



HARRISON PENSA

February 9, 2012

VIA MAIL and ELECTRONIC FILING

Our File No. 151372

Kirsten Walli  
Board Secretary  
Ontario Energy Board  
P.O. Box 2319  
27<sup>th</sup> Floor  
2300 Yonge Street  
Toronto, ON M4P 1E4

Dear Ms. Walli,

**Re: EB 2011-0420 - Pic River First Nation Notice of Intervention**  
**Re: Application for Leave to Construct Transmission Facilities**  
**White River Hydro and Pic Mobert First Nation**

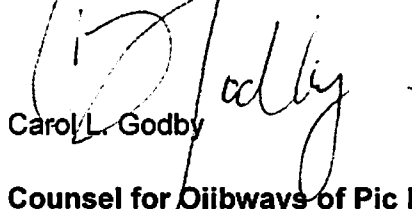
We represent the Pic River First Nation and in that capacity are writing to note our client's objection to a written hearing and to request the Board grant Intervenor status to Pic River in this Application.

Further to the Notice of Application published in the Marathon Mercury January 31, 2012, please find enclosed the Notice of Intervention and the Request for Oral Hearing submitted on behalf of the Pic River First Nation.

We have directed a copy of the same to the counsel for the Applicants.

Yours very truly,

**HARRISON PENSA <sup>LLP</sup>**



Carol L. Godby

**Counsel for Ojibways of Pic River**  
**Carol Godby and Steven Teal**  
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cc. **Ojibways of Pic River**  
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**ONTARIO ENERGY BOARD**

**APPLICATION FOR LEAVE TO CONSTRUCT  
TRANSMISSION FACILITIES FOR  
WHITE RIVER HYDRO LP AND PIC MOBERT FIRST NATION**

**NOTICE OF INTERVENTION  
OF THE  
PIC RIVER FIRST NATION and  
REQUEST FOR ORAL HEARING**

**To: Ms. Kirsten Walli  
Board Secretary**

**And to: Kristyn Annis as legal counsel for Regional Power OPCO Inc. and Pic  
Mobert First Nation**

1. Pic River First Nation hereby expresses its intention to intervene and participate in the above-noted proceeding.
2. Pic River First Nation became aware of the above-noted proceeding by way of the publication in the Marathon Mercury newspaper dated January 31, 2012.
3. The Pic River First Nation is located on the north shore of Lake Superior at the mouth of the Pic River. The First Nation has approximately 1000 members, half of whom reside on the reserve.
4. The transmission route proposed in the above Application is in the traditional territory of the Ojibways of Pic River, an area over which the First Nation has asserted a claim. Pic River First Nation has already been acknowledged to have an interest in the lands affected by the Project as noted in both the Board's Letter of Direction to the Applicants dated January 13, 2012 and in the Applicants' pre-filed evidence.
5. In this instance, an Environmental Review Report ("ERR") was prepared and submitted under the requirements for the Electricity Project Regulation (O Reg. 116/01). However, as the Applicants concede at paragraph 30 of their

Application, following the filing of the Statement of Completion, an additional transmission line routing option was considered that was not among the transmission alternatives considered and presented in the ERR. A portion of the route was altered (the "Niizh Portion") and is the route proposed in the Application before the Board.

6. It is significant to note that the alternate route was discussed with White River Forest Products ("WRFP"), the Sustainable Forest License holder. The Applicant, Pic Mobert First Nation holds an interest in WRFP; however, no further discussions with the Ojibways of Pic River took place although the amended Niizh Portion runs through their traditional territory.
7. A technical review completed by the Applicants concluded that the alteration was "minor" and, as such, no Addendum for public review under the environmental screening process was prepared. An Addendum is required in circumstances where the Project might have negative environmental effects (as conceded by the Applicants in their pre-filed evidence Exhibit B, Tab 1, Schedule 5, P.2 of 2) or where the change would involve the relocation of a portion of the transmission lines and poles.
8. Further, the determination of the alteration's potential environmental effects or whether these effects are indeed "minor" cannot be made in the absence of consultation with the Pic River as an "interested and affected party" whose members are directly impacted.
9. As the Ojibways of Pic River continue to exercise their aboriginal rights over their traditional territory and have asserted a title claim over same (including the Niizh Portion), there was a clear obligation to consult with Pic River on the altered route. No such consultation occurred.
10. The altered route was presented only as part of this Application before the Board and not as part of the consultation process on the Project. As the harmonized Project Information Report/Environmental Screening Review Report has been completed, this proceeding is the first opportunity available to Pic River to raise its concerns regarding the consultation process on the altered route.
11. In exercising its jurisdiction to determine whether the Orders requested by the Applicants are appropriate and in the public interest, the Board must assess the adequacy of consultation with aboriginal communities.
12. The duty to consult arises when the Crown has knowledge, real or constructive, of the potential existence of the aboriginal right or title and contemplates conduct that might adversely affect it. Clearly the alteration of the route which is now before the Board has the potential to impact the rights and interests of the Pic River members.

13. The matters raised above may only be properly addressed through an oral hearing to ensure that the people most affected by the Application have the right to hear and present evidence and to cross-examine witnesses. It is further noted that an oral hearing is in keeping with Ojibway culture and, as such, is the proper way to proceed in circumstances where the proposed transmission facilities directly impact the Pic River people.
14. Pic River First Nation expects to participate in the hearing by adducing evidence, conducting cross-examinations and presenting arguments as they deem appropriate with respect all issues arising from the Application or raised during the course of the hearing.
15. Pic River will be requesting an award of costs for its participation in this proceeding and believes that, as it has an interest in the land that is affected by the Project, it meets the eligibility criteria set out in the Ontario Energy Board's Rules of Practice and Procedure (Section 41) and its' Practice Direction on Cost Awards (section 3.03).
16. Pic River has retained Harrison Pensa LLP as its legal counsel in this matter and may retain qualified consultants to ensure that its interests are protected and will proceed on the basis that Pic River can recover the related fees and disbursements incurred based on the Board's Practice Direction on Cost Awards at the prevailing Cost Award Tariff.
17. Pic River requests that copies of any and all supporting materials in relation to this matter be served on its legal counsel at the address noted below:

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450 Talbot Street  
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Attention: Carol L. Godby

February 9, 2012

HARRISON Pensa<sup>LLP</sup>

Carol L. Godby

