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Delivered by Courier
and Email

Kirsten Walli
Board Secretary
Ontario Energy Board
2700 – 2300 Yonge Street
Toronto, Ontario
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Dear Ms. Walli:

Re: Further Submissions of the Nishnawbe Aski Nation ("NAN") arising from the Stakeholder Conference on 08 October 2013 / EB-2013-0301 /DMC File No. 10074

NAN wishes to thank the Board for the opportunity to participate in the Stakeholder Conference on 08 October 2013. It was helpful in providing a summary of different stakeholder viewpoints on the questions posed by the Board in its 22 August 2013 letter.

That being said, there were questions raised during the Conference for the Board itself, responses to which the participants eagerly await. Board Staff in attendance were obviously not in a position to advise of the answers which the Board might give to the questions or, alternatively, to articulate the Board's position on such matters.

For its part, NAN is looking forward to the Board providing any additional information on the following issues:

1. The genesis for the policy review relating to the granting of intervenor status and intervenor funding given the broad powers which the Board currently enjoys under its own *Rules of Practice*. This would include any information the Board may have indicating that the current

process under which intervenor party status is granted and funding is determined is not working very well, such that revisions to the existing *Rules* are warranted; and

2. For Phase 2 of this policy review, will the Board be providing the participants with information packages on intervenor participation and/or funding in other jurisdictions to assist the participants' understanding of the "alternative models" and to make submissions on same?

NAN's further submissions concerning the Stakeholder Conference can be summarized as follows:

1. No participant provided any convincing evidence to suggest that intervenor participation in OEB proceedings has been impeding, delaying, or making the process too complicated or unworkable;

2. Despite statements by certain organizations representing utilities, there was no evidence presented that "redundancy" in the interrogatory process had become a problem in OEB proceedings such that it was delaying the evidentiary process or increasing hearing costs. In fact, NAN submits that the evidence showed the opposite. When an applicant has been faced with the same or similar interrogatories in a proceeding, one answer will ordinarily be provided and any other party posing the same or a similar interrogatory will simply be referred to the answer which has already been provided to the first party. Further, to suggest that intervening parties should co-ordinate their efforts in the interrogatory process and divvy up the interrogatories to be formulated and submitted would itself require time and add costs which have not previously been part of the OEB process. In other words, it may simply be easier-- and indeed fairer --to permit intervening parties to pose, independent of each other, the interrogatories they wish to pose;

3. NAN submits that one of the causes of increased costs in the interrogatory process has been the practice of some applicants *not* to answer the interrogatories which have been posed, but rather to provide information which is non-responsive to an interrogatory. This conduct in the interrogatory process simply adds to the costs of the proceeding because it usually results in follow-up interrogatories or, worse still, motions before the Board. In short, the interrogatory process only functions effectively and efficiently to the extent that applicants accept its legitimacy and provide complete and responsive answers to Board Staff and intervening parties;

4. NAN submits that it would not serve the interests of justice or the regulatory mandate of the OEB to rely more heavily on Board Staff in the interrogatory process, including to have Board Staff conduct a preliminary review of interrogatories to narrow them, group them together, or try to eliminate redundancies. Board Staff have an advisory role to perform for the Board and their activities should not limit the adversarial aspects of OEB proceedings provided by intervening parties;

5. No workable scheme for capping intervenor funding was presented at the Stakeholder Conference. Apart from the organizations representing distributors which are often applicants before the Board, there did not appear to be broad-based support for capping intervenor funding or having the funding process changed to require the preparation and approval of pre-hearing budgets. On this issue, NAN submits that the current cost regime and the extensive powers of the Board under the *Rules* has served and continues to serve the public well. Therefore, no changes should be introduced by the Board;

6. In NAN's submission, the concepts of "cost-effectiveness" and "efficiency" as the criteria for this policy review were not embraced by most participants at the Stakeholder Conference. The Board should not be operating its adjudicative processes as if it were an operating utility. Indeed, to rely on such narrow economic criteria in this policy review detracts from what should be the principal objectives of the intervenor process: to ensure that all relevant interests are given access to the OEB process such that the Board is in a position to render *quality* decisions;

7. In NAN's view, there was no convincing evidence produced by any participant that intervenor funding costs are "out of control" or that they are causing hardship for anyone. In fact, NAN embraces and adopts the observation made by Association of Power Producers of Ontario at the Stakeholder Conference on the issue of annual intervenor costs. That organization, which represents 98% of Ontario's generating capacity in the electrical sector, made this observation in its written submission:

> The $5.5 million in intervenor funding is ultimately ratepayer money, and the Board is quite appropriately seeking to ensure that those funds are well spent. That having been said, the $5.5 million in intervenor funding in immaterial in the context of the

collective revenue requirement of 80 plus electricity distributors, four electricity transmitters, and three natural gas utilities.

In the absence of intervenor funding, intervenors such as APPrO will not be able to participate in Board proceedings. In APPrO's view, the participation of consumers in Board proceedings is of significant benefit to Ontario ratepayers, and that the benefit far exceeds the costs of intervenor funding.

8. The significant annual increases in electricity rates in Ontario which consumers have been experiencing confirm that the current regime in which intervenor party status and funding is granted be maintained. Given the annual increases in electricity rates since in or about 2006, including rising distribution costs, and the large capital investments planned for Ontario's electrical sector, there is ample reason to expand openness, transparency, and participation in OEB proceedings such that all relevant stakeholder interests are represented in the adjudicative process;

9. In NAN's submission, the most credible persons to make representations on behalf of ratepayers are not the electrical power generators, distributors or transmitters of electricity, or the gas utilities. Rather, they are the very organizations which the Board has come to accept as being representative of such groups. Those groups were in attendance at the Stakeholder Conference and they have often been granted intervenor party status and funding in many OEB proceedings; and

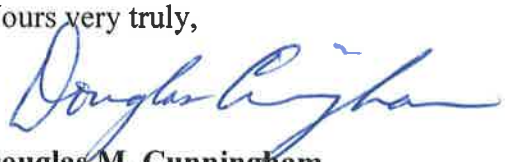
10. NAN notes that certain electrical and gas utilities or their representative organizations are proposing caps on intervenor funding. None of them, however, has proposed caps on their gas or electrical rates.

Nor have any applicants or their representative organizations proposed a *cap* on the legal and consulting fees which applicants can spend in their applications to obtain rate increases, changes to licensing requirements, or exemptions from various Codes, etc. Thus, we have a situation where applicants are proposing to limit the resources which can be brought to bear by intervening parties in OEB proceedings, while giving them (i.e. the applicants) complete freedom to use whatever resources they deem necessary to obtain the relief they are seeking from the Board. In NAN's respectful submission, it would be grossly unfair in such circumstances to set pre-hearing budgets or a cap on the fees and disbursement costs of intervening parties. The Board has ample authority under its *Rules* to determine the appropriate quantum of intervening

funding by taking into account a variety of factors. In short, reimbursable costs in a proceeding should be determined at the end of a proceeding not at its outset.

ALL OF WHICH IS RESPECTFULLY SUBMITTED ON BEHALF OF NAN.

Yours very truly,



Douglas M. Cunningham
(Legal counsel for NAN)

DMC/am