

February 22, 2012

Board Secretary
Ontario Energy Board
2300 Yonge Street
P.O. Box 2319
Suite 2700
Toronto, ON M4P 1E4

Attention: Ms. Kirsten Walli

Dear Ms Walli:

Re: EB-2011-0420: Response to intervention requests

The Applicant wishes to respond to the intervention requests of Pic River First Nation ("Pic River") and Innergex Renewable Energy Inc. ("Innergex"). The Applicant does not oppose the intervention of Pic River, but does oppose the intervention of Innergex. The Applicant wishes to provide clarification for the Board's benefit regarding certain issues raised by Innergex and Pic River. The Applicant also seeks clarification from the Board as to the scope of the present proceeding.

Innergex

Innergex requests in its letter dated February 14, 2012 further information regarding how the Hydro Facilities (as defined in the Application) will affect the flow regimes of Innergex's Umbata Falls generating station ("GS"). Respectfully, the Applicant submits that this issue is not within the scope of the leave to construct proceeding (a "Section 92 application"). The Board stipulated in EB-2005-0478 that "proponents are not required to apply to the Board for any approvals associated with the construction of a generating station." The Board further acknowledged in that case that it had no inherent jurisdiction to review any aspect of the construction of the generating facility, including a review of the environmental impacts, if any, associated with the construction of such facility. In particular, the Board has ruled that it has no jurisdiction over water flows, which are overseen by the Ministry of Natural Resources pursuant to the *Lakes and Rivers Improvement Act*.¹ It follows that the impact of the Hydro Facilities on the water flows for the Umbata Falls GS are not within the scope of the present proceeding, which pertains only to the Transmission Facility.

¹ See EB-2011-0065, EB-2011-0068, Decision and Order, dated May 20, 2011, at p. 8-9.

Notwithstanding the foregoing, Schedule 'A' attached hereto contains the record of consultation that took place between the Applicant and Innergex regarding the effect of the Hydro Facilities on Umbata Falls GS, which consultation was conducted pursuant to the environmental permitting process for the Hydro Facilities and Transmission Facilities (collectively, the "Project"). In addition to consultation, the Project Information Report details the downstream impact of the Hydro Facilities in numerous places, and in particular Umbata Falls GS.

Pic River First Nation

Pic River states in its letter dated February 9, 2012 that no consultation occurred regarding the amended routing option for the Niizh Portion (as defined in the Application) of the Transmission Line. As the Board is aware, consultation regarding environmental impact, which includes impact to aboriginal rights, is carried out under the environmental screening process. In consultation with the Ministry of Natural Resources and Ministry of Environment, the Applicant prepared the enclosed assessment report (the "Report") as part of the proponent driven review process. The Report concluded that the amended Transmission Line route would have low impact (the new route follows, for the most part, existing forestry roads, as opposed to cutting through forest, and eliminates one crossing over White River) and as such, no formal Addendum or public review process was required.

Notwithstanding the conclusion of the Report, the Applicant provided the information regarding the new Transmission Line route to Pic River and offered an opportunity for the latter to raise any issues. None were raised. Details of the consultation are attached at Schedule 'B'. The Crown confirmed that the consultation carried out was appropriate, given the low potential for adverse impact to aboriginal rights, and signed off on the consultation.

The Applicant submits that land rights and related consultation do not relate directly to the price or reliability and quality of electrical service contemplated within the scope of Section 92. The Applicant relies on the previous decisions of the Board, in which only consultation and accommodation issues directly related to the criteria of Section 96(2) were admitted for consideration.²

The issues raised by Pic River and Innergex are, respectfully, not within the scope of the a Section 92 application. Taking into account the Board's previous position on these matters, the Applicant requests that the Board provide clarification in the next procedural order to the parties as to the scope of this proceeding, and in particular; (i) whether the effects of the Hydro Facilities, and (ii) the effect of the Transmission Facilities on land-related aboriginal rights and related consultation, are out of scope.

All of which is respectfully submitted,

² EB-2009-0120, Yellow Falls Power Limited Partnership, Decision on Questions of Jurisdiction and Procedural Order 4, November 18, 2009. See also EB-2010-0150, Northgate Minerals, Procedural Order 2, July 29, 2010. See also EB-2011-0115, Detour Gold, Procedural Order No. 1, dated June 8, 2011.

McCarthy Tétrault LLP

Per: *signed in the original*

Kristyn Annis

KA/ps
encl.

Schedule 'A' – Consultation with Innergex Renewable Energy Inc.

