



EB-2016-0262

**Wataynikaneyap Power LP
Application for an accounting order to establish a
deferral account**

**OEB Staff Submission
February 10, 2017**

2472883 Ontario Limited (Wataynikaneyap Power GP) filed an application on behalf of Wataynikaneyap Power LP (WPLP), for an accounting order authorizing the establishment of a new deferral account with an effective date of August 26, 2016 to record costs incurred in relation to the development of the Wataynikaneyap Transmission Project (the Project). The application was filed with the Ontario Energy Board (OEB) on August 26, 2016 under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B) (the *OEB Act*).

The applicant will seek disposition of amounts in the deferral account at the time the applicant seeks to establish its initial transmission rates (or at another time as the applicant requests or the OEB orders). WPLP has acknowledged that the establishment of the account by the OEB, and the recording of costs in the account, is no guarantee of the eventual recovery of recorded costs from transmission ratepayers.

Background

On November 15, 2015, WPLP's application for a transmission licence was granted by the OEB¹. On July 20, 2016 the Lieutenant Governor in Council made an order declaring that the construction of electricity transmission lines to Pickle Lake and extending north from Red Lake and Pickle Lake required to connect 16 named remote First Nation communities to the provincial electricity grid are needed as priority projects². WPLP has discussed connecting a 17th remote First Nation community that is

¹ ET-2015-0264

² Order in Council 1157/2016.

not currently included in its licence³. Power in these communities is currently provided by local diesel generation.

On July 29, 2016, the Minister directed the OEB to amend the electricity transmission licence issued to WPLP to include a requirement that it proceed to develop and seek approvals for the following:

- A new three-phase single-circuit 230 kV overhead transmission line originating at a point between Ignace and Dryden and ending in Pickle Lake (The Line to Pickle Lake, or Phase I).
- Transmission lines extending north from Red Lake and Pickle Lake required to connect the remote communities to the provincial electricity grid. (The Remotes Connection Project, or Phase II)

Phase I and Phase II together form the Wataynikaneyap Transmission Project.

On September 1, 2016, the OEB amended WPLP's transmission licence.

A Notice of Hearing was issued for this proceeding on October 19, 2016. Notice was translated and provided in Cree, Oji-Cree, French, and English. No requests for intervenor status were received in response to the notice. OEB staff requested information from WPLP through written interrogatories on November 14, 2016. In Procedural Order No. 2, the OEB made provision for supplemental interrogatories. This submission is filed in accordance with Procedural Order No. 3.

The new Line to Pickle Lake (Phase I) is expected to run approximately 300km in length. The Remotes Connection Project is expected to consist of a network of approximately 1500km of transmission lines of varying standard operating voltages (Phase II). WPLP indicates it intends to construct one part of Phase II, running approximately 90km from Red Lake to connect Pikangikum First Nation, before commencing construction on Phase I. Although WPLP intends to construct this part of the Project using 115kV transmission level conductors, WPLP intends to seek a distribution licence and operate the line at a distribution voltage (44kV) for a period of approximately 3 to 4 years. This will enable WPLP to connect Pikangikum First Nation - one of the largest of the 16 named remote communities - as early as 2020. WPLP will later convert the line to operate at transmission voltage once it is possible to connect communities north of Pikangikum.

³ IR Staff-14

The applicant is not seeking to track or record in the deferral account costs associated with developing the line to Pikangikum⁴.

Establishment of the Account

OEB staff agrees with WPLP that the OEB should establish a deferral account for the recording of development costs for the Project. WPLP is required under its licence to develop and seek approval for the Project. OEB staff agrees that the OEB's criteria for establishment of a deferral account: causation, materiality and prudence, are met, and submits that WPLP, as a new transmitter, should not be disadvantaged compared to incumbent transmitters, who can include legitimate development costs in the capital costs of an approved project. Staff notes that the final determination of the prudence of the amounts recorded will be made at the time of disposition of the account.

OEB staff also agrees that WPLP should be permitted to record carrying charges on the account in accordance with the OEB's approved methodology⁵, and that the effective date of the account should be August 26, 2016. OEB staff submits that the structure of the account and sub-accounts proposed by the applicant at pages 18 – 19 of its Argument in Chief, and as filed in supplemental interrogatory S1, is appropriate, with the exception of category 14 "Start-up costs (partnership formation)". This exception will be discussed in detail later in this submission.

