

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

**Re: Submissions of Six Nations Council**  
**re: Motion to Review and Procedural Order No. 5**  
**(EB-2011-0063)**

This letter constitutes the submissions of Six Nations Council pursuant to paragraph 1 of Procedural Order No. 5.

### **Six Nations did not ask the Board to Review its Substantive Decision**

On December 12, 2011, Six Nations Council wrote to the Board requesting that the Board exercise its powers pursuant to *Rule 43 of the Ontario Energy Board Rules of Practice and Procedure* to correct its Order to incorporate the condition the Board indicated on page 12 (last paragraph) of its Decision that it was imposing but inadvertently did not actually carry through to its formal Order.

On December 22, 2011, the Board issued Procedural Order No. 5 in which it stated that it will treat the Six Nations Council letter as a request for a motion to review pursuant to the Rules and hear submissions on the appropriate wording of Condition 1.6 of its Order. Unfortunately, the Board then went on to invite submissions regarding two issues:

- the appropriateness of tying approval of the Project to the REA for the solar farm

(as opposed to the REA that includes the Project); and

- the extent to which the findings of the Customer Impact Assessment Report and System Impact Assessment Report (which contemplated the Project serving both generation facilities) are still valid if the Project initially serves only the wind farm.

By inviting submissions on these two issues, it appears that the Board is considering varying its earlier findings at page 12 of the Decision (last paragraph) which stated:

"The Board accepts that the Project is needed in order to transmit the electricity generated by the two generation facilities. The Board's approval will be conditioned, however, on the two generation projects receiving the REA and any other approvals necessary for their construction."

(emphasis added)

Six Nations letter of December 12, 2011 was not a request for a motion for the Board to review its substantive decision that the Board's approval should be "conditioned ... on the two generation projects receiving the REA and any other approvals necessary for their construction". Rather, we were simply requesting that the Board amend its formal Order so that Condition 1.6 of the Order accurately reflects the Board's decision on page 12 of the Decision.

### **The Threshold Test**

If the Applicant, or any other party to the proceeding, wishes to ask the Board to vary the substance of the Board's Decision, then that party must meet the threshold test as set out in Rules 44.01(a) and 45.01. Rule 44.01(a) requires that the grounds set out in support of a Motion for Review must raise questions concerning the correctness of the Order or Decision. The grounds presented must be new arguments, and not the same ones that were before the Board in the leave to construct proceeding. There must be an identifiable error in the Decision as a review is not an opportunity for a party to reargue the case.<sup>1</sup>

No party has brought any motion or request for a substantive review of the Decision. No party has raised any reason to doubt the correctness of the condition imposed by the Board on page 12 of its Decision, and the Board should make no changes to the condition it originally intended to impose.

Six Nations' letter of December 12, 2011 did, however, raise reason to doubt the correctness (completeness) of Condition 1.6 of the Order. In particular, the Condition 1.6 did not correctly express the condition imposed by the Board on page 12 of the Decision.

Condition 1.6 of Appendix A to the Order contained the following general condition only:

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<sup>1</sup> Motions to Review the Natural Gas Electricity Interface Review Decision (May 22, 2007) EB-2006-0322, p. 17-18, and Township of King Motion for Leave to bring a Motion to Review (March 21, 2011) EB-2011-0024, p. 12

1.6. GRWLP shall obtain all necessary approvals, permits, licences, certificates and easement rights **required to construct, operate and maintain the Project**, and shall provide copies of all such written approvals, permits, licences and certificates upon the Board's request.  
(emphasis added)

Condition 1.6 did not incorporate the Board's intended condition because the general condition only requires the "Project" to receive all necessary approvals. As defined in the Board's Decision and Order, "Project" did not include the two generation facilities (the wind project and the solar project) which GRWLP proposes to connect to the transmission facilities.

Page 2 of the Board's Decision defined "Project" as follows:

"The transmission facilities consist of approximately 19 kilometres of 230 kilovolt ("kV") transmission line, a collector substation consisting of two step-up transformers (34.5kV:230 kV), two transition stations to accommodate construction of an underground portion of the proposed 230 kV transmission line, and an interconnection station to connect to an existing Hydro One Networks Inc. owned 230 kV transmission line (collectively referred to as the "Transmissions Facilities" or the "Project")."

The Board's intended condition was that the leave to construct was to be conditional on the two generation projects (not the transmission facilities) receiving REA approval and any other approvals necessary for their construction.

### **Variation Requested**

In order to correctly reflect the Board's decision on page 12 of the Decision, Six Nations Council asks that the Board vary the Conditions of Approval, attached as Appendix "A" to the Decision, as follows:

1. To clarify the meaning of the word "Project" as used throughout Appendix "A", Condition 1.1 should be varied to refer to the definition of "Project" used throughout the Decision, to read:

1.1 Grand Renewable Wind LP ("GRWLP") shall construct the Project, **as described in the first paragraph of section II. titled "SCOPE OF APPLICATION" in the Decision and Order.** in accordance with its Leave to Construct application, and evidence, except as modified by this Order and these Conditions of Approval.

2. To correct the mistake in Condition 1.6, that condition should be varied to read:

1.6 GRWLP shall obtain all necessary approvals, permits, licences,

certificates and easement rights required to construct, operate and maintain the Project and required to construct, operate and maintain the Wind Project and the Solar Project , as described in the second paragraph of section II. titled "SCOPE OF APPLICATION" in the Decision and Order, including the Renewable Energy Approval for both the Wind Project and the Solar Project, and shall provide copies of all such written approvals, permits, licences and certificates upon the Board's request.

Yours truly,

A handwritten signature in blue ink, appearing to read 'Lonny Bomberry', is written over the printed name.

Lonny Bomberry  
Director, Lands & Resources  
for the Six Nations Council