



EB-2011-0420

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 White River Hydro LP and Pic Mobert First Nation for an order under section 92 and subsection 96(2) of the *Ontario Energy Board Act* granting leave to construct an electricity transmission line and related facilities.

PROCEDURAL ORDER NO. 1

White River Hydro LP and Pic Mobert First Nation (the “Applicants”) have filed an application with the Ontario Energy Board (the “Board”) dated December 6, 2011 under sections 92 and 96(2) of the *Ontario Energy Board Act*, 1998, S.O. 1998, c.15, Schedule B. The Applicants have applied for an order of the Board granting leave to construct an electricity transmission line as described below in item (i) and related facilities (“Transmission Facilities”), as described in items (ii), (iii) and (iv):

- (i) A single 115 kV electricity transmission line (the “Transmission Line”) approximately 23.5 kilometres in length, which will connect the two hydroelectric generating facilities (the Niiz Facility and the Bezhig Facility) on White River, to the Independent Electricity System Operator-controlled grid. The Transmission Line will begin at the downstream Niiz Facility, connect the Bezhig Facility and terminate at the interconnection point with Hydro One Networks’ (“Hydro One”) M2W 115 kV circuit;
- (ii) A switching station will be located adjacent to the M2W circuit;
- (iii) A switchyard located adjacent to the Niiz Facility powerhouse that will connect the Niiz Facility to the Transmission Line; and

- (iv) A switchyard located adjacent to the Bezhig Facility powerhouse that will connect the Bezhig Facility to the Transmission Line.

The Transmission Line and Transmission Facilities will be located near the community of Pic Mobert and the Town of White River.

The Application has been assigned Board File No. EB-2011- 0420.

The Board issued a Notice of Application dated January 24, 2012, and directed the Applicants to serve and publish the Notice.

Intervenors and Cost Eligibility

The Board received requests for intervenor status from Pic River First Nation ("PRFN"), Innergex Renewable Energy Inc. ("Innergex") and the Independent Electricity System Operator ("IESO"). On February 22, 2012, the Board received a letter from counsel for the Applicants in relation to the intervention requests of PRFN and Innergex.

In its letter of intervention dated February 9, 2012, PRFN stated that the Ojibway of Pic River were not consulted in relation to the proposed new route for the Transmission Line and raised concerns with respect to the adequacy of aboriginal consultation. At paragraph 11 of its letter PRFN stated:

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.

PRFN sought eligibility to apply for an award of costs and stated that the Board should convene an oral hearing in keeping with Ojibway culture.

The Board received Innergex's intervention request on February 14, 2012. Innergex stated that it was "mostly concerned about future flow regimes downstream from the proposed hydro facilities". Innergex did not seek costs and took no position on the Board's decision to proceed with a written hearing in this matter.

By letter dated February 22, 2012, the Applicants notified the Board that they were opposed to the intervention request of Innergex. The Applicants stated that the issues of concern to Innergex were beyond the scope of this proceeding. The Applicants referred to the Board's Decision in EB-2005-0478 and stated that the Board did not have

jurisdiction to consider matters related to the construction of generation facilities, including the consideration of environmental impacts associated with the construction of such facilities. Further, the Applicants referred to the Board's Decision in EB-2011-0065 and EB-2011-0068 and stated that the Board has no jurisdiction over water flows, which are overseen by the Ministry of Natural Resources, pursuant to the *Lakes and Rivers Improvement Act*. The Applicants also provided a schedule that outlined the consultation that had occurred with Innergex pursuant to the environmental permitting process.

With respect to the intervention request of PRFN, the Applicant did not object to the request for intervention, but objected to the claim by PRFN that it was not consulted in relation to the new route for the Transmission Line. The Applicants submitted that PRFN had been informed about the change in route and that the Crown had concluded that adequate consultation had occurred in relation to that change. The Applicants further submitted that issues related to land-related aboriginal rights and the adequacy of consultation are beyond the scope of this proceeding.