Staff notes that WPLP will be recording all funding received from other sources, in the same manner as the costs are recorded, and the costs to be eventually considered for recovery from ratepayers will be reduced by the amount of this funding.

OEB staff acknowledges and accepts the description provided at pages 4 and 5 of the applicant's Argument in Chief of the conditions in the remote communities. It is clear to staff that grid connection through the Project is a key element in improving quality of life for those communities. The Project is urgently needed. This need is recognized in the Long Term Energy Plan and the government's Order in Council.

WPLP is required by its licence to develop the Project. As and for so long as that is the case, section 97.1(1) of the *OEB Act* prevents the OEB from granting leave to construct to any other proponent for the Project. In staff's view, this means that no other transmitter should be permitted to recover development costs from transmission ratepayers for the transmission project that WPLP is obliged by its licence to develop.

⁴ Response to IR Staff-S13(b). WPLP indicates that development costs have been 100% funded through an INAC Minor Capital funding stream in order to expedite grid-connection of Pikangikum as a stand-alone project.

⁵ EB-2006-0117.

Staff also notes that WPLP is not asking the OEB to find, in this application, that prudently incurred development costs would be recoverable from transmission ratepayers if the project failed for reasons outside WPLP's control⁶.

Reporting

OEB staff generally agrees with the proposed requirements for reporting to the OEB as set out at pages 18 to 19 of the applicant's Argument in Chief. Reporting should be consistent with the recommendations of the Independent Electricity System Operator (IESO) Report⁷, and should include any updates on additional funding applied for, received, and any prescribed restrictions on that funding.^{8,9}

WPLP proposes that reporting be made quarterly. Given the anticipated length of time for the Project to be completed (7 years from present) staff submits that reporting twice a year should be adequate. Reporting could begin on the 15th of the month in the month following a decision in this proceeding, and approximately every six months thereafter.

OEB staff submits that the reports should be held on the public record of this application. If WPLP believes some information in a report is confidential, it should make a request for confidential treatment through the OEB's normal process.

Type of Costs to be Recorded in the Deferral Account

While OEB staff supports the establishment of a deferral account to allow the applicant to track its development costs, staff submits that the start-up and formation costs of WPLP and its predecessor entities, as well as any costs for restructuring WPLP or its predecessor or successor entities, should be excluded from the deferral account. It is the role of the OEB to determine what costs should be recovered from transmission ratepayers, and staff submits that the benefit to transmission ratepayers of the start-up and formation expense has not been clearly identified or quantified.

WPLP has argued¹⁰ that the OEB should defer its consideration as to whether and to what extent the start-up and formation costs should be recovered by WPLP through

⁶ Supplemental interrogatory S10

⁷ Interrogatory 3: IESO Report- Recommended Scope for the new Line to Pickle Lake and Supported Scope for the Remotes Connection Project, dated October 13, 2016.

⁸ Response to IR Staff-7(c).

⁹ Response to IR Staff-S2.

¹⁰ Argument in Chief page 14

transmission rates. WPLP indicates that it will determine what start-up and formation costs it will seek to recover at the time it applies for disposition of the account. It is the practice of the OEB in approving a deferral account to issue an associated accounting order at the same time¹¹. An accounting order provides direction on the nature of the costs and approach to recording costs in the account at the outset, to minimize debate when a deferral account is cleared, often several years later. Staff submits that the OEB should consider direction on this matter as part of its ruling on this application.

OEB staff recognizes the benefit of the participation of First Nations. Such participation is also supported by the provincial and federal governments. OEB staff submits, however, that recovery of start-up and formation costs through transmission rates may not be the most appropriate manner of cost recovery.

As WPLP has submitted, the OEB allowed the recovery from ratepayers of start-up and formation costs in the decision on B2M Limited Partnership¹². B2MLP was created to acquire a section of electricity transmission line owned by Hydro One Networks Inc. The OEB allowed for the recovery of past costs in future rates, on the basis that a tax benefit was available due to the participation of First Nations in the partnership, and that benefit would be passed on to transmission ratepayers. As benefits follow costs, the transaction costs creating the tax savings would be recovered from ratepayers. WPLP argues that formation costs which WPLP requests to track in a deferral account in this proceeding give rise to a similar tax benefit that would not occur without the partnership interest of First Nations LP, which holds a 51% LP interest in WPLP, and is tax exempt.