Date	Consultation
May 17, 2007	Letter from Byron Leclair of Pic River First Nation (partner in Umbata Falls project) mentioning that the Project Information Package/Environmental Screening Report did not mention impacts or changes to the Umbata Falls project ("Umbata").
April 4, 2008	Messages left by Hydro Facilities consultant Karen McGhee with Renaud deBatz and Jean Trudel of Innergex.
April 7, 2008	Discussion between Karen McGhee and Jean Trudel. Jean Trudel directs Karen McGhee to Renaud deBatz.
April 8, 2008	E-mail correspondence from Karen McGhee to Renaud deBatz of Innergex proposing that a discussion be held regarding possible impacts of the Hydro Facilities on Umbata.
April 8, 2008	Conference call with Renaud deBatz of Innergex regarding possible impacts of the Hydro Facilities on Umbata. Renaud deBatz was informed of the size of the proposed Hydro Facilities and expressed he was confident that no major issues would arise since the flow from the Hydro Facilities would be too small to send flows downstream that Umbata could not utilize.
Sept. 30, 2008	E-mail correspondence from Karen McGhee to Renaud deBatz of Innergex attaching the Flow Duration Curve requested to evaluate the impacts of the Hydro Facilities on Umbata. No response was received to this e-mail to date.
Oct 22, 2008	E-mail correspondence from Karen McGhee to Renaud deBatz of Innergex (a) following up on the Flow Duration Curve previously sent on September 30, 2008 (b) requesting comments, if any, regarding the Flow Duration Curve and (c) requesting Innergex's opinion as to possible impacts of the Hydro Facilities on Umbata.
November 21, 2008	Letter from Hatch design engineers (the "November Hatch Letter") stating that in their professional opinion the Hydro Facilities would not overtax Umbata.
November 24, 2008	Meeting with Ministry of Natural Resources regarding, among other things, the Water Management Plan for Umbata.
December 2, 2009	Letter from Hatch design engineers stating that in their professional opinion the Hydro Facilities would not overtax Umbata.
2011	Brief discussion between James Carter of Regional Power and Renaud deBatz of Innergex during a conference in British Columbia. Flows on the White River were mentioned, but Renaud deBatz made no specific information requests at that time.

Schedule 'B' – Consultation with Pic River First Nation

Date	Consultation
Week of October 24, 2011	Consultation letter (the "October Consultation Letter") sent by courier to Chief Michano of Pic River concerning proposed changes to the transmission line route for the Gitchi Animki Hydroelectric Project.
October 27, 2011	E-mail correspondence from Norman R. Jaehrling of Pic Moberg First Nation Hydro Power Joint Venture to Jamie Michano of Pic River to (a) confirm receipt of the October Consultation Letter (b) inquire whether Chief Michano of Pic River would require more time to review the contents of the October Consultation Letter and (c) attaching digital copies of the October Consultation Letter.
November 29, 2011	Voicemail message left by Norman R. Jaehrling of Pic Moberg First Nation Hydro Power Joint Venture to Jamie Michano of Pic River regarding the October Consultation Letter.
November 29, 2011	E-mail correspondence from Norman R. Jaehrling of Pic Moberg First Nation Hydro Power Joint Venture to Jamie Michano of Pic River following up on his own voicemail message of the same date inquiring (a) whether Pic River will respond to the October Consultation Letter and (b) whether Pic River has any concerns regarding the proposed changes to the transmission line route for the Gitchi Animki Hydroelectric Project.
December 01, 2011	E-mail correspondence from Norman R. Jaehrling of Pic Moberg First Nation Hydro Power Joint Venture to Wendy Leclair of the Ministry of Natural Resources (a) outlining efforts to consult with Pic River to date (b) attaching digital copies of the October Consultation Letter (c) confirming that no response was received from Pic River in connection with the October Consultation Letter and subsequent follow up attempts and (d) requesting confirmation from the Ministry of Natural Resources that the Pic River consultation should be considered closed.
December 19, 2011	E-mail correspondence from James Carter of Regional Power to Paul Gamble of the Ministry of Natural Resources (Wawa District) confirming that, during construction, only safety related access restrictions will be in place.
December 22, 2011	E-mail correspondence from Norman R. Jaehrling of Pic Moberg First Nation Hydro Power Joint Venture to Paul Gamble of the Ministry of Natural Resources (Wawa District) asking for confirmation that the consultation matter on the transmission route adjustments is complete and closed.
December 22, 2011	E-mail correspondence from Paul Gamble of the Ministry of Natural Resources (Wawa District) to Norman R. Jaehrling of Pic Moberg First Nation Hydro Power Joint Venture confirming that "The MNR Wawa can adequately assess that the aboriginal consultation is complete at this point in time."
January 23, 2012	E-mail correspondence from Norman R. Jaehrling of Pic Moberg First Nation Hydro Power Joint Venture to Paul Gamble of the Ministry of Natural Resources (Wawa District) asking for further confirmation that (a)

	the consultation matter on the transmission route adjustments is complete and closed and (b) in the event any significant changes to the project occur, further consultation obligations may arise.
January 24, 2012	E-mail correspondence from Paul Gamble of the Ministry of Natural Resources (Wawa District) to Norman R. Jaehrling of Pic Mobert First Nation Hydro Power Joint Venture confirming that MNR Wawa can adequately assess that the aboriginal consultation is complete at this point in time. Any further proposed changes to the location and/or scope of the Project which was consulted on will need to be assessed to determine if further consultation is required.