The Board will grant PRFN intervenor status and eligibility to apply for an award of costs. The Board however stresses that cost eligibility shall be restricted to matters directly within the scope of this proceeding. With respect to the scope of the proceeding and as noted in the Notice, the Board's jurisdiction in this proceeding as set out in section 96(2) of the Act, is limited to the consideration of the price of electricity, the reliability of the electricity system and quality of electricity supply, as well as the promotion of the use of renewable energy sources consistent with the policies of the government of Ontario. The Board therefore has no authority under the law to review, consider or adjudicate upon what might broadly be described as environmental issues.

Further, in a ruling in EB-2009-0120 ("Yellow Falls"), the Board found that the environmental assessment process was an appropriate forum for the consideration of aboriginal consultation issues in relation to environmental matters. The Board stated:

In accordance with the rules and procedures governing the environmental assessment process the Minister of the Environment will make a decision. The Board has no mandate or jurisdiction of any kind to suggest that it is empowered to review, assess, or adjudicate upon the adequacy of the Minister's consultation and accommodation of Aboriginal peoples.¹

¹ Decision on Questions of Jurisdiction And Procedural Order No. 4, EB-2009-0120

The Board will grant intervenor status to Innergex on condition that it focuses its intervention on issues directly related to the Transmission Line and Transmission Facilities and to matters within the scope of this section 92 application. With respect to the issues of concern to Innergex, the Board will not consider matters pertaining to “future flow regimes” and operation of the generation facilities as they are beyond the scope of this proceeding. As noted earlier in this Order, the Board’s jurisdiction in section 92 applications is strictly limited to the consideration of the price of electricity, the reliability of the electricity system and quality of electricity supply, as well as the promotion of the use of renewable energy sources consistent with the policies of the government of Ontario.

The Board received the IESO’s request for intervenor status on February 17, 2012. The IESO did not seek costs and took no position on the Board’s decision to proceed with a written hearing in this matter. The Board will grant intervenor status to the IESO.

In addition to the requests for intervenor status, the Board received requests for observer status from White River Area Co-Management Committee and Rodney Swarek and a letter of comment from Paul Filteau.

Written Hearing

In the Notice the Board indicated that it intends to proceed by way of a written hearing unless any party satisfies the Board that there is a good reason for not proceeding by way of a written hearing. PRFN requested an oral hearing in keeping with the Ojibway culture². The Board has however determined that, given the circumstances of this case, including the scope of its jurisdiction pursuant to section 92 of the Act, that it is most appropriate to hear this matter by way of a written proceeding.

The Board considers it necessary to make provision for the following matters related to this proceeding. The Board may issue further procedural orders from time to time.

THE BOARD ORDERS THAT:

1. Intervenor status and Board staff who wish information and material from the Applicants that is in addition to the evidence pre-filed with the Board, and that is relevant to the proceeding, shall request it by written interrogatories filed with the

² A similar request was made in the letter of comment, dated February 2, 2012

Board and delivered to all parties no later than **March 5, 2012**. All interrogatories and responses must include a reference to the section of the application which identifies the specific evidence on which the interrogatory is based.

2. The Applicants shall, no later than **March 15, 2012** file with the Board and deliver to all intervenors, a complete response to each of the interrogatories.
3. The Applicants shall file with the Board and deliver to all intervenors, their argument-in-chief, if any, by **March 23, 2012**.
4. Board staff and intervenors shall file their written submission, if any, with the Board, and deliver it to the Applicants and other intervenors, by **March 27, 2012**.
5. If the Applicants wish to respond to a submission, the response must be filed with the Board and delivered to intervenors by **April 4, 2012**.

All filings to the Board must quote file number **EB-2011- 0420**, be made through the Board's web portal at www.errr.ontarioenergyboard.ca, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.oeb.ontarioenergyboard.ca. If the web portal is not available you may email your document to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

ADDRESS:

Ontario Energy Board
P.O. Box 2319
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DATED at Toronto on **February 23, 2012**

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

APPENDIX “A”

TO

PROCEDURAL ORDER NO.1

ADDRESSES OF THE APPLICANTS AND INTERVENORS

EB-2011- 0420

FEBRUARY 23, 2012

**White River Hydro Limited Partnership
EB-2011-0420**

APPLICANT & LIST OF INTERVENORS

February 23, 2012

APPLICANT

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**White River Hydro Limited Partnership
EB-2011-0420**

APPLICANT & LIST OF INTERVENORS

February 23, 2012

INTERVENORS

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Ojibways of Pic River

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