OEB staff submits that the B2M situation is distinguishable from the current application. The B2M decision was concerned with a transaction with respect to an existing infrastructure asset with a well-defined cost base and clearly quantified benefit to ratepayers from the transaction. In this proceeding, as the transmission asset is not in service and is many years from being so, the cost base for the Project is an estimate, and the tax benefit cannot yet be quantified¹³.

In its response to supplemental interrogatory S12, WPLP outlines another benefit which it believes will accrue to transmission ratepayers from the Project: a reduction in the Rural and Remote Rate Protection (RRRP) subsidy presently supporting diesel generation in the remote communities. Staff acknowledges the benefit to ratepayers that may well occur over a 20 or 25 year time horizon through the reduction of the RRRP subsidy. However, this benefit, in staff's submission, is not a result of the

¹¹ For example, proceeding EB-2014-0311

¹² EB-2015-0026.

¹³ Supplemental interrogatory S12

partnership structure of WPLP, and therefore is not a benefit from the expenditure of the start-up and formation costs for WPLP or its predecessors.

B2MLP sought to recover costs incurred over a three year period before the application was filed, and did not seek to recover the cost of earlier discussions that led to the plan to form the partnership¹⁴. The costs sought to be recovered in the B2M application predated B2MLP's licence application by about one year. In contrast, in WPLP's case, a large portion of the start-up and formation costs were incurred many years ago, prior to the Project becoming a priority project and prior to any reference to the Project in a Long Term Energy Plan.

In general procurement practice, formation costs are not recoverable. For example, funding of project development through the IESO's Energy Partnerships Program excludes costs for formation of an entity to bid on a project¹⁵. OEB staff acknowledges, however, that funds to support First Nation and Métis participation are available through the partnership stream of that program. In this case, WPLP's licence, and the Order in Council that led to its amendment, require WPLP to "develop and seek approvals" for the transmission lines. Staff submits that transmission ratepayers should be responsible only for the cost of the work that is required by the transmission licence.

In generation and other types of procurements, a bidder's motivation to establish an entity and submit a bid is the potential financial reward of obtaining the contract to perform the work. A proponent is not compensated for the cost of preparing the bid, and the proponent must weigh the cost of preparing the bid against the likelihood of winning the contract and other factors. Similarly, entities that choose to form a utility and seek a licence to operate and recover costs in rates must be prepared to accept some risk that their initial investment to create the entity may not be recovered from utility ratepayers. Companies seeking to develop transmission projects should be subject to similar business risks and costs that are present in a competitive marketplace, including the non-recovery of the initial investment to establish the business.

In the East-West Tie designation proceeding¹⁶, the OEB was clear that start-up and formation costs would not be recoverable. All applicants had to be licensed before participating in the proceeding. Costs to create the entity to be licensed were not recoverable, even by the successful designated transmitter. Staff submits that the OEB should in this case similarly exclude start-up and formation costs from the WPLP deferral account.

¹⁴ EB-2015-0026 Exhibit J1.1, B2MLP reply submission

¹⁵ EPP Project Development Stream Rules: <http://www.ieso.ca/Documents/funding/EPP/EPP-Project-Development-Stream-Rules.pdf>

¹⁶ EB-2011-0140

In the alternative, if the OEB finds that start-up and formation costs may be tracked in the account, OEB staff submits that the OEB should ground its finding on the unique nature of this application. The transmission lines that comprise the Project have been declared to be needed as priority projects by Order-in-Council. The applicant is obliged to develop these transmission lines by reason of a licence condition required through a Ministerial directive. The partnership in this transmission project brings together 22 First Nation communities. These factors, in staff's submission, are unique to this application, and a finding that start-up and formation costs may be recoverable from ratepayers in this situation should not be relied upon by future applicants in different circumstances.

Timing of Costs

WPLP is seeking to recover costs incurred over a period of 8 years prior to this application. To allow these costs into future rates would appear to constitute retrospective ratemaking. Staff submits that in the circumstances of this case, the fact that the costs have been incurred before the regulatory mechanism of a deferral account was created should not be an absolute bar to their recovery from ratepayers.

Entrant transmitters do not have established rates or a regulatory basis on which to record prudently incurred development costs at the time it is necessary for such costs to be incurred. Typically, unless a deferral account is approved to mitigate project risk, existing transmitters will record the costs of development work for eventual inclusion in the total capital cost of the project. The development costs for a transmission infrastructure project may be incurred over a number of years before construction begins.

OEB staff submits that the costs to develop and seek approval for the transmission lines should be allowed in the account, as this activity is required by WPLP's licence. OEB staff accepts the explanation provided at supplemental interrogatory S6(d) that it was not practical for WPLP or its predecessors to apply for a deferral account before the Project was declared to be needed as a priority and the directive issued that required an amendment to WPLP's licence obliging the applicant to undertake development work on the Project. Staff submits that the unusual and complex circumstances involved in this case would have made an earlier application for a deferral account problematic.

At the same time, staff submits that the time frame in which costs were incurred provides some indication of whether those costs are truly related to development of the lines, or to activities that are not necessarily part of development work, such as start-up

and formation costs or general promotion of grid access for remote communities. The following are some key dates:

Table 1 – Key Dates

Description	Date/Timeframe
Central Corridor Energy Group formed, costs tracked	September 2008
Directive to former OPA re: “orange zones”	September 17, 2008
Release of the 2010 Long Term Energy Plan (LTEP) identifying new line to Pickle Lake as a priority	November 23, 2010
Directive to OPA to develop a plan for remote connection beyond Pickle Lake	February 17, 2011
Start of relationship-building through engagement activities in support of Environmental Assessment	June 2011
Start of Environmental Assessment work for the Line to Pickle Lake	September 2012
MOE letter re: delegation of certain aspects of duty to consult	February 13, 2013
Wataynikaneyap Power Corporation formed	April 2013
Release of the 2013 LTEP identifying the Remote Connections Project as a priority	December 2, 2013
OPA acknowledges WPLP's predecessor's work in draft Communities Connection Plan	August 21, 2014
Wataynikaneyap Power Corporation's amended Terms of Reference for EA approved	March 2015
Energy Minister Chiarelli press conference and signing ceremony in Thunder Bay, recognizing partnership efforts of Fortis-RES LP and First Nations LP	August 27, 2015
Application for transmission licence	September 1, 2015
Transmission licence granted	November 15, 2015
Orders-in-Council and Directive from Minister	July 20, 2016
Application date, and requested effective date of the account	August 25, 2016
Transmission licence amendment, pursuant to directive from Minister of Energy	September 1, 2016

September 2012 – present

OEB staff submits that from September 2012 onwards the Project which WPLP is developing was well-defined, and that the tracking of development costs, including consultation with First Nations (partners or otherwise) in this period is reasonable. It is clear that development work had begun by September 2012 with the initiation of the Environmental Assessment, after the line to Pickle Lake had previously been identified as a priority in the 2010 LTEP. Staff submits, however, that the OEB should consider excluding costs incurred to the present or in future related to restructuring of the

proponent, as restructuring would not appear to create a benefit for transmission ratepayers.

November 23, 2010 – September 2012

From the release date of the 2010 LTEP to the start of the Environmental Assessment work, staff submits WPLP undertook a combination of development and non-development work. The detail provided at supplemental interrogatory S7 is very helpful in understanding the sequence of events prior to the release of the 2013 LTEP.

The 2010 LTEP identified the new line to Pickle Lake as a priority project, but the Remotes Connection Project was identified as a priority only in the 2013 LTEP. In 2010, no plan had yet been developed for remote communities connections beyond Pickle Lake. Staff submits that at least the \$1.44 million of start-up and partnership formation costs listed in supplemental interrogatory S8 should be excluded from the account, for the reasons given earlier in this submission.

September 2008 – November 23, 2010

Prior to the 2010 LTEP, the Project was not yet defined. OEB staff submits that the costs incurred in this period, which are listed in the third column of the chart in interrogatory 4, cannot be characterized as directed to the project that WPLP's is now required to develop under its licence. OEB staff submits that the September 17, 2008 directive from the Minister to the OPA to examine "orange zones" in Northern Ontario is not sufficiently specific to define the Project.

Rather, OEB staff submits that costs incurred during this period are better characterized as start-up and formation costs, or costs to promote connection of First Nation communities generally. The exception to this characterization may be the amount of \$5,250 listed as engineering, design and procurement costs. While staff recognizes that this amount is immaterial, WPLP may wish to clarify in its reply argument what part of the Project WPLP is now required to develop was being engineered, designed or procured at that early stage. While promotion of connection of First Nation communities is a very valuable activity, staff submits that such costs should not be recovered from transmission ratepayers.

All of which is respectfully submitted